

***First Report to the Congress  
on the  
Operation of the  
Andean Trade Preference Act As Amended***

***April 30, 2003***



*prepared by*

THE OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE

**FIRST REPORT TO CONGRESS ON  
THE OPERATION OF  
THE ANDEAN TRADE PREFERENCE ACT AS AMENDED**

**Table of Contents**

<b>Executive Summary</b> .....	3
<b>Chapter 1 - Description of the ATPA</b> .....	5
Key Provisions .....	5
Country Eligibility .....	5
Product Eligibility .....	6
Safeguard Provisions .....	6
Reports on the Impact of the ATPA .....	7
<b>Chapter 2 - U.S. Trade With ATPA Countries</b> .....	8
U.S. Imports from ATPA Beneficiaries. ....	9
U.S. Imports Under ATPA by Country .....	11
U.S. Exports to ATPA Beneficiaries .....	12
<b>Chapter 3 - Country Eligibility Reports</b> .....	14
Detailed Eligibility Criteria .....	14
Bolivia .....	18
Colombia .....	26
Ecuador .....	34
Peru .....	41
<b>Chapter 4 - Summary of Federal Register Submissions</b> .....	52
International Intellectual Property Alliance .....	52
InterGen (North America), Inc. ....	52
Sithe Energies, Inc. ....	52
Pharmaceutical Research and Manufacturers of America .....	53
LeTourneau of Peru, Inc. ....	53
Colombian Flower Exporters Association (ASOCOLFLORES), Bloomsxpress, Inc., Fall River Florist Supply, Co. Inc., Summers Marketing, and Kennicott Brothers Company .....	53
American Apparel and Footwear Association .....	53
J.C. Penney Purchasing Corporation, Inc. ....	53
JeanYvesFWI .....	54
Russell Corporation .....	54

S. Schwab Company .....	54
Human Rights Watch , the U.S./Labor Education in the Americas Project, Representative George Miller and Representative Janice D. Schakowsky, and The American Federation of Labor and Congress of Industrial Organizations .....	54

**Tables**

Table 2-1: U.S. Trade with ATPA Countries, 1991-2002 .....	8
Table 2-2: U.S. Imports from ATPA Countries, Total and Under Import Programs, 2000-2002 .....	10
Table 2-3: U.S. Imports for Consumption Under ATPA, by Country, 2000-2002 ..	12

## EXECUTIVE SUMMARY

The Andean Trade Preference Act (ATPA), as amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA), requires the U.S. Trade Representative to submit a first report to Congress on the operation of the program no later than April 30, 2003, and every two years thereafter during the period the program is in effect. Congress directed that these reports include a general review of the ATPA beneficiary countries based on the eligibility criteria and considerations described in the statute.

This is the first such report required by the ATPA as amended, and covers the period 2000 through 2001, unless otherwise indicated. The report was prepared with input from all relevant federal agencies and offices, including the Departments of State, Treasury, Agriculture, Commerce and Labor; the Office of National Drug Control Policy (ONDCP); the Office of Management and Budget; the National Security Council/National Economic Council; and the U.S. International Trade Commission (USITC).

The ATPDEA renewed and expanded the ATPA, which had expired on December 4, 2001, providing beneficiary countries duty-free access to the U.S. market for any product not specifically excluded. Sections 203(c) and 203(d) and Section 204 (b)(6)(B) of ATPA, as amended by the ATPDEA, require that countries must meet certain criteria in order to be designated as an ATPDEA beneficiary country eligible to receive both the old and new benefits, and to maintain such beneficiary status. In Presidential Proclamation 7616 of October 31, 2002, the President designated all four ATPA beneficiary countries – Bolivia, Colombia, Ecuador and Peru – as ATPDEA beneficiary countries. The ATPA, as amended by the ATPDEA, will expire on December 31, 2006.

The objective of the ATPA is to promote broad-based economic development, diversify exports, consolidate democracy, and defeat the scourge of drug trafficking by providing sustainable economic alternatives to drug-crop production in Bolivia, Colombia, Ecuador and Peru. This report shows that the ATPA continues to achieve this goal. Furthermore, the United States is the leading source of imports and the leading export market for each of the ATPA/ATPDEA beneficiary countries. Thus, the ATPA has benefitted the trade of both the Andean region and the United States.

The report is organized as follows. Chapter 1 briefly describes the key sections of the ATPA, including the new ATPDEA requirements and the designation of ATPDEA beneficiary countries. Chapter 2 highlights trade between the United States and the ATPA/ATPDEA beneficiary countries. It notes that while U.S. trade with the countries has grown substantially since ATPA was enacted in 1991, two-way trade in 2002 grew less than one percent compared with the previous year due to factors such as weak demand and the lapse of the program. Chapter 3 evaluates the beneficiary countries' compliance with the eligibility criteria in the statute and discusses the ATPA's effect on economic development and the creation of viable economic alternatives to coca production in each of the beneficiary countries. It finds that the countries have been meeting the eligibility criteria of the program, but that there are several

areas that they need to continue to address. The chapter also finds that the program is having a positive effect on the countries' economic development, which in turn supports their counternarcotics efforts. Chapter 4 summarizes private sector and non-governmental organization responses to the Administration's *Federal Register* notice requesting comments on the program, as mandated by Section 203(f) of the ATPA, as amended by the ATPDEA. The comments range widely from those strongly supporting the continuation of the program's benefits to those advocating a removal of benefits due to issues relating to the program's eligibility criteria.

## Chapter 1

### DESCRIPTION OF THE ATPA

#### *Key Provisions*

The Andean Trade Preference Act (ATPA) was signed into law in December 1991 to help four Andean countries (Bolivia, Colombia, Ecuador and Peru) in their fight against drug production and trafficking by expanding their economic alternatives. To this end, the ATPA provides reduced-duty or duty-free treatment to most of these countries' exports to the United States.

The Andean Trade Promotion and Drug Eradication Act (ATPDEA) was signed into law on August 6, 2002, as part of the Trade Act of 2002. The program provides enhanced trade benefits for the four ATPA beneficiary countries. The ATPDEA renewed and amended ATPA to provide duty-free treatment for certain products previously excluded under the ATPA. In Presidential Proclamation 7616 of October 31, 2002, the President designated all four ATPA beneficiary countries – Bolivia, Colombia, Ecuador and Peru – as ATPDEA beneficiary countries. The renewal of the ATPA was retroactive to December 4, 2001, which is the date it had expired.

These four Andean countries are also beneficiaries of the U.S. Generalized System of Preferences (GSP) program. The ATPA offers broader product coverage and more liberal rules of origin than the GSP, thus augmenting the benefits of the GSP for the four countries. In addition, U.S. imports under the ATPA are not subject to the GSP's competitive need limitations or its country graduation requirements.

In response to the requirement in Section 3103(d) of the Trade Act of 2002, USTR has published interim final regulations establishing a petition process relating to the eligibility of the countries for the benefits of the program. Final regulations will be published shortly, and the first review of petitions is scheduled to take place in the fall of 2003. The President may withdraw or suspend ATPA designation, or withdraw, suspend or limit benefits, if a country's performance under the eligibility criteria is no longer satisfactory.

#### *Country Eligibility*

Under the ATPA, Bolivia, Colombia, Ecuador and Peru are the only countries eligible to be designated by the President as ATPA beneficiary countries. All four countries are ATPA beneficiary countries. Although Venezuela is a member of the Andean Community along with the four ATPA beneficiary countries, it is not eligible under the statute to be designated as an ATPA beneficiary country.

Each ATPA beneficiary country is eligible for the enhanced trade benefits of the ATPDEA if the President designates it as an ATPDEA beneficiary country, taking into account: (1) the criteria contained in sections 203(c) and 203(d) of the ATPA, as amended by the ATPDEA; and (2) additional eligibility criteria provided for in section 204(b)(6)(B) of the ATPA, as amended by

the ATPDEA.<sup>1</sup> These criteria are discussed in detail in Chapter 3, which contains a discussion of each country's compliance with the criteria since being designated. On October 31, 2002, the President designated all four ATPA beneficiary countries as ATPDEA beneficiary countries eligible for the ATPDEA's enhanced benefits. These four countries have also satisfied the requirements of section 204(b)(5)(A)(ii)(I) of the ATPA, as amended by the ATPDEA, related to customs cooperation.

### ***Product Eligibility***

Section 204 of the ATPA, as amended by the ATPDEA, identifies the articles eligible for preferential treatment. Duty-free treatment applies only to articles that meet the program's rules of origin, including a requirement that the sum of the cost or value of the inputs produced in the beneficiary country and the cost of processing operations performed in the country must not be less than 35 percent of the value of the article. Inputs from other ATPA/ATPDEA beneficiary countries, Puerto Rico, the U.S. Virgin Islands and beneficiaries of the Caribbean Basin Economic Recovery Act (CBERA) may be counted toward the 35 percent requirement.

The ATPDEA renewed the ATPA and amended it to provide preferential treatment for certain previously excluded products, including: certain textile and apparel articles, footwear, tuna packaged in foil or other flexible packages, petroleum and petroleum derivatives, watches and watch parts, and certain leather goods. Inclusion of all of the new benefits except textiles and apparel articles was subject to a Presidential determination that they are not import sensitive in the context of imports from ATPDEA beneficiary countries. The President did determine that certain footwear articles were import sensitive, as reflected in Presidential Proclamation 7616. The following products continue to be excluded by statute from receiving preferential treatment: textile and apparel articles not otherwise eligible for preferential treatment under the ATPDEA; rum and tafia; above-quota imports of certain agricultural products subject to tariff rate quotas (TRQs), including sugars, syrups and sugar-containing products; and tuna in cans. The ATPA, as amended by the ATPDEA, is scheduled to expire on December 31, 2006.

### ***Safeguard Provisions***

Section 204(d) of the ATPA authorizes the President to suspend duty-free treatment under the ATPA if temporary import relief is proclaimed for an article pursuant to Chapter 1 of Title II of the Trade Act of 1974 ("global safeguards") or Section 232 of the Trade Expansion Act of 1962. Section 204(e) of the ATPA provides for emergency relief from imports of perishable products from beneficiary countries and specifies the procedures for using these safeguard provisions.

---

<sup>1</sup> The criteria for the "new" benefits include the following: the extent to which the country demonstrates a commitment to undertake its WTO obligations and participate in the FTAA process; the extent to which the country provides protection of intellectual property rights and internationally recognized worker rights, including whether it has implemented its commitments to eliminate the worst forms of child labor; the extent to which it meets counternarcotics certification criteria; the extent to which it has taken steps to become a party to and implements the Inter-American Convention Against Corruption; how the country handles government procurement; and the extent to which the country has taken steps to support the efforts of the U.S. to combat terrorism.

Since 1991, the U.S. Government has taken two global safeguard measures that affected imports from the region. In February 2000, the President suspended duty-free treatment of steel wire rod and welded line pipe from ATPA beneficiary countries in two separate actions under the U.S. global safeguard law. In 1996, the President suspended duty-free treatment of corn brooms from Colombia for the period November 28, 1996 through November 27, 1999.

### ***Reports on the Impact of the ATPA***

Section 206 of the ATPA requires the U.S. International Trade Commission (USITC) to submit annual reports to the Congress on the impact of the ATPA on the U.S. economy generally and on U.S. industries and consumers, and its effectiveness in promoting drug-related crop eradication and crop substitution efforts of beneficiary countries. The USITC submitted its most recent (eighth) report covering 2001 to Congress in September 2002. Because the ATPA expired on December 4, 2001, this report was prepared at the request of the Committee on Ways and Means of the U.S. House of Representatives under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

The USITC reports have consistently found that the overall effect of ATPA-exclusive imports (i.e., those ineligible for other tariff preferences) on the U.S. economy and consumers, including in the year 2001, has been negligible. The eighth report estimated that U.S. imports of ATPA-exclusive products could have potentially significant effects on domestic industries producing fresh-cut roses; chrysanthemums, carnations, anthuriums and orchids; and asparagus. This report also found that the ATPA continues to have a positive (albeit small and indirect) effect on drug-crop eradication and crop substitution in the Andean region.

Section 207 of the ATPA directs the Secretary of Labor, in consultation with other appropriate Federal agencies, to undertake a continuing review and analysis of the impact of the ATPA on U.S. labor. The Secretary of Labor is required to report to Congress annually on the results of such review and analysis. The Department of Labor's most recent (eighth) report covering 2000 was submitted to Congress in November 2001. The Department of Labor's reports have consistently found that the ATPA does not appear to have had an adverse impact on, or have constituted a significant threat to, U.S. employment. The eighth report found that although declines in production and possibly employment in some sectors of the cut flower industry (standard carnations, standard and pompon chrysanthemums and roses) may have been affected to some extent by ATPA tariff preferences granted under the ATPA program, other factors may also have contributed to production and employment declines.

## Chapter 2

### U.S. TRADE WITH ATPA COUNTRIES

U.S. trade with the ATPA countries has grown substantially since ATPA was enacted in 1991. Between 1991 and 2002, total two-way trade increased 83 percent. During this time period, U.S. exports grew 70 percent and U.S. imports increased 93 percent. In 2002, two-way trade grew less than 1 percent compared with the previous year; U.S. exports to the region grew 1.6 percent compared to 2001 and U.S. imports grew less than 1 percent. For the fourth year in a row, the United States registered a trade deficit with the region, although the deficit peaked in 2000. (See Table 2-1.)

**Table 2-1.--U.S. Trade with ATPA Countries, 1991 - 2002**

Year	U.S. Exports*	ATPA Countries' Share of U.S. Exports to the World	U.S. Imports**	ATPA Countries' Share of U.S. Imports from the World	U.S. Trade Balance
	<i>Million \$\$</i>	<i>Percent</i>	<i>Million \$\$</i>	<i>Percent</i>	<i>Million \$\$</i>
<b>1991</b>	3,798.2	0.9	4,969.5	1.0	-1,171.3
<b>1992</b>	5,319.7	1.3	5,058.7	1.0	261.0
<b>1993</b>	5,359.1	1.2	5,282.3	0.9	76.7
<b>1994</b>	6,445.0	1.3	5,879.5	0.9	565.5
<b>1995</b>	7,820.2	1.4	6,968.7	0.9	851.4
<b>1996</b>	7,718.7	1.3	7,867.6	1.0	-148.9
<b>1997</b>	8,681.8	1.3	8,673.6	1.0	8.2
<b>1998</b>	8,670.1	1.4	8,361.0	0.9	309.1
<b>1999</b>	6,263.2	1.0	9,830.2	1.0	-3,567.0
<b>2000</b>	6,295.1	0.9	11,117.2	0.9	-4,822.1
<b>2001</b>	6,363.3	1.0	9,568.7	0.8	-3,205.3
<b>2002</b>	6,463.8	1.0	9,611.5	0.8	-3,147.7

\*Domestic exports, F.A.S. basis

\*\*Imports for consumption, customs value

Source: Compiled from official statistics of the U.S. Department of Commerce

## U.S. IMPORTS FROM ATPA BENEFICIARIES

Since 1991, U.S. imports from ATPA countries have nearly doubled from approximately \$5 billion to \$9.6 billion in 2002. U.S. imports from ATPA countries in 2001 and 2002 remained below the peak registered in 2000, primarily due to weak U.S. demand and depressed prices of traditional commodity exports of the ATPA countries, such as coffee and bananas.

U.S. imports from ATPA countries averaged between 0.9 and 1.0 percent of total U.S. imports between 1991 and 2000, but declined to 0.8 percent in both 2001 and 2002, probably due to lower prices on their traditional commodity exports. While ATPA country products represent only a fraction of U.S. imports, the United States is the leading export market for each of these countries.

U.S. imports from ATPA countries have primarily consisted of derivatives of raw materials, agricultural products and apparel. Mineral fuels, mainly petroleum, accounted for 41 percent of imports in 2002. Other leading imports were precious metals, gemstones and jewelry; fruits and nuts, primarily bananas; apparel; copper articles; coffee; cut flowers; and fish and crustaceans.

U.S. imports from ATPA countries enter the United States duty free if covered by at least one of several programs, including ATPA (including ATPDEA as of October 31, 2002), GSP, and the production-sharing provisions of HTS chapter 98. Imports may also enter the United States unconditionally free if the column 1-general tariff rate is zero (column 1-general lists what were formerly known as Most-Favored-Nation (MFN) rates and are now known as normal trade relations (NTR) rates). Such traditional U.S. imports from the region as coffee, bananas, shrimp and bituminous coke and coal enter the U.S. market NTR duty free.

In 2002, the pattern of U.S. imports from ATPA countries changed compared to previous years, primarily due to the expiration of ATPA for approximately eight months, from December 4, 2001, until August 6, 2002. In 2002, just over half of U.S. imports from ATPA countries entered the United States duty free, a decline from previous years, largely because ATPA-eligible products were subject to NTR duties when ATPA was not in effect (see table 2-2). The share of U.S. imports entering NTR duty free remained fairly stable, registering about 38 percent in 2002. In 2000 and 2001, nearly eighteen percent of U.S. imports from the region entered under ATPA and less than two percent entered under GSP. However, with the expiration of ATPA, the share of U.S. imports entering under ATPA fell to 10.4 percent in 2002 and the share entering under GSP grew to 5.0 percent. Although GSP had also lapsed during the same period that ATPA was not in effect,<sup>2</sup> there was a marked shift away from using ATPA to GSP for those products eligible for both programs. This shift likely resulted because importers had considerable previous experience with the periodic lapse and retroactive renewal of the GSP program and were likely more confident that it would be renewed retroactively (although the Trade Act of 2002 also renewed the ATPA retroactively).

---

<sup>2</sup>The GSP program expired on September 30, 2001, and was renewed retroactively on August 6, 2002 under Title XLI of the Trade Act of 2002.

**Table 2-2.—U.S. Imports from ATPA Countries, Total and Under Import Programs, 2000-2002, (thousands of dollars)**

Country	Import Program	2000	Percent of total	2001	Percent of total	2002	Percent of total
Bolivia	Total	184,250	100.0	165,130	100.0	160,220	100.0
	GSP	5,783	3.1	9,543	5.8	31,520	19.7
	ATPA	61,464	33.4	53,999	32.7	36,959	23.1
	ATPDEA <sup>1</sup>	n/a		n/a		160	0.1
	MFN free	86,240	46.8	73,543	44.5	62,917	39.3
Colombia	Total	6,680,611	100.0	5,622,631	100.0	5,382,368	100.0
	GSP	66,159	1.0	68,247	1.2	204,241	3.8
	ATPA	826,559	12.4	717,966	12.8	280,239	5.2
	ATPDEA <sup>1</sup>	n/a		n/a		123,909	2.3
	MFN free	2,968,500	44.4	2,499,392	44.5	2,207,506	41.0
Ecuador	Total	2,266,975	100.0	1,975,377	100.0	2,115,973	100.0
	GSP	28,569	1.3	33,007	1.7	74,618	3.5
	ATPA	247,595	10.9	216,300	10.9	85,712	4.1
	ATPDEA <sup>1</sup>	n/a		n/a		92,022	4.3
	MFN free	729,936	32.2	778,142	39.4	764,142	36.1
Peru	Total	1,985,389	100.0	1,805,523	100.0	1,952,921	100.0
	GSP	45,056	2.3	73,446	4.1	165,467	8.5
	ATPA	846,014	42.6	686,341	38.0	381,794	19.6
	ATPDEA <sup>1</sup>	n/a		n/a		20	0.0
	MFN free	515,883	26.0	460,594	25.5	569,477	29.2
All	Total	11,117,225	100.0	9,568,661	100.0	9,611,482	100.0
ATPA Countries	GSP	145,566	1.3	184,242	1.9	475,847	5.0
	ATPA	1,981,632	17.8	1,674,607	17.5	784,704	8.2
	ATPDEA <sup>1</sup>	n/a		n/a		216,112	2.2
	MFN free	4,300,559	38.7	3,811,672	39.8	3,604,042	37.5

<sup>1</sup> ATPDEA benefits were implemented on October 31, 2002.

Source: Compiled from official statistics of the U.S. Department of Commerce.

U.S. imports under the ATPA declined 40 percent in 2002 compared to 2001 because of the program's expiration. U.S. imports under ATPA of all major product categories<sup>3</sup> declined in 2002, with two exceptions: cigarettes, which only recently emerged as a major import under ATPA from Colombia and Peru in 2001, and petroleum-related products. Previously excluded from ATPA preferences, U.S. imports of petroleum entered under ATPA for the first time in December 2002 after the implementation of ATPDEA. Petroleum-based imports accounted for 97 percent of U.S. imports under ATPDEA in 2002 and despite only one month of imports under ATPA, became the second largest import category under ATPA in 2002, accounting for 21 percent of U.S. ATPA entries. Copper articles, primarily refined copper cathodes from Peru, was the leading import category in 2002, accounting for 25 percent of U.S. imports under ATPA. Cut flowers, primarily from Colombia and Ecuador, ranked third with seventeen percent of U.S. imports under ATPA in 2002. Other important imports under ATPA in 2002 included jewelry, asparagus and pigments.

Because the ATPDEA was only implemented on October 31, 2002, U.S. imports benefitting from ATPDEA preferences were negligible in 2002, with the exception of petroleum. U.S. imports under ATPDEA totaled \$216 million in 2002, of which petroleum-based products accounted for 97 percent, or \$210 million. The remaining three percent of U.S. imports under ATPDEA was accounted for almost entirely by leather apparel and travel bags, handbags, and similar containers of leather, plastics and textiles (\$5.8 million). No imports of textiles and apparel under ATPDEA were recorded in 2002.

### ***U.S. Imports under the ATPA by Country***

Colombia has been the leading source of U.S. imports under the ATPA in every year since the program began, except 2000. In 2002, Colombia provided 40.4 percent of all U.S. imports under the ATPA. Peru ranked second, with 38.2 percent; Ecuador was third, with 17.8 percent; and Bolivia was fourth, with 3.7 percent of the total. (See Table 2-3.)

In 2002, U.S. imports under the ATPA from Colombia fell 44 percent to \$404 million. U.S. imports under ATPA of cut flowers, which declined over 50 percent from \$286 million in 2001 to \$140 million in 2002, was the leading ATPA entry from Colombia in 2002. The second largest U.S. import under ATPA was petroleum (\$118 million), which entered under the ATPDEA during December 2002. Other leading ATPA entries from Colombia in 2002 were pigments, which declined 85 percent to \$30 million in 2002, cigarettes (\$17 million) and articles of iron or steel (\$12 million).

U.S. imports under the ATPA from Peru declined 44 percent, from \$686 million in 2001 to \$382 million in 2002. The leading ATPA entry from Peru was copper cathodes, which decreased 42 percent from \$429 million in 2001 to \$249 million in 2002, accounting for 65 percent of total ATPA entries from Peru. Other leading ATPA entries from Peru included fresh asparagus (\$50

---

<sup>3</sup>Product categories are defined at the HTS 2-digit level.

**Table 2-3.--U.S. Imports for Consumption under the ATPA, by Country, 2000-2002**

Country	2000	2001	2002	2002 share of total
	<i>1,000 dollars</i>	<i>1,000 dollars</i>	<i>1,000 dollars</i>	<i>Percent</i>
<b>Colombia</b>	826,559	717,966	404,148	40.4
<b>Peru</b>	846,014	686,341	381,814	38.2
<b>Ecuador</b>	247,595	216,300	177,734	17.8
<b>Bolivia</b>	61,464	53,999	37,119	3.7
<b>Total</b>	1,981,632	1,674,607	1,000,816	100.0

Source: Compiled from official statistics of the U.S. Department of Commerce

million), jewelry and parts (\$37 million), unwrought zinc (\$7 million) and onions (\$6 million). Most major U.S. imports under ATPA from Peru declined in 2002, with the exception of fresh asparagus, which increased 20 percent in 2002 compared to the previous year.

In 2002, ATPA entries from Ecuador decreased 18 percent, from \$216 million in 2001 to \$178 million in 2002. The leading U.S. import under ATPA was petroleum, which entered under ATPDEA and accounted for over 50 percent of U.S. imports under ATPA from Ecuador in 2002. The second largest ATPA entry was cut flowers, which declined 66 percent, from \$95 million in 2001 to \$32 million in 2002. Other important ATPA entries in 2002 were wood products, including plywood (\$13 million), fruits, including primarily mangoes and pineapples (\$9 million), and fruit and vegetable preparations (\$8 million).

U.S. imports under the ATPA from Bolivia declined 31 percent, from \$54 million in 2001 to \$37 million in 2002. The top U.S. import under ATPA from Bolivia was jewelry and parts, which accounted for 72 percent of ATPA entries in 2002. U.S. imports of jewelry and parts from Bolivia declined 33 percent, from \$40 million in 2001 to \$27 million in 2002. The second largest ATPA entry was wood doors (\$6 million), which accounted for seventeen percent of ATPA entries from Bolivia in 2002. The other leading ATPA entry in 2002 was raw cane sugar (\$3 million).

### **U.S. EXPORTS TO ATPA BENEFICIARIES**

Between 1991 and 2002, U.S. exports to ATPA countries increased 70 percent to \$6.5 billion. While still below the levels experienced in the mid-1990s, U.S. exports to the region have increased modestly in each year since 1999. In 2002, U.S. exports grew 1.6 percent compared to the previous year. (See Table 2-1.)

ATPA countries absorbed 1.0 percent of total U.S. exports in 2002. Although ATPA countries account for only a small portion of total U.S. exports, the United States is the leading exporter to each of the ATPA beneficiary countries.

The leading U.S. export to ATPA countries in 2002 was nonelectrical machinery, which accounted for 25 percent of total U.S. exports to the region. U.S. exports of nonelectrical machinery decreased 5.6 percent to \$1.6 billion in 2002. U.S. exports of electrical machinery, which was the second largest export, declined by 3.3 percent in 2002 to \$608 million. Other important U.S. exports to the region increased in 2002, including organic chemicals (\$473 million); cereals (\$440 million); plastics (\$370 million); optical, photographic, medical and measuring instruments (\$235 million); and aircraft and parts (\$225 million).

The ranking of ATPA countries as U.S. export markets was different from their ranking as U.S. suppliers with respect to the relative importance of Peru and Ecuador. Colombia was the largest market for U.S. exports at \$3.3 billion, representing 52 percent of U.S. exports to ATPA countries in 2002. Ecuador ranked second with \$1.5 billion in U.S. goods, Peru was third with \$1.4 billion, and Bolivia was fourth with \$182 million. U.S. exports to each of the ATPA countries declined in 2002, with the exception of Ecuador. U.S. exports to Ecuador climbed thirteen percent, in part reflecting demand associated with construction of the Transandean Heavy Oil Pipeline.

## Chapter 3

### COUNTRY ELIGIBILITY REPORTS

This chapter outlines the detailed country eligibility criteria in the ATPA as amended, then discusses each of the four ATPA beneficiaries' adherence to the criteria. The country reports also examine the effects of the ATPA on trade, investment and economic development in the beneficiary countries and on creating sustainable economic alternatives to coca production. The country reports are based on information provided by U.S. embassies in the region. They are an update of USTR's January 2001 Third Report to the Congress on the Operation of the Andean Trade Preference Act, which had been mandated under the original program.

The ATPA as amended contains two types of criteria: limitations on designation and factors affecting designation. Failure by a country to meet the criteria defined as "limitations on designation" would prevent the President from providing ATPA benefits to that country absent a finding that designation would be in the national economic or security interest of the United States. The criteria defined as "factors affecting designation" must be taken into account by the President in determining whether to designate any country a beneficiary country, but do not prevent him from designating beneficiary status or continuing benefits to a country. The criteria in both categories under the original ATPA program were retained in the renewal of the program and apply equally to the expanded benefits of the program contained in the ATPDEA. The ATPDEA also contains an additional set of factors affecting designation which apply only to the expanded benefits.

#### DETAILED ELIGIBILITY CRITERIA

Limitations on designation (*renewed ATPA benefits and ATPDEA benefits*):

The President shall not designate any country:

- (1) if such country is a Communist country;
- (2) if such country:
  - has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,
  - has taken steps to repudiate or nullify any existing contract or agreement with, or any patent, trademark, or other intellectual property of, a United States citizen or a corporation, partnership, or association, which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or
  - has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the

effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that:

- prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,
- good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or
- a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum,

and promptly furnishes a copy of such determination to the Senate and House of Representatives;

- (3) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;
- (4) if such country affords preferential treatment to the products of a developed country, other than the United States, and if such preferential treatment has, or is likely to have, a significant adverse effect on United States commerce, unless the President:
  - has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and
  - reports those assurances to the Congress;
- (5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent or such country fails to work towards the provision of adequate and effective protection of intellectual property rights;
- (6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and
- (7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 507(4) of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

The first, second, third, fifth, and seventh criteria shall not prevent the designation of any country as a beneficiary country under this title if the President determines that such designation

will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

Factors affecting designation (*renewed ATPA benefits and ATPDEA benefits*):

- an expression by such country of its desire to be so designated;
- the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;
- the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;
- the degree to which such country follows the accepted rules of international trade provided for under the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 2 of the Uruguay Round Agreements Act);
- the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;
- the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;
- the degree to which such country is undertaking self-help measures to protect its own economic development;
- whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights;
- the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;
- the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;
- whether such country has met the narcotics cooperation certification criteria set forth in section 481(h)(2)(A) [deemed to be a reference to section 490 of the Foreign Assistance Act of 1991 by section 6(a) of Public Law 102-583] of the Foreign Assistance Act of 1961 for eligibility for United States assistance; and

- the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this Act.

Factors affecting designation (*ATPDEA benefits only*):

- Whether the beneficiary country has demonstrated a commitment to undertake its obligations under the WTO, including those agreements listed in section 101(d) of the Uruguay Round Agreements Act, on or ahead of schedule, and participate in negotiations toward the completion of the FTAA or another free trade agreement;
- the extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act;
- the extent to which the country provides 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;
  - a minimum age for the employment of children; and
  - acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;
- whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974;
- the extent to which the country has met the counternarcotics certification criteria set forth in section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) for eligibility for United States assistance;
- the extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption;
- the extent to which the country applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement described in section 101(d)(17) of the Uruguay Round Agreements Act, and contributes to efforts in international fora to develop and implement rules on transparency in government procurement; and
- the extent to which the country has taken steps to support the efforts of the United States to combat terrorism.

## BOLIVIA

Population: 8,445,134 (July 2002 est.)

National Product per capita: \$2,600\* (2001)

\*National product: GDP – purchasing power parity

Source: 2002 World Fact Book - CIA

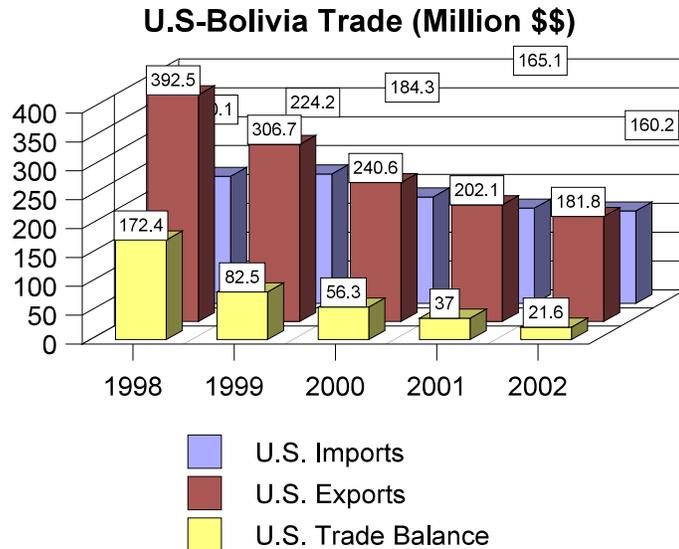
2002 Trade Statistics (thousand \$)

U.S. Imports from Bolivia: \$160,220

U.S. Exports to Bolivia: \$181,786

U.S. Trade Balance: \$21,566

Source: U.S. Department of Commerce



**Effect of the ATPA/ATPDEA:** The ATPA had only a localized effect on the Bolivian economy, with investment in ATPA industries showing uneven growth. An estimated 37 percent of Bolivian exports to the United States in 2001 entered under the ATPA regime, though these exports valued a mere \$55 million. One independent analysis showed a drop of 49 percent in ATPA-related exports to the U.S. between 1996 and 2001. Wooden doors and wood products, sugar, and gold saw small increases during this period, while jewelry plummeted. Agricultural exports under the ATPA included leguminous vegetables, pineapples, dried beans and cut flowers.

Bolivia enjoys several comparative advantages over other competitors. In 2001, Bolivia's monthly minimum salary of \$57.33 was far below any of its Andean neighbors. Lacking an ocean port, Bolivia still enjoys a competitive air cargo rate of \$1.31/kg - though this is admittedly the highest among Andean countries. Electricity rates in Bolivia (4.57 cents per watt-hour in 2001) are well below other ATPA countries. Bolivia has a system of nine free trade zones, six of them currently in operation, which could provide another comparative advantage.

Unfortunately, Bolivia also has its share of disadvantages in achieving significant ATPA export levels. Fuel prices are among the highest in South America. Tax arrangements to assist exporters are cumbersome and only worthwhile to large-volume exporters. There is a need for industry-wide job training programs, a cost otherwise borne by the exporting firm. Lack of knowledge of the U.S. market among Bolivian firms is a significant drawback, along with a corresponding failure to meet quality and service standards demanded by the competitive U.S. market. The Bolivian Government has also been largely ineffective in the dissemination of information about the ATPA/ATPDEA program and in the general promotion of Bolivian exports in world markets.

Still, the ATPA continues to be an important incentive to nurture a progressive entrepreneurial class in Bolivia. A small handful of companies are pre-positioned to take full advantage of ATPA as amended, especially in the area of textiles. To illustrate the impact of these companies, a large textiles exporter in Bolivia currently employs around 2,200 people, and may employ some 3,000 people by the end of 2003. In contrast, one estimate put the total number of workers in Bolivia's hydrocarbons sector – the most dynamic in this otherwise depressed economy – at no more than 1,500. With unemployment running at around 12 percent in 2003, ATPA-related jobs are desperately needed in Bolivia.

**Expropriations:** Article 22 of the Bolivian Constitution provides that property may be expropriated for the public good or when the property does not fulfill a “social purpose”; it also stipulates that just compensation must be provided. The Mining and Hydrocarbons Laws provide the means to expropriate land needed to develop the underlying concession.

A significant expropriation in Bolivia occurred in 1969, when the Government nationalized petroleum concessions granted to the local branch of Gulf Oil. Although the compensation agreement allowed for a 30-year payment period, the entire compensation due to Gulf Oil was paid off in seven years.

In 2000, the Bolivian Government cancelled a water concession granted to an international consortium in the city of Cochabamba, an action that constituted a legal expropriation. The Bolivian Government has agreed to an international arbitration with the consortium; proceedings continue at the time of this report.

**Arbitral Awards:** The U.S. Government is not aware of any problems in this area. Bolivia has signed the convention to become a member of the International Center for the Settlement of Investment Disputes (ICSID). The Government of Bolivia accepts binding international arbitration in all sectors. The 1997 Arbitration and Conciliation Law (Law 1770) offers alternative methods for resolving commercial legal disputes and provides a more comprehensive framework for national and international arbitration. The law decrees that international agreements, such as the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, will be honored. The law also mandates the recognition of all foreign decisions and awards, and establishes procedures for the national Supreme Court to execute arbitral decisions.

**Reverse Preferences:** The U.S. Government has no indication that Bolivia has granted such preferences to the products of a developed nation. Furthermore, Bolivia is a current member of the World Trade Organization (WTO) and, accordingly, is bound by the most-favored-nation provisions in the WTO Agreements.

**Intellectual Property:** Patents, trademarks and industrial designs are protected by Andean Community Decisions 486 (the Common Industrial Property Regime) and 345 (Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties). Copyrights are protected by Andean Community Decision 351 (Common Regime on Copyright and Neighboring Rights). These decisions, which were adopted in 2000, 1992 and 1993,

respectively, are comprehensive and represent a significant improvement over earlier standards of protection for intellectual property in the Andean Community countries.

U.S. drug manufacturers are concerned that Bolivia does not provide sufficient protection for data submitted to regulatory authorities in connection with marketing approval for pharmaceutical products. The Government of Bolivia does not provide for a fixed period of data exclusivity for pharmaceutical producers. Bolivia's health regulatory agency provides sanitary registrations to copies of innovative pharmaceutical products despite WTO TRIPS Article 39.3, which requires governments to prohibit the "unfair commercial use" of confidential test data. Bolivia also does not provide adequate patent protection to "second-use" innovations. The U.S. Government believes that qualifying "second use" inventions are entitled to patent protection under international obligations.

Bolivia has been on the Special 301 Watch List since October 1996. The U.S. copyright industry (represented by the International Intellectual Property Alliance) estimates that trade losses due to copyright infringement in Bolivia in 2002 amounted to \$26.5 million: \$15 million from the recording industry, \$6.0 million from software, and \$5.5 million from books. Estimates on losses to the film industry are not available. Enforcement of existing laws to protect intellectual property rights is weak and piracy in Bolivia continues largely unabated.

In September 1997, the Government of Bolivia legally consolidated the industrial and intellectual property portfolios under one administrator, the National Intellectual Property Service (SENAPI). In February 2002, a professionally qualified SENAPI director was appointed and, despite extremely limited resources, the agency has made good progress in hiring and training technical personnel, and in developing the institutional capacity to register patents and trademarks. SENAPI has also succeeded in negotiating new inter-institutional agreements with the police and the judicial system in order to coordinate better efforts at IPR enforcement. Although these recent actions lay a solid groundwork for future progress in IPR, there have been few concrete accomplishments in limiting piracy in the market.

The U.S. Government is not aware of any allegations of unauthorized broadcast of U.S. copyrighted works by a government-owned entity.

The Government of Bolivia is a member of the following international conventions on intellectual property:

- World Intellectual Property Organization (WIPO) Convention, since July 1993;
- Paris Convention for the Protection of Industrial Property, since November 1993;
- Berne Convention for the Protection of Literary and Artistic Works, since November 1993;
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, since November 1993; and
- Nairobi Treaty (Olympic Symbol), since August 1985.

**Extradition:** A new treaty of extradition superceding a 1900 treaty was signed in La Paz on June 27, 1995, and ratified by the Bolivian Congress on November 6, 1996 as Law 1721. The treaty permits the extradition of U.S. citizens.

**Workers' Rights:** Bolivia's labor code assures workers the right to establish and join organizations of their own choosing. The formation of a new trade union, however, requires approval by the Government, which may dissolve trade unions by administrative decree if it determines that the union does not meet legal requirements. The Government is not alleged to have used this power for political or anti-union purposes in recent years. Bolivian labor law does not restrict unions from affiliating with international labor confederations.

About one-quarter of Bolivia's workers in the formal economy belong to labor unions. Many workers in the informal economy also participate in some form of labor union or trade association. Although a limited number of trade union leaders are protected from unjust dismissal, trade union members are not, and labor advocates claim that anti-union firings are a common tool used by employers to prevent unionization.

To call a legal strike, private sector workers must first revert to lengthy government mediation, and then obtain a 75 percent strike vote from workers. Because these hurdles are rarely met, illegal strikes are common and frequent, and the government does not normally prosecute strikers. While solidarity strikes are illegal under the current labor code, the Government allows such strikes. The Government has the power to declare a strike illegal and does so on occasion.

With the exception of health workers and teachers, the labor code formally denies civil servants the right to organize and prohibits strikes in public services, including banks and public markets. In practice, however, the rate of unionization in the public sector (just over 50 percent of salaried workers) is twice that of the private sector workers and strikes are common.

Collective bargaining, or voluntary direct negotiations between employers and workers without the participation of the Government, is limited. The current labor code was written in a period in which the Bolivian Labor Confederation (the *Central Obrera Boliviana* or COB) had quasi-governmental status and the exclusive authority to negotiate with state-owned enterprises. The practice was for the COB and the Government to negotiate a global agreement on salaries, minimum wages and other working conditions each year for public servants. With the recent "capitalization" (privatization) of most of these enterprises, the COB's role has diminished markedly and the practice of direct employee-management negotiations in individual enterprises is expanding. Sectoral negotiations by teachers, health workers, transit drivers and many others often also eclipse the COB's annual negotiation with the Government.

Bolivian labor laws are in some aspects highly rigid, with a range of benefits stipulated for full-time salaried workers. Due to contradictions embedded in the frequently amended body of labor law, workers frequently do not receive the full range of pay, vacation and severance benefits. Moreover, employers have shifted significantly towards forms of temporary or informal employment that do not require payment of the same benefits. Over one-half of the workforce has no formal labor contract. Labor codes drafted by the two most recent governments were

never submitted to the legislature, largely due to COB opposition. The present Government is obliged to legislate reforms to the Code -- including greater labor flexibility -- under the terms of the Heavily Indebted Poor Country (HIPC) program, but has yet to do so.

On November 28, 2002, the Government of Bolivia ratified ILO Convention 182 on the Worst Forms of Child Labor. Bolivia has taken steps to implement the commitments under this Convention by creating an inter-institutional commission and beginning the development of a national plan to eradicate the worst forms of child labor.

***Economic Conditions:*** Bolivia has made remarkable economic advances since 1985 – from one of the most unstable economies in Latin America to one with sound, market-driven macroeconomic policies. Bolivia's inflation rate in 2002 was just 2.45 percent. Bolivia's real average GDP growth rate of 4.2 percent up to 1999 marked eleven years of positive growth; since then, however, annual growth has averaged below 2 percent.

Since 1985 successive Bolivian administrations have removed restrictions on foreign investment in most industry sectors, opened mining and hydrocarbon ventures to foreign participation, launched a program to sell Government-owned entities, modernized its banking laws, freed currency convertibility, removed most trade restrictions, and lowered tariffs. The first Sanchez de Lozada Administration (1993-97) further improved government reforms and implemented the so-called "capitalization" program, which differs from traditional privatization in that money paid by the new strategic partners for a fifty percent share of the business equity goes directly into new investment rather than to the government. The capitalization reform allowed the Government to continue to devote more public investment to social spending and less to production.

Bolivia has made substantial progress toward liberalizing its trade and investment regime. Trade surpluses and large inflows of foreign aid and investment have resulted in growing foreign exchange reserves. Total foreign direct investment (FDI) increased from around \$130 million in 1992 to over \$1 billion in 1999, but fell to \$825.7 million in 2001, with a similar level expected for 2002. The official exchange rate is set daily by the Government's exchange house, which is under the supervision of the Central Bank; the official rate is always within one percent of the parallel market rate.

While foreign investments are relatively simple exercises on paper, the process of investing has become increasingly complex in recent years given Bolivia's deteriorating social situation. Foreign companies have been the victims of social demonstrations and unrest, including roadblocks, peaceful occupations of facilities, looting, vandalism and even extortion attempts. A recent political attack against a U.S. company resulted in the temporary incarceration of the general manager. Government modifications of tax codes and other regulations have caused great concern among foreign investors about the continued sanctity of the "rules of the game."

The international donor community has been moving for years to reduce Bolivia's stock of multilateral and bilateral debt, in recognition of its significant economic reforms. As of December 2002, Bolivia's debt totaled \$4.4 billion. Through the HIPC initiative (HIPC), and its

subsequent enhanced framework (HIPC II), Bolivia became eligible for debt forgiveness totaling nearly \$2 billion (\$854 million in net present value). This will free up about \$120 million annually in government resources over the next ten years that will be channeled into social sector spending. The Government engaged in an extensive "National Dialogue" in order to develop its Poverty Reduction Strategy Paper (PRSP), which sets out spending priorities for attacking poverty. Nevertheless, Bolivia still suffers from chronic budget deficits that often lead to instability.

**Market Access:** Bolivia is moving toward providing equitable and reasonable market access for U.S. exports. Measures such as quotas, variable import levies and tariff rate quotas, are no longer used. Import licensing requirements exist on only a few products. In early 2000, Bolivia implemented a three-tier tariff structure that eliminated tariffs on capital goods designated essential for industrial development, and imposed a five percent tariff for non-essential capital goods, and a ten percent tariff for most other goods. However, the Government of Bolivia maintains additional import fees that raise the cost of importing some products. Bolivia imposes a ten percent preference margin for domestic firms in government procurement.

A series of investment laws have liberalized Bolivia's investment regime. The laws established guarantees such as national treatment, the remission of profits, convertibility of currency and the right to international arbitration in all sectors. Bolivia ratified the Bilateral Investment Treaty (BIT) with the United States, and on October 18, 2000 the U.S. Senate ratified the treaty. The BIT came into force on June 7, 2001.

**WTO Agreements:** Bolivia acceded to the GATT in 1989 and ratified its membership in September 1990. The Bolivian Congress ratified Bolivia's membership in the WTO in late 1995. In 2002, Bolivia ratified the Fifth Protocol of the WTO on Financial Services. Bolivia is several years overdue in achieving compliance with the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

**FTAA Participation:** Bolivia participates in the FTAA negotiations as part of the Andean Community. In 1999, Bolivia hosted an FTAA vice ministerial meeting in Cochabamba.

**Subsidies or Other Requirements that Distort International Trade:** While Bolivia has eliminated many of its export subsidy programs, and has partly replaced them with a drawback mechanism, Bolivia has notified to the WTO that it provides export subsidies through their "Free Zones" and "Temporary Import Regime for Export Promotion". However, because Bolivia is a country listed in Annex VII of the SCM Agreement, they are not required to phase-out export subsidies inconsistent with the SCM Agreement at this time.

**Trade Policies that Revitalize the Region:** Bolivia participates in the Andean Community. In 2001, Bolivian exports to the Andean Community totaled nearly \$357 million, representing nearly 30 percent of total exports. Imports from the Community in 2001 were 10.5 percent of Bolivia's total.

The Andean Community adopted a Common External Tariff (CET) in November 1994. While the Andean Community is theoretically a customs union, with a CET applicable to third countries, Bolivia and Peru, in particular, have taken many exceptions to the CET.

In addition to membership in the Andean Community, Bolivia signed a free trade agreement with MERCOSUR, which became effective on March 1, 1997. Bolivia signed a free trade agreement with Mexico in September 1994 and has a more limited trade agreement with Chile. A free trade agreement with Cuba has led to little expansion in trade with that country.

On the whole, Bolivia's experience with regional integration and free trade agreements has been disappointing, with the exception of the Andean Community. Bolivia's soy exports enjoy preferential entry into Colombian, Venezuelan and Ecuadorian markets, edging out more efficient production from Argentina and Brazil. With Mercosur and other liberalized trade arrangements, Bolivia has experienced mostly increased trade deficits.

***Narcotics Cooperation:*** Bolivia received certification for its cooperation with the United States in 2002 on counter-narcotics issues under the Foreign Assistance Act, as described in the *International Narcotics Control Strategy Report* of March 2003. Today Bolivia supplies to world markets far less coca base and cocaine hydrochloride (HCL) than Colombia and Peru. Bolivia's cultivation of coca is about half what it was at its peak in 1995, dropping from 48,600 hectares to 24,400 hectares in 2002. Bolivian law authorizes the cultivation of up to 12,000 hectares of coca for traditional use.

The successes of "Plan Dignity" were evident at the time of President Banzer's resignation due to ill health in August 2001. The transition administration of President Jorge Quiroga, worsening economic prospects, and the run-up to the 2002 presidential elections combined to constrain Bolivian Government initiatives that would have consolidated these successes. Yet, despite the transition from the Quiroga Administration to that of Sanchez de Lozada, 2002 eradication statistics (nearly 12,000 hectares) were the second highest ever recorded for Bolivia.

The current Administration maintains a strong forced eradication program in the Chapare region, although President Sanchez engaged in a "dialogue" with cocalero leader Evo Morales that continued through the end of 2002. Bolivian Government figures, confirmed by the United States Agency for International Development (USAID), show an increase in alternative crop production in the Chapare from 40,613 hectares under cultivation in 1986 to over 127,000 hectares in 2002. USAID reported that the volume of licit products leaving the Chapare decreased to \$27.9 million in 2002 from \$36 million in 2001 due to Bolivia's recession, the decline of the Argentine economy, social disturbances and plant diseases. Some of the Chapare-grown products are now being marketed and sold in Europe.

USAID supported net coca reduction by deepening and broadening alternative development assistance in the Chapare region. Through 2002, USAID reached 22,500 families with on-farm technical assistance, planting material, training and infrastructure. Social conflicts and frequent blockades, however, limited the percentage of investments made in production and road infrastructure covered by non-U.S. Government resources in 2002. There are currently 97

agribusinesses purchasing agricultural products and/or supplying agro-inputs on a regular basis in the Chapare. The annual family income from licit agricultural products in the Chapare increased from \$1,706 in 2000 to \$2,138 in 2002. The Bolivian Government estimates the number of jobs in licit agriculture rose to 53,000 by December 2002.

## COLOMBIA

Population: 41,008,227 (July 2002 est.)  
National Product per capita: \$6,300\*  
(2001)

\*National product: GDP - purchasing  
power parity

Source: 2002 World Fact Book - CIA

2002 Trade Statistics (thousand \$)

U.S. Imports from Colombia:

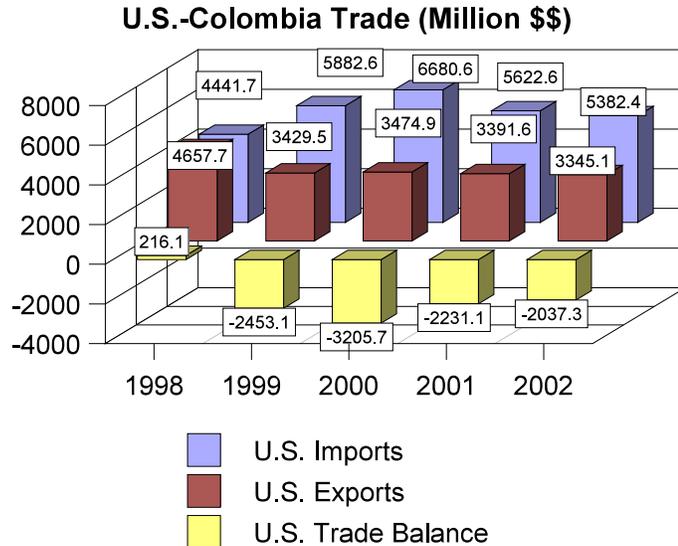
\$5,382,368

U.S. Exports to Colombia: \$3,345,084

U.S.-Colombia Trade Balance:

-\$2,037,284

Source: U.S. Department of Commerce



**Effect of the ATPA/ATPDEA:** Colombian exports to the U.S. market under ATPA have increased in value and as a percentage of total Colombian exports every year since 1993. The flower sector remains the most important ATPA beneficiary. Flowers, polymers (chemical compounds for the production of certain pigments), gold compounds, precious metals, handbags, gelatin capsules, asparagus, sugar and candy products, certain fruits, chewing gum, iron nails, and ceramic products have accounted for more than 80 percent of Colombian exports by value to the United States under the ATPA.

According to estimates from the Colombian Ministry of Foreign Trade, between 1992 and 2001 the ATPA program generated a total of \$1.5 billion worth of output and more than 150,000 direct jobs. In the same period, the ATPA program has also had a positive impact on investment, which is evidenced by Colombia's higher diversification of its export-oriented production.

The Colombian Government estimates that the new benefits granted under the Andean Trade Preference and Drug Eradication Act could generate as many as 200,000 new jobs and several hundred million dollars in exports. Textile and apparel producers have already spent approximately \$100 million in new capital goods (mostly from the United States) to expand capacity. The total new investment expected in the textile, apparel and leather industries is well over \$500 million, with a vast majority from the United States.

**Expropriations:** Colombia has not expropriated property of foreign investors in the past 50 years. The 1991 Colombian Constitution explicitly protects individual rights against the actions of the state and upholds the right to private property. The Constitution permits expropriation of private property in cases of public necessity (e.g., public transit system) and social interest (e.g., agrarian reform).

Previously, a clause in Article 58 of the 1991 Constitution had expressly allowed expropriation without compensation; in June 1999, however, the administration successfully obtained an amendment to the Constitution to remove that clause. Colombian law now guarantees indemnification in expropriation cases.

Confiscation of property is allowed when the property is used in criminal activities or is the “fruit” of such activities. While seizure of property for drug-related crime has been in practice for some time, a new law strengthening asset forfeiture was passed in December 1996. In 2002, the Uribe Administration approved a new asset forfeiture law that dramatically streamlines the process, and in the first quarter of 2003 the government has moved aggressively to use the new law.

**Arbitral Awards:** Law 315 permits the inclusion of an international binding arbitration clause in contracts between foreign investors and domestic partners. The law allows parties to set their own arbitration terms including location, procedures and the nationality of rules and arbiters. In the absence of an arbitration clause, Colombian law mandates that the dispute go before a Colombian judge for settlement.

Colombia is a member of the New York Convention on Investment Disputes, the International Center for the Settlement of Investment Disputes (ICSID), and the Multilateral Investment Guarantee Agency (MIGA).

In 2002, the Constitutional Court sanctioned an arbitral award involving a U.S. company, but subsequently overturned an award involving another U.S. firm. The Uribe Administration has committed itself to enacting new legislation that will further guarantee the right to international arbitration.

**Reverse Preferences:** The U.S. Government has no indication that Colombia has granted such preferences to the products of a developed nation. Furthermore, Colombia is a current WTO member and, accordingly, is bound by the most-favored nation provisions of the WTO Agreements.

**Intellectual Property:** Patents, trademarks and industrial designs are protected by Andean Community Decisions 344 (the Common Industrial Property Regime) and 345 (the Common Regime to Protect Plant Varieties). Copyrights are protected by Andean Community Decision 351 (the Common Regime on Copyright and Neighboring Rights). These decisions, which were adopted in 1993 and 1994, are comprehensive and represent a significant improvement over earlier standards of protection for intellectual property in the Andean Community countries.

In August 2002, the Colombian Government enacted Decree 2085, which grants protection for confidential data used in registrations for health licenses. The decree, a first in the Andean region, grants three to five years of protection to confidential data. In addition, the Colombian Government has played a key role in stopping attempts within the Andean Community to weaken the protection afforded under Decision 486 to agrochemicals. However, Colombia does not provide adequate patent protection to “second-use” innovations. The U.S. Government believes that qualifying “second use” inventions are entitled to patent protection under international obligations.

The Superintendency of Industry and Commerce acts as the local patent and trademark office in Colombia. Despite recent efforts to more effectively manage the application process, this agency still suffers greatly from a backlog of trademark and patent applications. Enforcement in the trademark area needs to be strengthened.

Colombia has a modern copyright law (Law 44 of 1993). The law extends protection for computer software to 50 years, but does not explicitly classify it as a literary work. Law 44 and Colombia’s Civil Code include some provisions for IPR enforcement, which have been used to combat infringement and protect rights. Semiconductor layout designs are not protected under Colombian law.

Colombia’s 1993 copyright law significantly increased penalties for copyright infringement, specifically empowering the Prosecutor General’s office to combat piracy. The most recent data suggests that counterfeit merchandise available in the Colombian market significantly affects U.S. industries, which continue to lose substantial revenue from piracy: \$117.8 million in 2002, \$137.8 million in 2001 and \$177.2 million in 2000 according to the International Intellectual Property Alliance (IIPA).

Colombia was elevated to the Special 301 “Priority Watch List” in April 2002 for not providing effective protection of intellectual property rights (IPR), particularly in the pharmaceutical sector. However, in April 2003 it was moved to the “Watch List” in recognition of progress on data protection for pharmaceuticals.

The Government of Colombia is a member of the following international conventions on intellectual property:

- Convention Establishing the World Intellectual Property Organization (WIPO);
- Berne Convention for the Protection of Literary and Artistic Works;
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms;
- Treaty on the International Registration of Audiovisual Works;
- Universal Copyright Convention of 1952; and
- Paris Convention for the Protection of Industrial Property.

**Extradition:** Colombia signed an extradition treaty in Washington on September 14, 1979, and it entered into force on March 4, 1982. Even though the treaty is still in effect for international purposes, in 1987 the Colombian Supreme Court declared unconstitutional the treaty's internal implementing legislation. Thus, the treaty is currently inapplicable in Colombia. However, extradition has been possible based on the Colombian Penal Code. The Colombian Constitution of 1991 prohibited the extradition of Colombian citizens, but in 1997 a constitutional amendment reinstated extradition of Colombian nationals for crimes committed after December 17, 1997. The 1991 Constitution and the 1991 Criminal Procedure Code currently regulate extradition. Since 1997, Colombia has extradited 117 individuals, including 88 Colombian nationals, to the United States. The Uribe Administration has expressed its commitment to strengthen and expedite this process.

**Workers' Rights:** Colombian law recognizes the right of workers to organize and strike. Unions are free to affiliate with international labor confederations. The Colombian labor code as amended by Law 50, enacted in January 1991, provides for automatic legal recognition of unions (25 or more signatures are required) and strengthens the penalties for interfering with workers' freedom of association. It also prohibits the dissolution or suspension of trade unions by administrative fiat. In addition, the labor code increased fines for restricting the freedom of association.

The Constitution recognizes the rights of workers to organize unions and to strike, except for members of the Armed Forces, Police and those essential public services as defined by law. However, legislation that prohibits public employees from striking is still in force. In 1993, two ILO supervisory bodies criticized several provisions of Colombian labor law as inconsistent with international norms regarding the freedom of association. These included the prohibition on strikes in a broad range of public services that are not necessarily essential, the power to dismiss trade union officials involved in an illegal strike, and administrative power to intervene in disputes through compulsory arbitration.

As reported in the Department of State's annual *Human Rights Report*, organized labor suffers from a high level of violence from a variety of sources. Since 1998, the ILO has expressed serious concern at allegations of murders, forced disappearances, death threats, and other acts of violence against trade union members. Union activists have long been a target of right-wing paramilitary organizations. The most respected labor association reports that there have been 1,381 union members killed in Colombia since 1995. The Uribe Administration has taken important measures, however, since coming into power to help lessen this threat. Colombia is working closely with the ILO in a Special Technical Cooperation Program to address the issues of violence against trade unionists and improve industrial relations. This cooperation has supported the Uribe Administration's measures that have stepped up government protection of union members and revived the moribund Inter-agency Commission for the Promotion and Protection of Worker's Human Rights to serve as a forum for discussion with labor. Labor groups report that these efforts have borne fruit, with assassinations dropping from sixteen in December 2001 to two in December 2002.

The Constitution provides workers the right to organize and engage in collective bargaining. However, high levels of unemployment and weak union organization have limited workers' bargaining power in all sectors. Colombia's labor laws apply to workers in the country's fifteen free trade zones, although enforcement has been mixed.

Forced or compulsory labor is prohibited by law. However, trafficking in persons (especially women and children) for the purpose of forced prostitution and forced conscription of indigenous people and children into paramilitary and guerrilla groups occurs and is discussed in the State Department's *Human Rights Report*. While the Constitution does not permit the employment of children in most jobs before the age of 14, and the labor code prohibits youths under the age of 18 from requesting employment permits, child labor remains a problem. However, the Colombian Government is making efforts to address the problem through several initiatives including ILO child labor programs funded by the U.S. Department of Labor.

The Government establishes national minimum wages annually. Workers' occupational safety and health are extensively regulated, but regulations are difficult to enforce for workers in the informal sector who are not covered by the social insurance systems.

**Economic Conditions:** Colombia's economy suffers from weak domestic demand, austere government budgets, and a difficult security situation. Two of Colombia's leading exports, oil and coffee, face an uncertain future; new exploration is needed to offset declining oil production, while coffee harvests and prices are depressed. Problems in public security are a concern for Colombian business leaders, who are calling for progress in the Government's peace negotiations with insurgent groups. Colombia is looking for continued support from the international community to boost economic and peace prospects. According to Global Insight, Colombia's GDP grew an estimated 1.7 percent in 2002, up slightly from an estimated 1.4 percent GDP growth in 2001.

**Market Access:** Trade and investment barriers were reduced substantially under the economic liberalization plan followed by the Colombian Government since 1990. Under "apertura" (opening), Colombia has substantially reduced tariffs, eliminated most import license requirements (except with respect to certain agricultural products), simplified import and export procedures, established a free-market exchange regime, created transparent and more liberal foreign investment rules, and opened up nearly all sectors of the economy to foreign investment. Colombia now requires import licenses on less than two percent of products. Those products include certain agricultural products, weapons and other products related to defense, "precursor" chemicals (used in refining cocaine) and the majority of used goods (such as machinery). Used cars are still banned. Colombia also applies a value added tax for distilled spirits, which discriminates in favor of whiskeys aged twelve or more years, to the detriment of U.S. exports of Bourbon and Tennessee Whiskey.

Colombia and its Andean Community partners apply a common external tariff (CET), which took effect February 1, 1995. Colombia's average official tariff is approximately 11 percent *ad valorem*. Most non-agricultural products and services (both locally produced and imported) are

also subject to a 15 percent value added tax, which was reduced from 16 percent in November 1999.

**WTO Agreements:** There continues to be concern with the WTO consistency of some of Colombia's policies. An important item is the continued inclusion of dry pet food under the Andean Price Band system. In June 2002 the Andean Community removed canned pet food from the system.

**FTAA Participation:** The Colombian Government has been a full participant in the FTAA negotiations. A Colombian official currently chairs the FTAA Negotiating Group on Market Access.

**Subsidies or Other Requirements that Distort International Trade:** As a result of commitments made by Colombia to abide by the provisions of the WTO Subsidies Agreement, Colombia agreed to phase out any export subsidies inconsistent with that agreement. Colombia has notified the WTO that its "special machinery import-export system" and "free zones" do constitute export subsidies. Also, Colombia's tax rebate certificate program (CERT) contains a subsidy component that the Government of Colombia has stated it will replace with an equitable drawback system. In late August 2002, the Colombian Government announced a reduction of the CERT provided to exporters to zero percent due to current fiscal difficulties. Although in practice this means that the subsidy component has disappeared, the CERT has not been eliminated and it might well be increased in the future when Colombia's budgetary conditions improve. The other export subsidy, known as the "Plan Vallejo," allows for duty exemptions on the import of capital goods and raw materials used to manufacture goods that are subsequently exported. In July 2002, the Government announced measures to improve the efficiency of "Plan Vallejo" by reducing "red-tape."

**Trade Policies that Revitalize the Region:** Colombia is a member of the Andean Community. Colombian exports to the Community during 2001 represented 22 percent of its total exports (\$2.7 billion); imports from the Community in 2001 accounted for 15 percent of Colombia's total (\$1.9 billion). Colombia and Venezuela implemented a bilateral free trade area (FTA) effective January 1, 1992. Exempt from this arrangement are motor vehicles and some agricultural products.

Colombia has continued its efforts to conclude trade arrangements with other countries in Latin America and the Caribbean. Colombia provides duty-free access on a wide range of products to other Andean Community members and has participated as a member of the Andean Community in trade talks with Mercosur. Colombia implemented a free trade agreement with Venezuela and Mexico (the "G-3" Agreement) on January 1, 1995. In addition, Colombia concluded a partial free trade agreement with Chile in 1993. Colombia also extends preferential tariffs to a more limited number of products to member states of the Latin American Integration Association (ALADI).

***Narcotics and Counter-terrorism Cooperation:*** Colombia is a firm partner of the United States in the fight against narco-terrorism. President Uribe has publicly declared his solidarity with the war on terrorism.

The links between narcotics and terrorism in Colombia are undeniable. Since 1999, Colombia has obtained certification under the Foreign Assistance Act. U.S. assistance to Colombia will reach 2.3 billion by the end of FY 2003, making Colombia the third largest recipient of U.S. assistance. According to Colombian Government statistics, the eradication program, which is the backbone of our counter-narcotics effort, has achieved a 50 percent reduction in coca cultivation since 2001 (from 163,000 hectares to 81,000 hectares). The Counter-narcotics Center estimates the drop at 15 percent. 2002 represented a record year for spraying, at 130,00 hectares. It was also the first year in which all assets included under our assistance programs were in place.

In December 1996, the Colombian Congress adopted an asset forfeiture law aimed at narco-traffickers. In February 1997, penalties were increased for a number of crimes, including narco-trafficking and money laundering. In 2002, the Uribe Administration approved a new asset forfeiture law that dramatically streamlines the process, and in the first quarter of 2003 the Government has moved aggressively to use the new law. Since 1997, the Colombian Government has cooperated fully with the U.S. Government on extraditions. Since that time there have been 117 extraditions, 88 of Colombian nationals. The Uribe Administration has pledged to continue this cooperation, and the pace of extradition has increased since August 2002 when President Uribe took office.

The effect of the ATPA on drug crop eradication efforts has been indirect. Much of ATPA-related investment has flourished in regions where there is no presence of illegal crops. However, the ATPA has helped the counter-narcotics efforts in Colombia by providing employment alternatives to Colombians who might otherwise support the drug trade. The flower sector is particularly relevant in this respect. It generates approximately 75,000 direct and nearly 50,000 indirect jobs. In many cases, displaced persons and migrants fleeing from violence in drug producing regions are recruited to work on flower plantations.

Enhanced benefits under APTDEA are expected to have an even greater effect. The Colombian Government estimates that over 200,00 new jobs will be directly created as a result of efforts to take advantage of new benefits for textiles, apparel, shoes and leather goods. These jobs are focused in areas where those displaced from our successful counter-narcotics efforts are re-settling. ATPA preferences also bolster efforts by the Colombian private sector to press their Government on counter-narcotics reforms. The U.S. Government has enjoyed strong support from the private sector for important U.S. counter-narcotics goals, such as passage of legislation on asset forfeitures and money laundering, increased penalties for narcotics offenses, increased eradication efforts and passage of a strong extradition law.

***Government Procurement:*** The Government Procurement and Contracting Law, Law 80/93, sought to establish simpler procedures based on the principles of transparency and objective selection. It provides equal treatment to foreign companies on a reciprocal basis and eliminates

the 20 percent surcharge previously added to foreign bids. It also eliminated unnecessary requirements and bureaucratic procedures that increased prices of public services and limited their availability. In implementing Law 80, the Colombian Government instituted a requirement that companies without local headquarters in Colombia must certify that government procurement laws in their home country meet reciprocity requirements.

Although Law 80 has given more impartiality to the government contracting system, Colombia is still not a signatory of the WTO Agreement on Government Procurement, and there have been complaints of non-transparency in the awarding of major government contracts. During 2001, the Colombian Government made a serious commitment to develop an Internet model for government purchasing, aimed at reducing corruption in government procurement practices. As a result of this initiative, Colombian citizens now have access to a huge volume of public information related to government budgets, plans and purchasing. Businesses can now access government procurement information online. The spread of information has contributed to making public officials more accountable and the citizens better informed and more likely to participate. With this initiative, the government eliminated non-bid contracts, providing equal treatment to foreign and domestic bidders.

## ECUADOR

Population: 13,447,494 (July 2002 est.)  
 National Product per capita: \$3,000\*  
 (2001)

\*National product: GDP – purchasing  
 power parity

Source: 2002 World fact Book - CIA

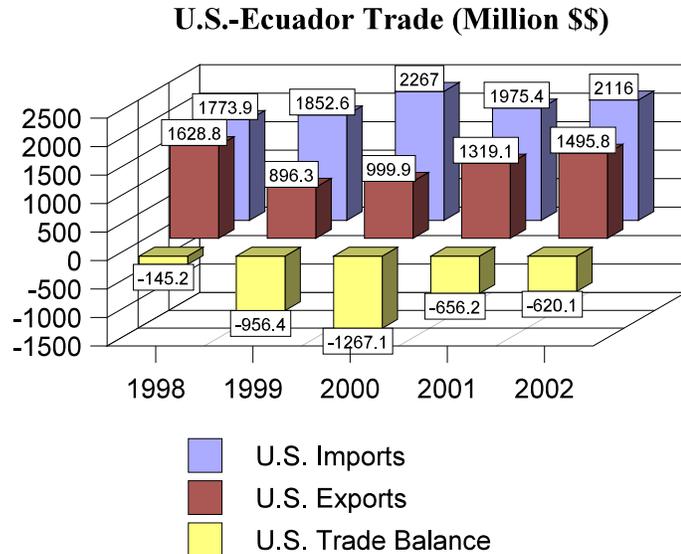
2002 Trade Statistics (thousand \$)

U.S. Imports from Ecuador: \$2,115,973

U.S. Exports to Ecuador: \$1,495,839

U.S. Trade Balance: -\$620,134

Source: U.S. Department of Commerce



**Effect of the ATPA/ATPDEA:** Despite the ATPA's provision of duty-free entry to a wide range of Ecuadorian products, the country's exports remain concentrated in petroleum and a handful of other traditional products. Preliminary figures for 2002 indicate that petroleum and its derivatives accounted for 40.9 percent of Ecuador's exports to the United States. The most economically significant nontraditional export product that has benefitted from duty-free treatment under ATPA is cut flowers. In 2002, Ecuador exported \$291 million in cut flowers to the United States. Some nontraditional export products, including plywood and other wood products, crabmeat, pineapples and broccoli, experienced triple-digit sales increases to the United States in 2002. Exports of some traditional products have also increased since 2000. Banana exports rose from \$821 million in 2000 to \$969 million in 2002. Cacao exports jumped from \$39 million in 2000 to \$89 million last year. However, exports of other traditional products, such as shrimp and coffee, have fallen. Ecuador expects to increase significantly its exports of tuna in pouches due to the inclusion of the product in the ATPDEA.

Foreign direct investment (FDI) has risen sharply in the last two years. Preliminary figures for 2002 indicate that FDI was \$1.2 billion, down slightly from the \$1.3 billion registered in 2001 but still up significantly from 2000 FDI of \$720 million. Most of the increase is associated with the construction of the new Heavy Oil Pipeline ("OCP" in Spanish). FDI outside the oil sector remains modest and is focused on financial services, food processing, telecommunications, the chemical and pharmaceutical industries, and machinery and vehicle manufacturing. For Ecuador to take full advantage of the possible investment benefits associated with the ATPA, it will need to improve its investment climate through providing greater transparency and certainty for foreign investors.

**Expropriations:** While cases of expropriation have been infrequent, two foreign investors have outstanding claims based on land and squatter disputes. Under Ecuadorian law, individuals have the right to petition a judge to establish the appropriate price for expropriated holdings. The Agrarian Development Law restricts the grounds for expropriation of agricultural land and provides for adjudication of disputes in the courts. Though foreign and domestic investors are treated equally under the law, the extent to which investors and lenders receive prompt, adequate and effective compensation varies from case to case. Under Ecuador's Bilateral Investment Treaty with the United States, expropriation can only be carried out for a public purpose, in a nondiscriminatory manner, and upon payment of prompt, adequate and effective compensation.

**Arbitral Awards:** The U.S.-Ecuador Bilateral Investment Treaty provides for international arbitration of disputes at the investor's option. Ecuador is a member of the International Center for the Settlement of Investment Disputes (ICSID). A U.S. company launched arbitration proceedings relating to a dispute over the company's eligibility for value-added tax refunds in 2002. The process is ongoing.

**Reverse Preferences:** The U.S. Government has no indication that Ecuador has granted such preferences to the products of a developed nation. Furthermore, Ecuador is a member of the World Trade Organization (WTO) and, accordingly, is bound by the most-favored-nation provisions in the WTO Agreements.

**Intellectual Property:** Patents, trademarks and industrial designs are protected by Andean Community Decisions 344 (the Common Industrial Property Regime) and 345 (the Common Regime to Protect Plant Varieties). Copyrights are protected by Andean Community Decision 351 (the Common Regime on Copyright and Neighboring Rights).

U.S. drug manufacturers are concerned that Ecuador does not provide sufficient protection for data submitted to regulatory authorities in connection with marketing approval for pharmaceutical products. The Government of Ecuador does not provide for a fixed period of data exclusivity for pharmaceutical producers. Ecuador's health regulatory agency provides sanitary registrations to copies of innovative pharmaceutical products despite WTO TRIPS Article 39.3, which requires governments to prohibit the "unfair commercial use" of confidential test data. Ecuador also does not provide adequate patent protection to "second-use" innovations. The U.S. Government believes that qualifying "second use" inventions are entitled to patent protection under international obligations.

In 1998, the Ecuadorian Congress passed, and the President signed, a comprehensive law significantly improving the legal basis for protecting intellectual property rights (IPR), including patents, trademarks and copyrights. However, it remains difficult to gain protection through the legal system and enforcement is uneven. There is a widespread local trade in pirated audio and video recordings, computer software and clothing. Local registration of unauthorized copies of well-known trademarks has been reduced. Some local pharmaceutical companies produce or import pirated drugs and have sought to block improvement in patent protection. Producers of

copycat medicines have also succeeded in obtaining sanitary registrations to market drugs still protected by patent.

Ecuador's IPR law incorporates Andean Community Decisions 344, 345 and 351 and many aspects of the WTO TRIPS Agreement. The law provides criminal and administrative relief to right holders. Ecuador is a member of the World Intellectual Property Organization (WIPO), and has ratified the Berne Convention for the Protection of Literary and Artistic Works and the Geneva Phonogram Convention. Ecuador has also ratified the WIPO Patent Cooperation Treaty, but not the Paris Convention for the Protection of Industrial Property.

The IPR law extends patent protection for twenty years from date of filing. Patenting of pharmaceutical products is permitted. Compulsory licensing is relatively limited. In infringement cases, the burden of proof lies with the alleged infringer. The law also provides patent protection for new drugs. However, in 1999 the Andean Tribunal ruled against Ecuador for issuing pharmaceutical pipeline patents in spite of Ecuador's bilateral obligation with the United States to provide pipeline protection. Since the Andean Tribunal's ruling, no additional pipeline applications have been approved in Ecuador. In addition, third parties have filed petitions or judicial actions requesting the nullification of already-granted pipeline patents.

The IPR law provides protection for industrial designs and extends protection to industrial secrets and denominations of origin. Semiconductor chip layouts are protected. The law provides protection for development of new plant varieties and biotechnology products.

Trademark registration is permitted for renewable ten year periods, but registration may be canceled if the mark is not used in the Andean region for a period of three years. The IPR law provides protection for well-known trademarks. A trademark registration cannot be surrendered without consent of the licensees.

The IPR law protects copyrights for printed and recorded works for the life of the author plus 70 years. Computer programs are protected, albeit as a type of work distinct from literary works. The IPR law also covers software.

**Extradition:** An extradition treaty was signed in Quito on June 28, 1872, and entered into force on November 12, 1873. A supplementary extradition treaty was signed in Quito on September 22, 1939, and entered into force on May 29, 1941. The treaties permit the extradition of U.S. citizens.

**Workers' Rights:** Under the Constitution and the labor code, most workers have the right to form trade unions. Approximately twelve percent of the labor force is unionized. Public sector employees in non-revenue earning entities, as well as security workers and military officials, are not permitted to form trade unions. The labor code reform of 1991 raised the number of workers required for an establishment to be unionized from 15 to 30, which the ILO Committee on the Freedom of Association considered too stringent. In March 2000, a new labor law allowed businesses to hire workers on 'individual contracts,' and unions have complained that this further undermines freedom of association since these workers are not allowed to join unions.

Some companies have taken advantage of the law that prohibits unions from organizing at companies that have less than 30 employees by sub-contracting with several shell companies, each of which has less than 30 workers. Under the Labor Code, these subcontracted workers have no legal right to freedom of association or right to bargain collectively with the companies that ultimately benefit from their labor, nor do they have legal protection against anti-union discrimination.

Neither the Constitution nor the Labor Code requires reinstatement of workers fired for union activity. In addition, there have been instances of the Government's failing to enforce its labor laws. The Government of Ecuador has established a high-level commission to investigate alleged worker rights violations at a large banana plantation. This commission is preparing a report that will make recommendations in the area of sub-contracted workers, illegal firings, and administration of the labor code in general. The commission is also investigating violence against the striking banana workers in May 2002.

Most public employees maintain membership in some labor organization, and there are frequent illegal strikes despite the fact that, technically, most public sector employees are prevented from joining unions and lack collective bargaining rights. During legal strikes in the private sector, salaries and benefits continue to be paid by employers.

In 1990, the Government approved a law allowing the establishment of free trade zones in Ecuador. Most maquila operations are related to textiles or fish processing. There is no prohibition on freedom of association in the free trade zones, but the maquila law permits the hiring of temporary workers for the maquila industry. Because temporary workers are not covered by the labor code, enforcement of anti-union discrimination laws is much more difficult in this sector.

The Constitution and the labor code prohibit forced labor. The law also prohibits the employment of persons under the age of fifteen years old, except in special circumstances such as an apprenticeship. Enforcement of this provision is uneven, especially in rural communities. Reports of child labor in the agricultural sector are widespread and credible. In response, Ecuador recently created a national system for child labor inspections with a focus on this sector. In the cities, many children under fifteen years old work in family businesses in the informal sector.

The minimum wage appears inadequate to provide a decent standard of living for a worker and his or her family. Most organized workers in state industries and in the formal sector (private enterprises) earn more than the minimum wage and are provided other significant benefits through collective bargaining. The majority of workers work in the large informal sector, without recourse to the minimum wage or legally mandated benefits.

***Economic Conditions:*** Ecuador adopted the U.S. dollar as its national currency in 2000 in response to the most serious economic crisis in its history. Dollarization, combined with modest economic reform, has helped to tame inflation and bring the country back to positive growth. However, to sustain dollarization in the medium term, Ecuador must tackle persistent fiscal

imbalances and a ballooning trade deficit, which hit \$1.4 billion in 2002. According to Global Insight, Ecuador's GDP grew an estimated 3.3 percent in 2002, down from an estimated 5.6 percent GDP growth in 2001.

**Market Access:** Ecuador's accession to the WTO in 1996 was an important step in improving access to Ecuador's market. However, a number of trade barriers remain. For example, despite recent improvements, bureaucratic procedures required to obtain clearance for imports from the Government's standards-setting body still appear to discriminate against foreign products. Also, corruption and inefficiency in the sanitary registration process have delayed and even blocked the entry of some agricultural imports from the United States.

When it joined WTO in January 1996, Ecuador bound most of its tariff rates at 30 percent or less. Ecuador's average applied tariff rate is about 13 percent *ad valorem*. Since February 1995, Ecuador has applied a common external tariff (CET) with two of its Andean Community partners, Colombia and Venezuela. Although Ecuador has harmonized its tariff schedule with the CET, it took numerous exceptions in order to maintain lower tariff rates on capital goods and industrial inputs. Agricultural inputs and equipment are imported duty-free.

Ecuador's foreign investment policy is governed largely by the national implementing legislation for Andean Community Decisions 291 and 292 of 1991 and 1993, respectively. Foreign investors are accorded the same rights of entry as Ecuadorian private investors, may own up to 100 percent of enterprises in most sectors without prior government approval, and face the same tax regime. There are no controls or limits on transfers of profits or capital. There are no performance requirements, with the exception of the auto regime. A Bilateral Investment Treaty with the United States that guarantees access to binding international arbitration entered into force in May 1997.

Certain sectors of the economy are reserved to the state, although the scope for private sector participation, both foreign and domestic, is increasing. All foreign investment in petroleum exploration and development in Ecuador must be carried out under a contract with the state oil company. Ecuadorian law permits the sales of 51 percent of the state's electrical sector facilities and telephone companies. Foreign investment in domestic fishing operations, with exceptions, is limited to 49 percent of equity. Foreign companies cannot own more than 25 percent equity in broadcast stations. Foreign investors must obtain armed forces approval to obtain mining rights in zones adjacent to international boundaries.

**WTO Agreements:** Ecuador acceded to the WTO in January 1996. Ecuador has failed to meet deadlines for fulfilling some of its WTO obligations related to the elimination of non-tariff barriers. These include requirements for prior authorization for certain goods before the central bank can issue an import license, and Ministry of Agriculture denial of import permits for certain agricultural products in order to protect local producers.

**FTAA Participation:** Ecuador chaired the FTAA negotiations process until the Quito Ministerial, held in November 2002, and continues to participate in the process. Ecuador's FTAA negotiating positions are usually developed jointly with its Andean Community partners.

***Subsidies or Other Requirements that Distort International Trade:*** Ecuador does not use export subsidies. It does maintain a drawback system to reimburse the cost of duties and taxes paid on raw materials and other inputs incorporated in products that are subsequently exported.

***Trade Policies that Revitalize the Region:*** Ecuador acceded to the Andean Community in early 1993. Ecuador's trade is gradually reorienting toward the Community. In 2002, the Andean Community absorbed 15.9 percent of Ecuador's exports and provided 22 percent of its imports.

***Narcotics Cooperation:*** Ecuador has received full certification for its cooperation through 2002 with the United States on counter-narcotics issues under the Foreign Assistance Act, as described in the *International Narcotics Control Strategy Report* of March 2003. Ecuador, with the support of the U.S. Government, maintains an active drug detection and interdiction program. Its programs focus on demand reduction, interdiction, training in police investigations, drug detection, information sharing and control of money laundering. A program initiated in 1996 targets modernizing the judicial system.

The Government of Ecuador continues to work with the U.S. Government to reduce trafficking through Ecuador. Ecuador has criminalized the production, transport and sale of controlled narcotic substances. Although smuggling of precursor chemicals through Ecuador remains a problem, the Government of Ecuador is making efforts to monitor and control these chemicals. Nonetheless, it appears that, despite Ecuadorian efforts, transshipment of narcotics through Ecuadorian maritime and land routes to the United States is widespread.

The ATPA has played an important role in providing trade opportunities in agricultural industries in Ecuador. Such opportunities have provided the citizenry with jobs, thus deterring them from becoming involved in growing narcotics crops and, consequently, preventing the entrenchment of narcotics trafficking in Ecuador. ATPA's contribution to the rapid growth of Ecuador's cut flower industry has been particularly important. Cultivation of fresh fruits, vegetables and cereals in the highlands is also growing and offering similarly promising export and employment opportunities. Ecuador's beneficiary status under the ATPA helps to create the conditions for such opportunities.

The successful development of more profitable agricultural industries in Ecuador will help prevent Ecuador from becoming a major coca-producing country. Ecuador's proximity to Colombia and Peru, the world's leading coca leaf and cocaine hydrochloride suppliers, warrants continued vigilance in preventing illicit crop cultivation in Ecuador.

***Anti-Corruption:*** Ecuador has been identified as facing corruption problems in international rankings. Judicial insecurity, impunity and lack of transparency are frequently cited as the root causes of corruption in Ecuador. Efforts at reform have had mixed results to date. There is an independent anti-corruption agency, but it is underfunded and without legal teeth. There are few non-governmental institutions that fight corruption.

***Government Procurement:*** Government procurement of goods, equipment and services is regulated by the 1990 Public Contracting Law. The law does not apply for some types of

military procurement. Foreign bidders must be legally represented in Ecuador, and when participating in a bid financed by international loans, they must be associated with an Ecuadorian company in order to bid.

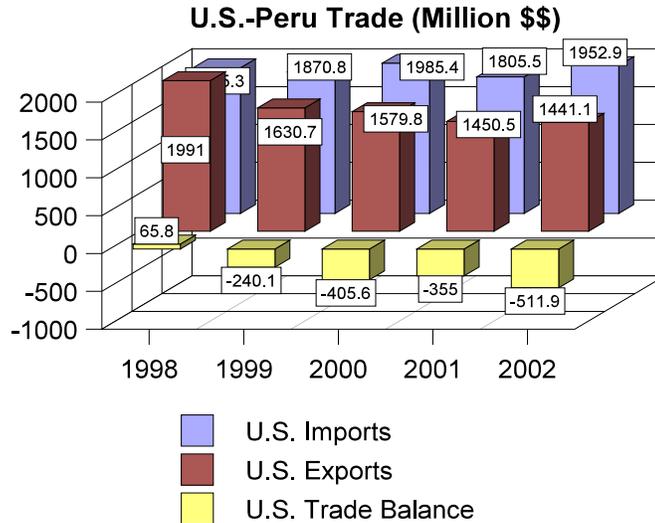
In practice, tender procedures are often non-transparent. Contracting agencies frequently manipulate bidding specifications or add new conditions after the bidding deadline to favor certain bidders. The tender process for government contracts can be cumbersome. By law, bidders are required to post a bank or insurance guarantee for five percent of the contract. Awards of government contracts must be authorized by both the Comptroller and Attorney General.

***Counter-Terrorism:*** As did most Latin American nations in the wake of the September 11 attacks in the United States, Ecuador voiced strong support for U.S., Organization of American States and United Nations antiterrorism declarations and initiatives put forth in various international fora. During President Gutierrez's February 2003 visit to Washington, he publicly proclaimed his desire to make Ecuador a strong ally in the fight against terrorism. Ecuador is making efforts to improve control of its borders. Other issues of concern include Ecuador's weak financial controls, widespread document fraud and reputation as a strategic corridor for arms, ammunition and explosives destined for Colombian terrorist groups.

## PERU

Population: 27,949,639 (July 2002 est.)  
 National Product per capita: \$4,800\* (2001)  
 \*National product: GDP - purchasing power parity  
 Source: 2002 World Fact Book - CIA

2002 Trade Statistics (thousands of \$)  
 U.S. Imports from Peru: \$1,952,921  
 U.S. Exports to Peru: \$1,441,052  
 U.S.-Peru Trade Balance: -\$511,869  
 Source: Department of Commerce



**Effect of the ATPA/ATPDEA:** The growing importance of the U.S. market for Peruvian exporters is reflected by the fact that the U.S. share of Peru's total exports grew from about 16.6 percent in 1994 to 25.7 percent in 2002. Peru became eligible for preferential trade benefits under ATPA in August 1993 and received renewed and expanded benefits under ATPDEA in October 2002. Exports under ATPA, and now ATPDEA, have since gained an increasingly important role in Peru's economy, as exporters have discovered that the ATPA as amended offers greater advantages than the benefits offered under the Generalized System of Preferences (GSP). Of the \$1.7 billion of goods that Peru exported to the United States in 2001, \$686 million worth of goods entered the United States under ATPA. Between 1993 and 2001, exports from Peru accounted for 34 percent of all exports under ATPA.

Under original ATPA benefits, four products (copper, asparagus, jewelry and zinc) of the roughly 5,500 covered items represented more than 90 percent of the value of ATPA exports from Peru. In 2001, the United States imported copper valued at \$573 million and asparagus valued at \$41 million. With the expansion of benefits under the ATPDEA (now covering more than 6,000 products), the Government of Peru is coordinating with the private sector in efforts to diversify and increase Peru's exports. Under the ATPDEA, large increases in non-traditional exports such as apparel, jewelry, handicrafts and shoes are expected. The Government of Peru estimates that Peruvian exports to the United States will increase by more than 13 percent per year through 2006, driven by annual gains of more than 17 percent for non-traditional exports.

Peru's large textile and apparel sector anticipates substantial growth as a result of new ATPDEA benefits. Prior to the ATPDEA, Peru's apparel exports entered the United States with tariffs averaging about 21 percent. With largely duty-free treatment under the ATPDEA, the National Society of Industries (SNI) estimates that apparel exports to the United States from Peru could increase from \$400 million in 2002 to \$2 billion in 2006. The Government of Peru estimates that exports of products made with local alpaca fiber, included under the ATPDEA, could grow by 30 to 50 percent in 2003 alone. Industry and government sources estimate that the textile and apparel industry could generate up to 200,000 new jobs (including in cotton cultivation) in Peru through 2006. Due to the high rate of unemployment, job creation is key to economic development in Peru.

Increased cotton cultivation in support of Peru's apparel industry could serve as a new valuable alternative to illicit coca growing. During the first ten years of the ATPA, asparagus exports were the most significant direct alternative development benefit of the program. A University of Lima study estimated that over 50,000 jobs were created in asparagus cultivation under the ATPA.

**Expropriations:** According to the Constitution, the Peruvian Government can only expropriate private property on public interest (such as for public works projects) or national security grounds. Any expropriation requires the passage of a specific act of the Congress. The Government of Peru has expressed its intention to comply with international standards concerning expropriations. Adequate payment to owners of agricultural lands expropriated by the Peruvian Government in the late-1960s and early-1970s is still at issue. The Government of Peru has committed to the U.S. Government to resolve expeditiously one such claim involving an American citizen.

**Arbitral Awards:** Peru accepts binding international arbitration of investment disputes between foreign investors and the state, in accordance with national legislation or international treaties signed by the Government. A law permitting international arbitration of disputes between foreign investors and the Government or state-controlled firms was issued by decree during December 1992, and such recourse to arbitration was provided for in the 1993 Constitution. Peru is a party to the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards.

Peru's adherence to ICSID (International Conference on Settlement of Investment Disputes) has improved the Government's ability to conclude bilateral investment agreements. Disputes between foreign investors and the state regarding pre-existing contracts must still be submitted to national courts. However, investors who conclude a juridical stability agreement for new investment are permitted to submit contract disputes with the Government to national or international arbitration by common agreement.

**Reverse Preferences:** The U.S. Government has no indication that Peru has granted such preferences to the products of a developed nation. Furthermore, Peru is a member of the World Trade Organization (WTO) and, accordingly, is bound by the most-favored-nation provisions in the WTO Agreements.

***Intellectual Property:*** Protection of intellectual property rights (IPR) in Peru has improved significantly over the past decade, but still falls short of U.S. and international standards in several areas. After two years on the U.S. Government's "Priority Watch List" under the Special 301 provisions of the 1988 Trade Act, Peru was moved to the "Watch List" in 2001 in recognition of progress on copyright issues. In 2002 and 2003, Peru remained on the Watch List due to concerns about the adequacy of Peru's enforcement of its IPR laws.

Peru belongs to the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO). It is also a signatory to the Paris Convention, Bern Convention, Rome Convention, Phonograms Convention, Satellites Convention, Universal Copyright Convention and the Film Register Treaty. In December 2001, the Public Ministry created the first office of a special prosecutor for the enforcement of IPR. This move has increased the efficiency and number of IPR enforcement actions. In August 2002, the Interior Ministry entered into an agreement with the IPR administrative agency, INDECOPI, to facilitate greater interagency cooperation on IPR enforcement actions, including police raids. Nevertheless, concerns remain about the adequacy of IPR law enforcement, particularly with respect to the relatively weak penalties that have been imposed on IPR violators by the criminal justice courts.

### *Copyrights*

Peru's 1996 Copyright Law is generally consistent with the TRIPS Agreement. However, sound recordings, textbooks, books on technical subjects, motion picture videos and software are widely pirated. While the government, in coordination with the private sector, has conducted numerous raids over the last few years on large-scale distributors and users of pirated goods and has increased other types of enforcement, piracy continues to be a significant problem for legitimate owners of copyrights. Peru signed the WIPO Copyright Treaty in July 2001 and the Performances and Phonograms Treaty in February 2002. Progress is being made on the government's legalization of computer software; the Government of Peru published a decree in February 2003, requiring all government entities to use legal software and establish effective controls to ensure such legal use between now and March 31, 2005.

### *Patents and Trademarks*

Peru's 1996 Industrial Property Rights Law provides the framework for effective protection for patents and moves Peru closer to conformity with international obligations. In 1997, based on an agreement reached with the U.S. Government, Peru resolved several inconsistencies with the TRIPS Agreement provisions on patent protection and most-favored nation treatment for patents. However, U.S. companies continue to have concerns about Peru's protection of patents.

U.S. drug manufacturers are concerned that Peru does not provide sufficient protection for data submitted to regulatory authorities in connection with marketing approval for pharmaceutical products. The Government of Peru does not provide for a fixed period of data exclusivity for pharmaceutical producers. Peru's health regulatory agency provides sanitary registrations to copies of innovative pharmaceutical products despite WTO TRIPS Article 39.3, which requires governments to prohibit the "unfair commercial use" of confidential test data. Peru also does not

provide adequate patent protection to “second-use” innovations. The U.S. Government believes that qualifying “second use” inventions are entitled to patent protection under international obligations.

**Extradition:** A treaty on extradition was signed in Lima in 1899 and entered into force in 1901. The treaty permits the extradition of U.S. citizens. It specifies a list of extraditable offenses and excludes the extradition of nationals. The United States and Peru have both ratified a new extradition treaty, but it has not entered into force as the instruments of ratification have yet to be exchanged.

**Workers’ Rights:** The Constitution and the law provide for the right of association. About five percent of the formal sector workforce of 8.3 million belong to organized labor unions. Only about 43 percent of the economically active population has permanent employment.

Labor regulations provide that workers may form unions on the basis of their occupation, employer affiliation or geographic territory. Workers are not required to seek authorization prior to forming a trade union, nor may employers legally condition employment on union membership or non-membership.

In the past, labor advocates asserted that laws promulgated by the Fujimori administration in the 1990’s, as well as provisions in the 1993 Constitution, failed to protect the rights of workers to form unions and bargain collectively. In January 2003, President Toledo signed into law legislation that addresses some of the International Labor Organization’s (ILO) primary objections to the Peruvian labor code. The new labor law includes provisions to allow apprentices to join unions, reduces the number of individuals required to form a union to 20, recognizes the right to strike and allows for collective bargaining by sector.

In recent years, the ILO criticized a provision that permitted businesses to employ up to 30 percent of their workforce from workers between the ages of 16 to 25 in apprenticeship-type jobs; workers in this age bracket were precluded from union membership and participation. To address this complaint, a 2001 law reduced this number to 10 percent, and the 2003 labor reforms allow apprentices to join unions and participate in union activities.

The 2003 labor reforms also remedy some of the ILO’s long-standing concerns with Peruvian law in the areas of collective bargaining and the right to strike. The new law allows unions to bargain collectively at both the firm and sector levels, and removes a 1992 requirement that a majority of workers in an enterprise, regardless of union membership, must vote in favor of any strike.

In the area of illegal dismissals for union activity, the main union confederations criticized the Employment Promotion Act, amended in 1995 and 1996, for restricting the rights of workers. Unions complained that the law eliminated the right of dismissed workers to compulsory reinstatement if they prove that employers dismissed them unjustly. In practice, companies sometimes offered financial compensation instead of reinstatement as the legislation allows. Although the law prohibits companies from firing workers solely for involvement in union

activities, this provision was not enforced rigidly. In November 2000, the ILO's Committee of Freedom of Association recommended that the Government enforce legislation protecting workers from dismissal on account of membership in a union or participation in union activities. In the first such action by the judiciary, in September 2002 the Constitutional Tribunal ruled that a major company, Telefonica, had to rehire over 400 workers suspected of being fired for their union affiliation.

In July 2002 Congress passed a law regarding collective dismissals that reinstated workers' rights in this area. In December 2002 the Ministry of Labor published a list of 7,156 names of former public sector employees who stand to benefit from the new Collective Dismissal Law. Additional names are to be released in 2003. The workers were among those deemed to have been fired unjustly during the Fujimori Administration.

There are no restrictions on the affiliation of labor unions with international bodies. Several major unions and labor confederations belong to international labor organizations such as the ICFTU, the international trade secretariats, and regional bodies.

The Constitution recognizes the right of public and private sector workers to organize and bargain collectively; however, it specifies that this right must be exercised in harmony with broader social objectives. Labor regulations provide that workers may form unions on the basis of their occupation, employer affiliation or geographic territory. The law does not prohibit temporary employees from joining a union, but they may not join the same union as permanent workers.

The Constitution prohibits forced or bonded labor, and there were no reports of forced labor during 2002. The law specifically prohibits forced or bonded labor by children. Forced labor previously was found in the gold mining industry in the Madre de Dios area; however, the changing nature of the industry and government efforts to regulate it seem to have addressed the problem. Non-governmental organization sources and the ILO reported in 1999 that mechanization largely had replaced manual labor, and the Ministry of Labor inspection programs helped deter illegal child labor in this industry.

The Constitution provides that the State promote social and economic progress and occupational education. It states that workers should receive a "just and sufficient" wage to be determined by the Government in consultation with labor and business representatives, as well as "adequate protection against arbitrary dismissal."

In March 2000, the Government raised the statutory minimum wage from \$117 (410 soles) a month to \$128 (450 soles), which is not considered sufficient to provide a decent standard of living for a worker and family. The Ministry of Labor employs 170 labor inspectors.

The Constitution provides for a 48-hour workweek, a weekly day of rest, and an annual vacation. As of February 2002, a law requires companies to pay overtime to employees who work more than 8 hours, to provide additional compensation for work at night, and to provide a 45-minute meal break to employees during their 8-hour shift.

While occupational health and safety standards exist, labor advocates argue that the Government dedicates insufficient resources to enforce existing legislation. The Ministry of Labor receives worker complaints and intervenes in cases. When firms are found to be in violation of the law, the Government sanctions them with fines or, in some cases, closure. In cases of industrial accidents, the level of compensation awarded to the injured employee usually is determined by agreement between the employer and the individual involved. The worker does not need to prove an employer's culpability in order to obtain compensation for work-related injuries. No provisions exist in the law for workers to remove themselves from potentially dangerous work situations without jeopardizing their continued employment.

***Economic Conditions:*** Over the past decade, Peru has been transformed by market-oriented economic reforms and privatizations that generated many of the conditions for long-term growth. Peru's dynamic economic performance in 2002 contrasted sharply with turmoil elsewhere in South America. The country led the hemisphere with 5.2 percent real growth, driven by investment, domestic demand and exports. GDP in 2002 reached \$56.9 billion. Inflation was low at 1.5 percent, the currency slid 2.3 percent over the year and Lima unemployment fell to 8.5 percent. Fiscal accounts were under control, though the deficit hit 2.2 percent of GDP (above the original target of 1.9 percent). Foreign reserves grew by over \$1 billion and closed the year at \$9.6 billion. External debt was 49.2 percent of GDP. Banking and retail services, mining, manufacturing, agriculture and fishing are key economic sectors.

Peruvian exports reached \$7.69 billion in 2002, with imports of \$7.43 billion, producing the country's first trade surplus in eleven years. ATPDEA benefits may propel exports above \$8.1 billion in 2003 (provided the Peruvian Government continues to improve the investment climate). Peru's major trading partners are the United States, European Union, Japan, Colombia, Brazil, China and Venezuela. Approximately 25 percent of Peruvian exports are destined for the United States and 30 percent of Peruvian imports come from the United States. Exports include fishmeal, copper, zinc, gold, petroleum, coffee, sugar and textiles and apparel. Imports include machinery, vehicles, processed food, petroleum and steel. Peru belongs to APEC and the WTO and actively participates in FTAA negotiations. Peru's stock of foreign direct investment (FDI) is over \$11 billion, with the United States, Spain and Britain the leading investors. FDI is concentrated in privatized sectors such as mining, electricity and telecommunications. The Peruvian Government may face political opposition to meeting its target of \$400 million in privatization revenues for 2003.

Peru's economy is one of the better-managed in Latin America, but challenges remain. Growth should be near 4 percent in 2003, driven by construction, investment, domestic demand and ATPDEA-related exports, with inflation of 2.5 percent. Improved tax collection and growth should allow the Peruvian Government to raise real spending by 6 percent, while meeting its 1.9 percent of GDP deficit target. Peru secured its \$750 million external financing requirement for 2003 with successful bond issuances in January and March. The Peruvian Government still faces strong social pressures to reduce high poverty (54 percent) and both unemployment and underemployment (56 percent). Maintaining long-term growth will require improving the investment climate, reducing corruption and completing other reforms.

**Market Access:** Tariffs apply to virtually all goods exported from the United States to Peru, although rates have been lowered over the past few years. Peru continued to reduce its overall average tariff rate in 2001-2002, from 13.5 percent to 10.9 percent. The government maintains some “temporary” tariff surcharges on agricultural goods in an effort to protect local production, assure fiscal revenues, and promote domestic investment in the sector. Under the current system, Peru imposes 4 percent duties on 21 percent of the items on its tariff schedule (1,438 products largely covering intermediate goods and components); 7 percent duties on 22 percent of the items (1,560 products covering capital goods); 12 percent duties on 41 percent of the items (2,900 products); and 20 percent duties on 16 percent of importable items (1,094 products in the textiles, footwear and agricultural sectors). A few products, mostly agricultural, are assessed rates (because of the additional “temporary” tariffs) of up to 25 percent. In March 2002 the tariff rate for most capital goods was reduced from 20 percent and 12 percent to 7 percent. In an effort to promote exports and maximize ATPDEA benefits, Peru further reduced the tariff rate for 178 capital goods from 7 percent to 4 percent in August 2002. However, the tariff rate for cigarette items was raised from 12 percent to 25 percent (including the five percent “temporary” tariff) in August 2002.

In theory, Peru has a two-tier import tariff system (12 and 20 percent), but in reality it has four levels for agricultural imports: 4, 12, 17 and 25 percent. Additionally, all products are subject to a value added tax (VAT) of 18 percent, although discounts have been granted to local production in some cases. Most products of interest to U.S. agricultural exporters are subject to high import duties. Meats, offal, dairy products, ice cream, processed potatoes, beans, fruit and vegetables (fresh and processed), rice, wheat, confectionery, chocolate, pasta and pastry are assessed an import duty of 25 percent. Malt, wine and beverages are assessed a 17 percent import duty, while yellow corn, 12 percent. Inputs such as seeds, cattle for reproduction, semen and fertilizers are imported into the country duty free. Peru’s bound levels for agricultural products under the WTO are quite high, from 80 percent to 141 percent.

Imports of “sensitive” products, including corn, rice, sugar and powder milk, plus scores of related products, are subject to a price band. In 1998, the price band on wheat was removed, although there are frequent calls to reinstate it. On September 27, 2002, the Government of Peru increased the number of products related to these “sensitive” products. This new law principally affects U.S. import of dairy products, and in September 2002, import duties on sugar were raised from 40 to 100 percent.

In the second half of 2002, the five member countries of the Andean Community started to negotiate their common external tariff and initially reached agreement on 62 percent of tariff items. If implemented, this harmonization will have the effect of increasing Peru’s tariffs on a number of products, particularly with respect to consumer goods.

Some non-U.S. exporters to Peru have preferential access to the Peruvian market because of Peru’s bilateral tariff reduction agreements.

**WTO Agreements:** Peru was a founding member of the WTO and was a contracting party to the GATT beginning in 1948. The U.S. Government has raised concerns regarding Peru’s failure to

provide adequate protection for confidential test data as required by WTO TRIPS Article 39.3. The U.S. Government has also pressed for increased cooperation between INDECOPI, the administrative agency that handles patents, and DIGEMID, the health agency that licenses pharmaceutical products.

***FTAA Participation:*** Peru is an active participant in FTAA negotiations and currently serves as chair of the FTAA Negotiating Group on Competition Policy and vice-chair of the Committee of Government Representatives on Civil Society. The Government of Peru views successful completion of FTAA negotiations as a means of consolidating and continuing benefits gained under the ATPA as amended. Peru hosted an FTAA vice ministerial meeting in 2001.

***Subsidies or Other Requirements that Distort International Trade:*** Almost all non-tariff barriers, including subsidies, import licensing requirements, import prohibitions and quantitative restrictions have been eliminated. However, the following imports are banned for a variety of reasons: several insecticides, fireworks, used clothing, used shoes, used tires, radioactive waste, cars over five years old and trucks over eight years old. Used cars and trucks that are permitted to be imported must pay a 45 percent excise tax – compared to 20 percent for a new car – unless they are refurbished in an industrial center in the south of the country upon entry, in which case they are exempted entirely from the excise tax. Import licenses are required for firearms, munitions and explosives, chemical precursors (since these can be diverted to illegal narcotics production), ammonium nitrate fertilizer, wild plant and animal species, and some radio and communications equipment.

There are still significant trade barriers imposed by SENASA, the Government of Peru's sanitary regulatory agency, on agricultural products including poultry, live animals, animal genetic material and plant products. The result has been an effective ban on the import of certain agricultural products (for example, paddy rice).

Imports are also assessed an 18 percent value-added tax on top of any tariffs; domestically-produced goods generally pay the same tax as well. The Government of Peru exempts certain domestic agricultural products from the tax.

***Trade Policies that Revitalize the Region:*** Peru has been a member of the Andean Community (and its predecessor Andean Pact) since 1969. In 1992, Peru suspended its participation in the Andean Community's integration process because it was reluctant to abandon its two-level tariff structure for the four-tiered common external tariff (CET) favored by the other members. In 1997, Peru agreed to be fully and gradually incorporated into the Community's free trade area by December 2005. At the Andean President's Council meeting on January 31, 2002, the five member countries of the Andean Community agreed to establish an Andean free trade zone, a common external tariff (CET), and a customs harmonization policy by January 2004. Peru received an exception for petroleum and fuels until the end of 2003 and for agricultural products until the end of 2005.

The CET agreement establishes a unified tariff schedule that will come into effect at the end of 2003. In the second half of 2002, the Andean members started to negotiate the CET in order to

provide initial offers for the FTAA, and reached agreement on 62 percent of tariff items. Peruvian industry representatives and economists raised concerns that negotiations of a CET on the remaining 38 percent of items could lead to increased tariffs on several consumer products and lower competitiveness. As a result, finalization of negotiations on the CET with Andean neighbors will be difficult to achieve.

***Narcotics Cooperation:*** On March 1, 2003 Peru received full certification for its cooperation with the United States on counter-narcotics issues under the Foreign Assistance Act. Peru is the second largest cocaine producer in the world and a major exporter of high purity cocaine and cocaine base to markets in South America, Mexico, the United States and Europe. About 90 percent of the coca leaf harvested in Peru is used to produce cocaine or its intermediate products. The remainder is used by the local population or for legal medical and commercial consumption in the United States and Europe. The country's production had dropped to about 33,000 hectares from the 115,000 hectares that were measured in 1995. However, the number of hectares of coca cultivated in Peru rose by 8 percent to 36,500 hectares at the end of 2002. Opium poppy cultivation and resulting opium trafficking in Peru have also been on the rise since 2000.

President Toledo pledged in his inaugural address in 2001 to oppose drug trafficking. During the March 2002 visit of President Bush to Lima, both Presidents met and pledged a joint fight against narcotics trafficking and terrorism. Peru's counter-narcotics effort has encountered both successes and difficulties during the past twelve months ending in March 2003.

Two new threats are the development of organized political protest movements by coca growers on the Bolivian Evo Morales model, and the growing connection between drug trafficking and terrorism. Peru's most active terrorist group, the Sendero Luminoso (Shining Path), has evolved into a narco-terrorist organization that operates across large areas within the cocaine producing valley and jungle regions of Peru. The Shining Path provides protection as well as financial and political support to coca farmers and maintains close association with cocaine and base traffickers operating clandestine laboratories in those same jungle regions.

Progress was made in the past year on many components of the counter-narcotics program that targeted the illicit drug trade, encompassing demand reduction, coca eradication, air, land and waterway drug interdiction and chemical diversion control. Major accomplishments include increases in drug seizures, the destruction of maceration pits and arrests. A new bilateral maritime ports initiative is underway to improve police and Peruvian customs capabilities and to gain the cooperation of private maritime and air freight companies to identify suspect cargo at all major ports throughout Peru.

The pace of eradication picked up in last four months of 2002 after it had temporarily slowed because the Peruvian Government faced social unrest from coca farmers and other civic sectors. Peru's interest in qualifying for ATPDEA benefits spurred greater cooperation that enabled it to eradicate 7,130 hectares of coca by year's end. The Peruvian Government is considering an eradication plan for 2003 that sets a minimum goal of 8,000 hectares.

The Government of Peru and U.S. Agency for International Development signed a five-year cooperative agreement that more directly links alternative development assistance to coca eradication. Under the new strategy, communities will sign agreements committing to voluntarily eradicate the illicit coca grown in their area of influence and remain permanently coca-free in order to participate in the alternative development program.

Peruvian traffickers continue to utilize the Peruvian banking system and gambling casinos to launder drug proceeds, but the volume of drug funds passing through the Peruvian banking system is unknown. In April 2002, the Toledo Administration promulgated a law approved by Congress, to create a Financial Intelligence Unit (FIU) to analyze and identify suspected money laundering. The Government of Peru has still not established and named an executive director of the FIU.

***Anti-Corruption:*** In a recent Transparency International Latin American country corruption index, Peru ranked fourth best and has held a fairly stable position for the past five years. While corruption may be lower in Peru than in other countries in the region, it nonetheless constitutes a serious problem. Prime Minister Luis Solari suggested that corruption increases Peruvian Government purchasing costs by 20 percent annually. Confirming the extent of corruption in a recent poll, Peruvians cited corruption as the fourth severest problem facing their country. Not surprisingly, President Alejandro Toledo made anti-corruption a major theme of his election campaign, though he has not presented a national anti-corruption plan.

Peru ratified the Inter-American Convention Against Corruption, but has yet to provide the information required by the treaty to the Organization of American States. President Toledo created a National Anti-Corruption Commission within his office as opposed to making an independent body. The commission has been extremely passive in investigating cases of corruption. The vast majority of governmental anti-corruption resources have been allotted to the investigation of President Alberto Fujimori's 1990-2000 regime.

***Government Procurement:*** There is no limitation on foreign participation in government solicitations. In 2000, however, in an effort to support national companies, the government began adding 15 points (on its rating scale of 100) to Peruvian firms bidding on government procurement contracts. In January 2002, the government raised the point preference an additional five points, for a total of 20, until 2005. U.S. pharmaceutical firms have raised concerns about this practice with regard to bidding on the Health Ministry's pharmaceutical purchases. U.S. firms contend that the 20 percent margin is excessive, giving unfair advantage to Peruvian competitors that would otherwise lose these bids on cost or technical grounds. Peru is not a signatory to the WTO Agreement on Government Procurement.

***Counter-Terrorism:*** Peru has taken a number of steps to combat terrorism. In June of 2002, Peru signed the Inter-American Convention Against Terrorism. Besides condemning all forms of terrorism, domestic and international, as well as cooperating with neighboring countries' investigation of terrorism, Peru recently passed legislation strengthening its own ability to fight terrorism. A June 2002 law passed by Congress allows prosecution of money laundering related to terrorism and also creates the Financial Intelligence Unit as a means to identify money-

laundering. This legislation moves the country closer to fulfilling UNSCR 1383. Furthermore, other resolutions passed by Peru's Congress on the one-year anniversary of the 9/11 attacks reaffirmed the country's solidarity in the fight against terrorism. Though no major obstacles exist to the prosecution of terrorists, maximum sentences of twenty years with parole eligibility or full release after ten years cast doubt on the appropriateness of Peruvian punishment. The Peruvian National Police force has worked diligently to neutralize threats against the U.S. Embassy, the Ambassador's residence, and other locations. In addition, Peru has participated in the State Department's Anti-Terrorism Training Assistance program since 1986 and efficiently arrested those behind the March 20, 2002, bombing near the U.S. Embassy.

## Chapter 4

### SUMMARY OF FEDERAL REGISTER SUBMISSIONS

In compliance with section 203(f) of the ATPA as amended, USTR requested the views of interested parties (68 Fed. Reg. 37, February 25, 2003) on whether the countries designated as ATPDEA beneficiary countries in Presidential Proclamation 7616 of October 31, 2002, are meeting the eligibility criteria provided for in section 204(b)(6)(B) of the program.

USTR received twenty comments in response to its request. One comment was subsequently recalled. The full texts of the submissions are available at the Office of the United States Trade Representative Reading Room, 600 17<sup>th</sup> Street, NW, Washington, D.C. A summary of each submission follows.

**International Intellectual Property Alliance (IIPA)** summarized the status of copyright law reform, protection and enforcement in Bolivia, Colombia, Ecuador and Peru. According to the IIPA, the four countries have failed to provide U.S. copyright owners “adequate and effective protection” as required under the program’s eligibility criteria. The IIPA estimates that trade losses in these countries due to copyright piracy in 2002 were at least \$263 million. The IIPA notes that copyright law reform alone, without adequate and effective enforcement, does not satisfy the IPR criteria of the ATPDEA. The IIPA is concerned that recent copyright-related commitments made by these governments in order to secure ATPDEA benefits may not have been implemented fully and successfully in practice.

**InterGen (North America), Inc. (InterGen)**, a U.S. affiliate of TermoEmcali, asserts that the Government of Colombia does not currently meet the eligibility requirements provided for in section 204(b)(6)(B) of the ATPA, as amended by the ATPDEA. InterGen states that current actions by an entity of the Colombian Government regarding the TermoEmcali Project violate eligibility requirements in section 3202(c)(2)(B)(i) regarding the repudiation of an existing contract constituting a potential expropriation. InterGen further states that these actions constitute a rejection of self-help measures to protect Colombia’s economic development pursuant to section 3202(d)(7). InterGen submits that these actions call into question Colombia’s eligibility for ATPA benefits.

**Sithe Energies, Inc. (Sithe)** objects to granting eligibility to Colombia because, as a result of a court ruling, the Colombian Government has refused to pay an arbitral award of approximately \$60 million to a subsidiary of Sithe. Sithe argues that the Colombian Government should be required to engage in direct discussions with Sithe as to an appropriate process for resolving this dispute. Sithe states that such a process would include direct negotiations, concluding in an agreement to provide reasonable compensation, or an expedited arbitration with respect to the damages to be awarded for the breach of contract. Sithe argues that in the event that the Colombian Government refuses to take such actions, Colombia’s eligibility for enhanced benefits should be terminated immediately.

**Pharmaceutical Research and Manufacturers of America (PhRMA)** states that the Andean Community's intellectual property regime has created problems affecting all of its member companies. PhRMA states that, with the exception of Colombia, which in September 2002 adopted a decree to protect confidential clinical trial data from unfair commercial use, the ATPA countries do not comply with WTO TRIPS Article 39.3. PhRMA argues that failure by Bolivia, Ecuador or Peru to pass and enforce a law or decree similar to that in Colombia, or to find an alternative means of accomplishing the same objective, appears contrary to the ATPDEA eligibility criteria ("work toward adequate and effective protection of intellectual property rights"). The Andean Tribunal's invalidation of all second use patents is also a concern. PhRMA further states that the Andean Community's common intellectual property law, Decision 486, falls short of adequate pharmaceutical patent protection by placing unjustified restrictions on biotech inventions.

**LeTourneau of Peru, Inc. (LeTourneau)** states in its submission that Peru does not meet the eligibility criteria under section 203(c) because of the Peruvian Government's lack of progress in resolving LeTourneau's 32 year-old expropriation claim. LeTourneau questions whether the Government of Peru is working expeditiously to establish the value of compensation owed and to fully resolve this claim. LeTourneau points out that a condition of country eligibility under the ATPA as amended is that U.S. citizens be compensated for expropriated property.

**Colombian Flower Exporters Association (ASOCOLFLORES), Bloomsxpress, Inc., Fall River Florist Supply, Co. Inc., Summers Marketing, and Kennicott Brothers Company** support continuing the designation of Colombia as a beneficiary country under the ATPA. These organizations point out that one of the most important industries of Colombia -- fresh cut flowers -- is a direct beneficiary of the ATPA. These organizations argue that any disruption of those benefits as a result of a declaration of ineligibility for Colombia would have negative repercussions on the U.S. floral industry, which is now an \$11 billion industry.

**American Apparel and Footwear Association (AAFA)**, the national trade association of the apparel and footwear industries, strongly supports the ATPA as amended. The AAFA points out that apparel imports from the ATPA region for the year ending January 2003, when compared with the year ending January 2002, are up nearly 14 percent. Further, according to the AAFA, imports for the month of January 2003 alone show growth of more than 30 percent. The AAFA also points out that footwear imports from the region for the first three months of the program's operation, when compared to the similar period in the preceding year, also show strong growth.

**J.C. Penney Purchasing Corporation, Inc. (JCPPC)** states that as a major retailer doing business in the Andean region, its experience in apparel factories in these countries has been very favorable. JCPPC states that the removal or reduction of the ATPA benefits would disrupt the supply of targeted retail products to the U.S. market, to the immediate disadvantage of Andean workers and, ultimately, to the disadvantage of American consumers. Accordingly, JCPPC urges USTR to conclude that the benefits of the ATPA countries should be continued.

**JeanYvesFWI** states that “we are pleased to be working under ATPDEA and are wishful that these provisions are maintained as to the eligibility of Colombia and regional fabrics. It has certainly enhanced our business.”

**Russell Corporation** states that Colombia in particular is continuing to meet the eligibility criteria set forth in Section 204(b)(6)(B) of the Andean Trade Preference Act (ATPA), as amended by the ATPDEA. Russell Corporation feels that its company and other U.S. investors will benefit if the United States continues to offer trade benefits to Colombia, Bolivia, Ecuador and Peru. Russell Corporation argues that in the long term the ATPA will help foster the same kinds of values that the United States hopes will be enforced in the FTAA and other multilateral trade organizations such as the WTO.

**S. Schwab Company** expresses satisfaction with the benefits it has realized since the implementation of the ATPDEA. In measuring the performance and practices of the vendors in the Andean region with which it engages business, S. Schwab Company states that it has no reason to believe the beneficiary countries are not meeting the eligibility requirements.

**Human Rights Watch , the U.S./Labor Education in the Americas Project (US/LEAP), Representative George Miller (CA-7) and Representative Janice D. Schakowsky (IL-9), and The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)** argue that Ecuador has not fully met the eligibility criteria under ATPDEA Section 204(b)(6)(B)(3), (4) because the government has so far failed to uphold its commitments to eliminate the worst forms of child labor in the banana sector and to ensure that banana workers can freely exercise their right to freedom of association and to organize. These parties believe that the U.S. Government should make Ecuador’s continued designation as an ATPDEA beneficiary country conditional on its immediate fulfillment of certain workers’ rights benchmarks.

In a separate submission, the **AFL-CIO** reviewed recent developments in the other ATPA countries as they relate to the ATPA’s country eligibility criteria. The AFL-CIO states that the ATPA as amended requires the Government of Colombia to be “taking steps” to afford workers’ rights as required under the ATPA, and also to be affording these rights to an extent consistent with its ILO obligations. The AFL-CIO asserts that a systematic denial of certain basic labor rights and human rights for workers throughout Colombia has continued over the past six months. With respect to Peru, the AFL-CIO states that there has been no significant progress in the past six months on key labor law reforms identified as necessary by the ILO.