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THIRD REPORT ON THE OPERATION OF THE ANDEAN TRADE PREFERENCE ACT

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE THIRD REPORT ON THE OPERATION OF THE ANDEAN TRADE PREFERENCE ACT, PURSUANT TO PUB. L. 102–182, SEC. 203(f) (105 STAT. 1239)

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To the Congress of the United States:

As required by section 203(f) of the Andean Trade Preference Act (ATPA) of 1991, as amended (19 U.S.C. 3201 *et seq.*), I transmit herewith the third report to the Congress on the Operation of the Andean Trade Preference Act.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 5, 2001.*

Third Report to the Congress on the Operation of the Andean Trade Preference Act

January 31, 2001

prepared by

THE OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE

THIRD REPORT TO CONGRESS ON THE OPERATION OF THE ANDEAN TRADE PREFERENCE ACT

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EXECUTIVE SUMMARY

As virtually all cocaine sold in the United States originates in the Andean Trade Preference Act (ATPA) countries, the ATPA functions as a U.S. trade policy tool that contributes to our fight against drug production and trafficking. By strengthening the legitimate economies in these Andean countries and creating viable alternatives to the profitable drug trade, the ATPA is proving an important component of efforts to contain the spread of these illicit activities. The ATPA has generated significant job opportunities in a variety of sectors, including cut flowers, non-traditional fruits and vegetables, jewelry and certain electronics inputs.

ATPA countries have been making important gains in the fight against drugs. In 1999, Bolivia, Colombia and Peru achieved record levels of coca eradication and as a result, net coca cultivation continued to decline slightly across the region. Alternative development programs in each of these countries have successfully provided former drug-crop producers with viable income alternatives.

Since the ATPA was enacted in 1991, it has had a positive impact on U.S. trade with the four ATPA beneficiary countries–Bolivia, Colombia, Ecuador and Peru. Between 1991 and 1999, total two-way trade nearly doubled. During this time period, U.S. exports grew 65 percent and U.S. imports increased 98 percent. The United States is the leading source of imports and the leading export market for each of the ATPA countries.

In 1999, serious economic problems plagued each of the beneficiary countries and adversely affected U.S. exports to the region. In 1999, U.S. exports to ATPA countries declined 28 percent, resulting in an uncharacteristically large U.S. trade deficit with the region of $3.6 billion. This followed two years of modest trade surpluses and was the third trade deficit with the region since 1991. In January-August 2000, U.S. exports began to rebound, and U.S. imports grew 19.5 percent.

Over the past five years, U.S. imports under the ATPA have grown more than twice the rate of total U.S. imports from the region. Accordingly, the portion of U.S. imports from ATPA countries entering under ATPA provisions has been rising gradually since the program began, to 19.7 percent in 1998. In 1999, the portion declined to 17.8 percent, primarily reflecting the surge in oil prices that inflated the value of petroleum imports outside the ATPA program.

The ATPA became fully effective for all beneficiary countries at the end of 1993. During the relatively short time since then, during a period in which ATPA countries also experienced serious economic and political difficulties, the ATPA has begun to show important success in meeting one of its major goals: contributing to export diversification in beneficiary countries.

This has particularly been the case in Colombia and Peru. Although traditional exports (such as raw materials and derivatives, including petroleum, and agricultural products, such as coffee and bananas)

remain an important component of each country's overall export mix, exports of nontraditional products have grown. Cut flowers remains the dominant import under the ATPA, but its relative importance in the program has been declining in recent years as imports in other categories have increased, such as copper cathodes, pigments, processed tuna, and zinc plates. Imports of nontraditional agricultural products, such as asparagus, mangoes and wood products, have also grown considerably under the ATPA.

In reviewing the four countries' compliance with the criteria of the ATPA, it appears that ATPA tariff preferences are giving additional impetus to these countries' efforts to address the eligibility factors contained in the statute. They are working cooperatively with the United States on these issues, in part as a result of their status as ATPA beneficiaries.

Each of the ATPA countries strongly recommends renewal of the program and its expansion to cover currently excluded products. Public comment on the program was generally supportive, although U.S. producers of certain agricultural products expressed some concerns.

INTRODUCTION

The Andean Trade Preference Act (ATPA) requires the President to submit a report to Congress on the operation of the program on the third, sixth and ninth anniversaries of the program. Congress directed that these reports include a general review of beneficiary countries based on the considerations described in subsections 203(c) and (d) of the ATPA. Congress also directed that the reports address any evidence that drug-related crop eradication and crop substitution efforts of the beneficiary countries are directly related to the effects of the ATPA.

This is the third and final report required by the ATPA, and covers the period 1997 through mid-2000, unless otherwise indicated. The report was prepared with input from all relevant federal agencies and offices, including the Office of the U.S. Trade Representative, 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 ATPA authorized the President to designate Bolivia, Colombia, Ecuador and Peru as recipients of preferential trade benefits similar to the benefits granted to beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA)[1] program. The ATPA provides beneficiary countries duty-free access to the U.S. market for all products not excluded by law. The Act is scheduled to expire 10 years after the date of enactment, or December 4, 2001.

The ATPA imposes conditions that countries must meet to be designated and to maintain beneficiary status. All four countries have been so designated. This report lists the steps they are taking to maintain beneficiary status.

The primary goal of the ATPA is to promote export diversification and broad-based economic development that provides sustainable economic alternatives to drug-crop production in the Andean region. This report shows that the ATPA has begun to achieve this goal. The ATPA also appears to have had an indirect but positive effect on the drug-control efforts of the beneficiary countries. Furthermore, U.S. exports, although erratic, have grown substantially. Thus, overall the ATPA appears

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[1] The Caribbean Basin Economic Recovery Act of 1983, commonly known as the Caribbean Basin Initiative or CBI, allows the President to grant duty-free access to the U.S. market for certain eligible articles from beneficiary countries. The Caribbean Basin Economic Recovery Act of 1990, commonly known as CBI II, modified the CBI program. CBI II called for the consideration of extending trade benefits to the Andean region. The United States-Caribbean Basin Trade Partnership Act (CBTPA), enacted in 2000, amended the CBI program to provide additional trade benefits to designated countries. The enhanced trade preferences made available under the CBTPA go beyond those available under the ATPA.

to have benefitted 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 ATPA requirements and the designation of beneficiary countries. Chapter 2 highlights trade between the United States and the ATPA beneficiaries, drawing largely upon the annual reports prepared by the USITC. Chapter 3 evaluates the ATPA beneficiaries' compliance with the eligibility criteria in the law and discusses the ATPA's effect on economic development and the creation of viable economic alternatives to coca production in each of the ATPA countries. Chapter 4 summarizes private sector and foreign government responses to the Administration's *Federal Register* notice requesting comments on the program.

Chapter 1

DESCRIPTION OF THE ATPA

Key Provisions

The Andean Trade Preference Act, as amended (19 U.S.C. 3201 et seq.), was signed into law on December 4, 1991 and provides tariff benefits to four beneficiary countries (Bolivia, Colombia, Ecuador and Peru) comparable to those granted under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.). It is intended to help these countries expand economic alternatives in their fight against drug production and trafficking by providing reduced duty or duty-free treatment to most exports to the United States.

Duty-free treatment is afforded all products, except textiles and apparel, certain footwear, petroleum and petroleum products, certain leather products, certain watches and watch parts, canned tuna, rum, and certain sugar, syrups and molasses. The tariffs on those leather products excluded from duty-free treatment were reduced by the lesser of 20 percent or 2.5 percent *ad valorem* in five equal annual stages. All ATPA preferences are scheduled to expire on December 4, 2001.

The four ATPA beneficiaries are also beneficiaries of the U.S. Generalized System of Preferences (GSP) program. In practical terms, the ATPA operates as an extension of the U.S. GSP program, augmenting those benefits to the four countries. The ATPA covers more tariff categories than GSP and has more liberal qualifying rules for individual products. In addition, U.S. imports under ATPA are not subject to GSP competitive-need and country-income restrictions.

Country Eligibility

Section 203 of the ATPA establishes the criteria for determining whether to designate eligible countries as beneficiaries. These criteria are discussed in detail in Chapter 3, which contains a discussion of each country's compliance with the criteria since being designated.

Bolivia, Colombia, Ecuador and Peru are the only countries eligible to be designated by the President for ATPA benefits. All four countries currently receive ATPA benefits. Bolivia and Colombia were designated as ATPA beneficiaries on July 2, 1992. Ecuador was added on May 13, 1993, followed by Peru on August 12, 1993. Although a member of the Andean Community with the four ATPA countries, Venezuela is not eligible to be designated an ATPA beneficiary under the current program.

Product Eligibility

Section 204 of the ATPA identifies the articles eligible for preferential treatment under the ATPA. Duty-free treatment applies only to articles that meet ATPA rules-of-origin, including a 35-percent

ATPA content requirement. This content requirement permits input from Puerto Rico, the U.S. Virgin Islands and beneficiaries of the CBERA to count toward the value threshold.

The ATPA exempts the following articles from duty-free treatment: textiles and apparel subject to textile agreements; footwear not eligible for GSP benefits; handbags, luggage, flat goods, work gloves, and leather wearing apparel not eligible for duty-free treatment under the GSP program as of August 5, 1993; canned tuna; petroleum and petroleum products; watches and watch parts containing components from non-most-favored-nation country sources; certain sugars, syrups, and molasses; and rum and tafia. Handbags, luggage, flat goods, work gloves and leather wearing apparel are subject to reduced duties.

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.

During the review period the U.S. Government took two global safeguard measures pursuant to WTO rules which 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 broom corn brooms from Colombia for the period November 28, 1996 - November 27, 1999. No private sector petitions have been submitted seeking emergency relief under the safeguard provisions for perishable products.

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 U.S. industries and consumers, and, in conjunction with other agencies, the effectiveness of the ATPA in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries. The USITC submitted its most recent (seventh) report covering 1999 to Congress on October 2, 2000. The USITC reports have consistently found that the impact of ATPA-exclusive imports (those ineligible for other tariff preferences) on the U.S. economy and consumers has been negligible. The seventh report estimated that U.S. imports under the ATPA could have an effect on domestic industries producing certain cut flowers and asparagus. This report also found that the ATPA has had a slight but positive 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 (sixth) report covering 1998 was submitted to Congress in February 2000. 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 sixth report found that although declines in production and possibly employment in some sectors of the cut flower industry may have been affected to some extent by ATPA tariff preferences, 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 1999, total two-way trade nearly doubled. During this time period, U.S. exports grew 65 percent and U.S. imports increased 98 percent. In 1999, severe economic recession in the region hurt U.S. exports, but U.S. imports continued to grow, by 17.6 percent. (See Table 2-1.)

Table 2-1.--U.S. Trade with ATPA Countries, 1991 - August 2000

Year	U.S. Exports*	ATPA Share of U.S. Exports to the World	U.S. Imports**	ATPA Share of U.S. Imports from the World	U.S. Trade Balance
	Million $$	*Percent*	*Million $$*	*Percent*	*Million $$*
1991	3,798.2	0.9	4,969.5	1.0	-1,171.3
1992	5,319.7	1.3	5,058.7	1.0	261.0
1993	5,359.1	1.2	5,282.3	0.9	76.7
1994	6,445.0	1.3	5,879.5	0.9	565.5
1995	7,820.2	1.4	6,968.7	0.9	851.4
1996	7,718.7	1.3	7,867.6	1.0	-148.9
1997	8,681.8	1.3	8,673.6	1.0	8.2
1998	8,670.1	1.4	8,361.0	0.9	309.1
1999	6,263.2	1.0	9,830.2	1.0	-3,567.0
1999 (Jan-Aug.)	4,076.6	1.0	6,173.2	0.9	-2,096.6
2000 (Jan-Aug.)	4,156.9	0.9	7,376.8	0.9	-3,219.9

*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 $9.8 billion in 1999. Between 1998 and 1999, U.S. imports from ATPA countries increased by 17.6 percent, largely because of higher prices for petroleum products. Also, in January-August 2000, U.S. imports from the region rose 19.5 percent compared to the same period in 1999.

U.S. imports from ATPA countries have averaged between 0.9 and 1.0 percent of total U.S. imports throughout the duration of the program. 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 36 percent of imports in 1999. Other leading imports were precious metals, gemstones, and jewelry; coffee; fruits and nuts, primarily bananas; fish and crustaceans; apparel; and cut flowers.

About two-thirds of U.S. imports from ATPA countries enter the United States duty-free. Two-thirds of such duty-free imports, or over 40 percent of total U.S. imports from the region, enter unconditionally free under column 1-general tariff rates (formerly known as Most-Favored-Nation or MFN rates) (see table 2-2). Such traditional U.S. imports from the region as coffee, bananas, shrimp, and precious metals and stones enter the U.S. market MFN free. The remaining duty-free imports enter under one of the following programs: ATPA, GSP, and the production sharing provisions of HTS chapter 98. By far, more U.S. imports from the region enter under the ATPA than under GSP and the production sharing provisions. In 1999, 17.8 percent of U.S. imports from the region entered under ATPA, 1.3 percent under GSP, and 1.6 percent under production sharing provisions.

U.S. imports under the ATPA rose 6.4 percent in 1999 and 21.8 percent during January-August 2000 compared to the same period in 1999. Over the past 5 years, U.S. imports under the ATPA have increased more than twice as fast as total U.S. imports from the region. Accordingly, the portion of U.S. imports from ATPA countries entering under the ATPA has been rising steadily since the program began, to 19.7 percent in 1998. In 1999, the portion declined to 17.8 percent, primarily reflecting the increased importance of imports of petroleum products among total imports. Cut flowers, mostly from Colombia and Ecuador, continued to dominate imports under the ATPA in 1999, accounting for about one-quarter of all entries under the program. However, the relative importance of cut flowers in the program has been declining in recent years as imports in other categories have increased, such as copper cathodes, pigments, processed tuna and zinc plates. Jewelry remains another important U.S. import under the ATPA.

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. In 1999, Colombia provided 45.6 percent of all U.S. imports under the ATPA. Peru ranked second, with 36.1 percent; Ecuador was third, with 14.9 percent; and Bolivia was fourth, with 3.5 percent of the total. (See Table 2-3.)

Colombia was responsible for over 80 percent of the increase in 1999 U.S. imports under the

Table 2-2.–U.S. Imports from ATPA Countries, Total and Under Import Programs, 1997-August 2000, (*thousands of dollars*)

Country	Import Program	1997	percent of total	1998	percent of total	1999	percent of total	Jan.-Aug. 1999	percent of total	Jan.-Aug. 2000	percent of total
Bolivia	Total	213,408	100.0	220,142	100.0	224,167	100.0	130,969	100.0	126,854	100.0
	GSP	18,885	8.8	7,773	3.5	7,958	3.6	7,008	5.4	2,857	2.3
	ATPA	68,955	32.3	69,630	31.6	61,492	27.4	34,363	26.2	38,652	30.5
	MFN free	92,426	43.3	110,191	50.1	114,944	51.3	65,597	50.1	62,113	49.0
Colombia	Total	4,614,873	100.0	4,441,685	100.0	5,882,599	100.0	3,568,373	100.0	4,502,832	100.0
	GSP	78,162	1.7	42,645	1.0	46,840	0.8	40,308	1.1	41,320	0.9
	ATPA	605,472	13.1	709,889	16.0	797,305	13.6	518,040	14.5	568,002	12.6
	MFN free	2,093,474	45.4	1,800,951	40.5	2,530,688	43.0	1,546,086	43.3	2,051,250	45.6
Ecuador	Total	2,139,354	100.0	1,773,919	100.0	1,852,631	100.0	1,280,923	100.0	1,440,549	100.0
	GSP	17,312	0.8	14,579	0.8	19,213	1.0	17,121	1.3	18,565	1.3
	ATPA	217,437	10.2	233,002	13.1	260,301	14.1	176,805	13.8	172,683	12.0
	MFN free	1,211,646	56.6	1,083,578	61.1	950,147	51.3	724,045	56.5	515,671	35.8
Peru	Total	1,705,929	100.0	1,925,291	100.0	1,870,819	100.0	1,192,940	100.0	1,306,560	100.0
	GSP	140,912	8.3	125,054	6.5	51,691	2.8	34,846	2.9	28,917	2.2
	ATPA	460,992	27.0	632,676	32.9	631,180	33.7	344,616	28.9	528,766	40.5
	MFN free	605,524	35.5	720,343	37.4	720,776	38.5	499,729	41.9	347,335	26.6
All	Total	8,673,564	100.0	8,361,037	100.0	9,830,216	100.0	6,173,205	100.0	7,376,795	100.0
ATPA	GSP	255,271	2.9	190,051	2.3	125,702	1.3	99,283	1.6	91,659	1.2
Countries	ATPA	1,352,856	15.6	1,645,196	19.7	1,750,278	17.8	1,073,824	17.4	1,308,103	17.7
	MFN free	4,003,070	46.2	3,715,064	44.4	4,316,555	43.9	2,835,456	45.9	2,976,370	40.3

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

Table 2-3.–U.S. Imports for Consumption under the ATPA, by Country, 1997-1999

Country	1997	1998	1999	1999 share of total
	1,000 dollars	*1,000 dollars*	*1,000 dollars*	*Percent*
Colombia	605,472	709,889	797,305	45.55
Peru	460,992	632,676	631,180	36.06
Ecuador	217,437	233,002	260,301	14.87
Bolivia	68,955	69,630	61,492	3.51
Total	1,352,855	1,645,196	1,750,279	100.00

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

ATPA. In 1999, U.S. imports under the ATPA from Colombia rose 12.3 percent to $797 million. Cut flowers was the leading ATPA entry from Colombia, which declined 5 percent from $361 million in 1998 to $342 million in 1999. This decline was compensated for by an increase in ATPA entries of pigments, which rose by 307 percent, to $161 million. Other leading ATPA entries from Colombia in 1999 were gold compounds ($57 million), nonadhesive plates ($30 million), leather articles ($22 million), and cane sugar ($13 million).

U.S. imports under the ATPA from Peru declined less than 1 percent, from $633 million in 1998 to $631 million in 1999. The leading ATPA entry from Peru was copper cathodes, valued at $324 million in 1999, a 61 percent increase over 1998. Other leading ATPA entries from Peru included jewelry and parts ($104 million), unwrought zinc ($59 million), asparagus ($36 million), zinc plates ($23 million), and mangoes ($13 million). The 1999 decline in U.S. imports under the ATPA from Peru can be primarily attributed to a cessation of entries of watch cases and certain forms of non-monetary gold.

ATPA entries from Ecuador increased 11.7 percent from $233 million in 1998 to $260 million in 1999. Cut flowers was the single largest entry ($92 million), followed by processed tuna, which rose 66 percent to $77 million in 1999. Other important ATPA entries were wood products ($15 million), plywood ($12 million), jewelry and parts ($8 million), and fruits and vegetables, including mangoes ($7 million).

U.S. imports under the ATPA from Bolivia declined 11.7 percent from $69.6 million in 1998 to $61.5 million in 1999. Two products accounted for 94 percent of ATPA entries from Bolivia in 1999: jewelry and parts, which declined 10 percent to $48 million, and wood doors, which rose 49 percent to $9.5 million. Other leading ATPA entries in 1999 included oxides of boron ($1.5 million) and leather

accessories ($837,000).

U.S. EXPORTS TO ATPA BENEFICIARIES

Between 1991 and 1999, U.S. exports to ATPA countries increased about 65 percent to $6.3 billion. U.S. exports have grown more erratically than U.S. imports from the region, and in 1999 declined 28 percent from the 1998 level of $8.7 billion, resulting in a trade deficit of $3.6 billion. This followed two years of modest trade surpluses and was the third trade deficit with the region since 1991. In January-August 2000, U.S. exports to ATPA countries grew 2.0 percent compared with the same period in 1999. (See Table 2-1.)

From 1991 to 1999, ATPA countries on average absorbed 1.2 percent of total U.S. exports. In 1999, the region's share of U.S. exports fell to 1.0 percent. Although ATPA countries account for only a small portion of total U.S. exports, the United States is the leading source of imports into each of the ATPA beneficiary countries.

In 1999, poor economic performance, political instability, and the strength of the U.S. dollar restricted the ability of ATPA countries to import. During the year, U.S. exports to ATPA countries declined in all leading sectors and to all ATPA countries. Nonelectrical machinery, which accounted for one quarter of total U.S. exports to the region, decreased 26 percent to $1.6 billion in 1999. U.S. exports of electrical machinery ($619 million), motor vehicles ($211 million), and aircraft ($177 million) each declined around 40 percent in 1999. Other leading exports that also fell were cereals ($444 million), organic chemicals ($347 million), plastics ($289 million), and paper and paperboard ($239 million).

The ranking of ATPA countries as U.S. export markets was the same as their ranking as U.S. suppliers. Colombia was the largest market for U.S. exports at $3.4 billion, representing 55 percent of U.S. exports to ATPA countries. Peru ranked second with $1.6 billion in U.S. goods, Ecuador was third with $896 million, and Bolivia was fourth with $307 million.

Chapter 3

COUNTRY ELIGIBILITY REPORTS

This chapter outlines the detailed country eligibility criteria in the ATPA, 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. These effects of ATPA are addressed in the subsections on economic conditions and narcotics cooperation, respectively. The country reports are based on information provided by U.S. embassies in the region. They are an update of the 1997 report and cover the period from 1997 to mid-2000.

The ATPA contains two sets of criteria. Failure by a country to meet the first set of criteria (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 second set of criteria (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.

DETAILED ELIGIBILITY CRITERIA

Limitations on designation:

- Section 203(c)(1) stipulates that the President shall not designate any country as a beneficiary under the ATPA if such country is a communist country.

- Section 203(c)(2) addresses expropriation or nationalization by an ATPA beneficiary country, including measures such as repudiation of a patent or restrictive operational conditions that have the effect of expropriation of the property of a U.S. citizen or U.S.-owned corporation. If such an expropriation or nationalization occurred, the ATPA country must provide prompt, adequate and effective compensation or otherwise be taking steps toward discharging its obligations under international law.

- Section 203(c)(3) stipulates that the President shall not designate any country a beneficiary country if such country fails to act in good faith in recognizing as binding or enforcing arbitral awards in favor of U.S. citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by U.S. 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.

- Section 203(c)(4) stipulates that if a country affords preferential treatment to the products of a

developed country, other than the United States, which has or is likely to have a significant adverse effect on U.S. commerce, it will not be designated as a beneficiary country.

- Section 203(c)(5) requires an assessment of whether the country is working toward the provision of adequate and effective protection of intellectual property rights (IPR), and prohibits the unauthorized government broadcast of U.S. copyrighted material. Since the ATPA was established in December 1991, the United States has placed increasing importance on the availability of adequate and effective levels of protection for IPR in its relationships with its trading partners. The negotiation of the Trade-Related Intellectual Property Rights (TRIPS) text in the Uruguay Round and the IPR provisions within the NAFTA are both products of this increased level of attention to the problems of inadequate protection of IPR. A great deal of attention has likewise been devoted to raising all IPR standards in ATPA countries.

- Section 203(c)(6) stipulates that unless a country is signatory to a treaty, convention, protocol, or other agreement regarding the extradition of U.S. citizens, it will not be designated as a beneficiary country.

- Section 203(c)(7) specifies that the President shall not designate any country a beneficiary "if such country has not or is not taking steps to afford internationally recognized worker rights" to its workers (as defined in Title V--Generalized System of Preferences, Section 507(4) of the Trade Act of 1974, as amended).

  The GSP statute defines internationally recognized worker rights as follows:

  - the right of association;
  - the right to organize and bargain collectively;
  - a prohibition against any form of forced or compulsory labor;
  - a minimum age for the employment of children; and
  - acceptable condition of work with respect to minimum wages, hours of work and occupational safety and health.

Factors affecting designation:

- Section 203(d)(1) specifies that the President shall consider whether the country has expressed a desire to be designated.

- Section 203(d)(2) specifies that the President take into account the economic conditions and living standards of the country.

- Section 203(d)(3) stipulates that the President shall consider the extent to which a country

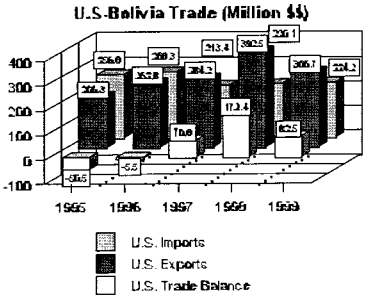
provides equitable and reasonable access to its markets and basic commodity resources.

- Section 203(d)(4) requires the President to consider the degree to which a country adheres to WTO Agreements.
- Section 203(d)(5) specifies that the President consider the degree to which a country uses export subsidies or other requirements that distort international trade.
- Section 203(d)(6) specifies that the President take into account the degree to which a country engages in trade policies that revitalize the region.
- Section 203(d)(7) seeks assurances that the country is taking steps to help its own economic development.
- Section 203(d)(8) specifies that the President take into account whether the country has taken or is taking steps to afford to workers internationally recognized worker rights.
- Section 203(d)(9) directs the President to take into account whether the country is providing adequate and effective protection of intellectual property rights.
- Section 203(d)(10) stipulates that the President consider the extent to which the country prohibits its nationals from engaging in the broadcast of U.S. copyrighted material.
- Section 203(d)(11) stipulates that the President consider whether the country has met the narcotics cooperation certification criteria set forth in the Foreign Assistance Act of 1961.
- Section 203(d)(12) specifies that the President consider whether the country is cooperating with the United States in the administration of the ATPA.

BOLIVIA

Population: 7,982,850 (1999)
National Product per capita: $3,000* (1999)
**National product: GDP – purchasing power parity*[2]
Source: 1999 World Fact Book - CIA

1999 Trade Statistics (thousand $)
U.S. Imports from Bolivia: $224,167
U.S. Exports to Bolivia: $306,659
U.S. Trade Balance: $82,492
Source: Department of Commerce



Expropriations: Article 22 of the Bolivian Constitution allows expropriation for the public good or when the property does not fulfill a social purpose, so long as it is in accordance with law and with just compensation. The mining and hydrocarbon laws also provide for expropriation of land when needed to develop the underlying mineral or hydrocarbon concession.

The last expropriation in Bolivia was in 1969 when the Government nationalized the petroleum concessions granted to the Bolivian Gulf Oil Company. The compensation to Gulf Oil was paid in full well ahead of the schedule established in the compensation agreement. There have been no more recent expropriations involving U.S. citizens or companies.

Arbitral Awards: The Administration 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

[2]The purchasing power parity method of calculating per capita gross domestic product involves the use of standardized international dollar price weights, which are applied to the quantities of final goods and services produced in a given economy.

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 WTO member and, accordingly, is bound by the most-favored-nation provisions in the WTO Agreements.

Intellectual Property and Government Broadcast of Copyrighted Material: 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.

On September 14, 2000, Andean Community trade ministers approved Decision 486, to replace Decision 344 as the Andean Community's common industrial property regime effective December 1, 2000. The new Decision 486 is an important improvement over Decision 344 in terms of conformance with the provisions of the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property (TRIPS), e.g., national treatment, most-favored nation treatment, and border control measures.

Nonetheless, U.S. pharmaceutical companies are concerned that Decision 486 does not go far enough in ensuring the patentability of "second use" innovations. Both the U.S. pharmaceutical and agrochemical industries are also concerned that Decision 486 is not sufficiently explicit regarding the confidentiality of data included with patent applications. The U.S. Government is currently examining the TRIPS-consistency of these provisions.

With respect to copyrights, former President Gonzalo Sanchez de Lozada issued a supreme decree on software in May 1997, which addressed most of the deficiencies in the protection of computer software. However, some deficiencies in copyrights still remain, such as a lack of implementing legislation for the copyright law of April 1992.

Bolivia has remained on the Special 301 Watch List since inclusion on the list in an out-of-cycle review in October 1996. The U.S. copyright industry (represented by the International Intellectual Property Alliance) estimated that trade losses due to copyright infringement in Bolivia in 1998 amounted to $34.8 million: $20 million from music, $7.8 million from software, $5 million from books, and $2 million from films. The Government of Bolivia subsequently moved to improve its protection of IPR, including better enforcement against piracy at book fairs, the creation of a special police force to confiscate pirated

materials, and an organizational and promotional campaign to educate Bolivian officials and the private sector about the importance of IPR protection. However, enforcement of existing laws to protect IPR is weak and piracy in Bolivia continues largely unabated.

In 1996-97, the Government of Bolivia opened its new national copyright office, created intellectual property offices in all major regions of the country, conducted seminars for private sector intellectual property industry personnel and public sector officials, created an inter-governmental intellectual property committee, and began to provide arbitration for copyright disputes. In September 1997, the Government of Bolivia promulgated a new executive power law (Law No. 1788), which consolidated the industrial and intellectual property portfolios under one administrator, the *National Intellectual Property Service* (SENAPI). In October 1999, the first 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. 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.

No allegations of unauthorized broadcast of U.S. copyrighted works by a government-owned entity have been made. However, we have received U.S. industry complaints about Bolivian broadcasters transmitting "pirated" copyrighted material, especially motion pictures, without the express consent of U.S. copyright owners. U.S. industry asserts that the Bolivian authorities have been either unresponsive or unable to address these concerns.

The Government of Bolivia 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; and
- Paris Convention for the Protection of Industrial Property.

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, 1966 as Law 1721. The treaty permits the extradition of U.S. citizens.

Workers' Rights: Bolivia's antiquated labor code assures workers the right to establish and join organizations of their own choosing. The formation of a new trade union, however, requires prior authorization from the Government, which may dissolve trade unions by Administrative Decree. The Government has not utilized this provision of the law in recent years. Bolivian labor law does not restrict unions from affiliating with international labor confederations.

About one-half of Bolivia's workers in the formal economy belong to labor unions. Some workers in the informal economy also participate in labor unions. Private sector workers have and frequently exercise the right to strike. While solidarity strikes are illegal under the current labor code, the Government allows such strikes.

The labor code denies civil servants the right to organize and prohibits strikes in all public services, including banks and public markets. In practice, however, virtually all public service workers are unionized and strikes by municipal employees are common.

Collective bargaining, or voluntary direct negotiations between employers and workers without the participation of the Government, is limited but growing. The current labor code was written in a period in which the Bolivian Labor Confederation (the *Central Obrera Boliviana* or COB), which purports to represent all worker groups and interests, 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" 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. The COB objects to sector negotiations, although typically they produce greater benefits to workers than the COB is able to achieve by negotiating with the Government. 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 Highly Indebted Poor Country (HIPC) program, but has yet to do so.

There are currently seven industrial duty-free zones operating in Bolivia. All labor laws apply to workers in these zones.

The law prohibits forced or compulsory labor, including forced and bonded labor by children. Reported violations included the unregulated apprenticeship of children, agricultural servitude by indigenous workers and some individual cases of household workers effectively imprisoned by their employers. In addition, women were trafficked for the purpose of prostitution. The law also prohibits the employment of persons under 18 years of age in dangerous work, although in practice this is not enforced, and minors and children are routinely found doing dangerous work, particularly in the mining industry. The law permits apprenticeship for children between the ages of 12 and 14, which the International Labor Organization (ILO) has criticized since 1992. In fact, Bolivia has a serious child labor problem, which it is beginning to address. According to a May 1999 study commissioned by the ILO, approximately 369,385 children between the ages of 7 and 14 work (23 percent of that age group), usually to help provide for family subsistence, in uncontrolled and sometimes unhealthy conditions.

In urban areas, while enforcement is uneven, about half of the workforce enjoys an eight-hour workday

and a workweek of 5 or 5 ½ days. Underemployment is also widespread.

The Labor Ministry's Bureau of Occupational Safety is responsible for ensuring protection to workers, and the state-owned mining corporation has a special office charged with mine safety. However, there is weak and uneven enforcement of health and safety regulations, although the Government has recently requested technical assistance in the occupational safety area from the U.S.

Economic Conditions: Bolivia has made remarkable economic advances since 1985--from one of the most unstable economies in Latin America to one with some very positive macroeconomic indicators. The inflation rate in 1999 was just under 3.1 percent. Bolivia's real average GDP growth rate of 4.2 percent since 1989 marked eleven years of positive growth. However, the economic growth rate fell to a twelve-year low of 0.68 percent in 1999, due mainly to the international economic crisis that has affected most of the region.

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 Sanchez de Lozada Administration (1993-97) further improved government reforms and implemented capitalization reform, 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. 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.

Bolivia has remained solvent despite a high level of debt. 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 1999, Bolivia's debt totaled $4.5 billion. Bolivia became the second country to benefit from the heavily indebted poor country (HIPC I) initiative, which resulted in debt relief of $450 million. In January 2000, Bolivia applied for an additional $1.3 billion in debt relief under the enhanced HIPC II program. The program's conditions require improvements in many social indicators, and the Government has undertaken a "National Dialogue" to determine spending priorities and how it should attack persistent poverty.

Effect of the ATPA: The ATPA has continued to have a small yet appreciable impact on the Bolivian

economy, with investment in ATPA industries showing slow but steady growth. Information on ATPA-related investment and estimated value of exports to the U.S. were compiled with data provided by the Bolivian Ministry of Foreign Affairs, the National Institute of Statistics (INE), and private Bolivian trade associations. Since Bolivia does not require that foreign or domestic companies register new investments with the Government, comprehensive data on investments in ATPA-related industries is not available.

Bolivia has a relatively low level of industrialization and remains highly dependent on imports of capital and consumer goods to fuel its growth. The Bolivian Ministry of Foreign Trade and Investment reported that U.S. companies as a group were the largest source of foreign direct investment (FDI) in Bolivia in 1999, totaling $301.9 million or 30 percent of the approximately $1 billion invested. Around 74 percent of total FDI during 1999 went to the hydrocarbons, mining and electricity generation sectors, where most U.S. investment is concentrated.

Among ATPA-eligible products, there has been a steady increase in exports to the U.S. of gold jewelry, minerals and metals, and wood products since the ATPA went into effect in December 1991. However, overall exports of gold jewelry and minerals/metals declined during 1999 due to lower world commodity prices. Important Bolivian agricultural exports to the U.S. include Brazil nuts, quinoa and coffee. Bolivia also exports in lesser amounts cut flowers and soybean flour.

Bolivian producers have not taken full advantage of ATPA preferences. This is due mainly to the lack of readily available information about the benefits of the program, poor product quality standards, and the country's weak infrastructure, which makes it difficult to get agricultural products to foreign markets. In many areas of the country the Government has failed to adequately promote the ATPA program and information on how to reach the U.S. market is unavailable to many rural producers. There is a noticeable lack of technical knowledge in the agricultural sector regarding compliance with U.S. phytosanitary standards and product specifications.

Considering the general lack of information regarding ATPA-related investments, it is difficult to establish a clear link between the ATPA and the development of alternative industries. However, Government figures show a gradual but steady increase in exports of important ATPA-related products to the U.S. since 1992.

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. Bolivia has a two-tier tariff system of five percent for capital goods and 10 percent for all other imports, down from over 100 percent. However, the Government of Bolivia maintains additional import fees that raise the cost of importing some products. Bolivia imposes a 10 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 with the United States, and on October 18, 2000 the U.S. Senate ratified the treaty.

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. The U.S. Government has not identified any significant violations by Bolivia of the WTO Agreements at this time, though it is reviewing the most recent Andean IPR decision relating to patents (see above).

Subsidies or Other Requirements that Distort International Trade: Bolivia has eliminated its export subsidies programs and replaced them with a drawback mechanism.

Trade Policies that Revitalize the Region: Bolivia participates in the Andean Community. In 1999, Bolivian exports to the Andean Community represented 19.3 percent of its total exports; imports from the Community in 1999 were 8.8 percent of Bolivia's total. In preparation for entry, Bolivia eliminated tariffs on all but 11 products coming from three other members of the Andean Community (Colombia, Ecuador and Venezuela).

Colombia, Ecuador and Venezuela have national tariff rates consistent with the common external tariff (CET) range of the Andean Community. In early 2000, Bolivia implemented a lower, three-tier tariff structure that eliminated tariffs on capital goods designated essential for industrial development, imposed a 5 percent tariff for non-essential capital goods, and a 10 percent tariff for all other goods.

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.

Narcotics Cooperation: Bolivia received full certification in 1999 for its cooperation with the United States on counter-narcotics issues under the Foreign Assistance Act, as described in the *International Narcotics Control Strategy Report* of March 2000.

Bolivia has dropped from being the second leading source of cocaine to the third leading source country, has cooperated closely with the United States on counter-narcotics efforts, and has taken strong steps toward full compliance with the goals and objectives of the 1988 UN Convention. Bolivia's coca crop is third behind Colombia's and Peru's in the production of the cocaine alkaloid, and it ranks third (behind Colombia and Peru) in terms of area under cultivation. Bolivia is also currently the world's third leading source of refined cocaine hydrochloride (HCL). Bolivian coca growers produce cocaine base in rudimentary laboratories, then transfer it out of the growing area for further processing and/or consolidation prior to export. Colombian traffickers have a diminished role in the country's drug industry, as Bolivian traffickers manage more sophisticated organizations that convert cocaine base into

cocaine HCL.

The Bolivian Congress enacted legislation criminalizing money laundering on March 7, 1997 and established a financial investigations unit within the superintendency of banks to enforce the law.

The Banzer Government has committed itself to shutting down illegal coca cultivation and narcotrafficking during its 5-year term (1997-2002). Eradication efforts have been extremely successful, with eradication on track to be completed by the end of 2002. As part of that strategy, the Government has encouraged a shift from the production of coca to the production of legitimate crops. Its strategy includes forced eradication of immature coca and seedlings as well as illegal mature coca plants, and an extensive alternative development program involving crops such as bananas, hearts of palm, passion fruit, pineapple, and black pepper, some of which are being exported to neighboring countries. Alternative development has resulted in the cultivation of legitimate crops in the illegal coca-growing Chapare region, surpassing by three times the acreage in the cultivation of coca.

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 108,500 hectares in 1999. USAID reported that the volume of licit products leaving the Chapare increased overall by 36 percent during the first half of year 2000 compared to the same period in 1999. USAID figures show that the wholesale value of licit products leaving the Chapare exceeded $58.2 million during 1999. However, there are currently no exports of Chapare grown products to the U.S.

Chapare producers soon hope to export canned hearts of palm to the U.S. market. Once registration with the U.S. Department of Agriculture is completed, growers plan to export up to thirty-six containers of canned hearts of palm to the U.S. during the first year. As more producers become familiar with U.S. phytosanitary requirements, and as infrastructure improvements are made and marketing programs sponsored by international development agencies begin to bear fruit, USAID expects to see additional exports to the U.S. of high value alternative development crops. Dried fruit, black pepper, canned papaya, passion fruit and coffee show the most promise of finding market openings in the U.S.

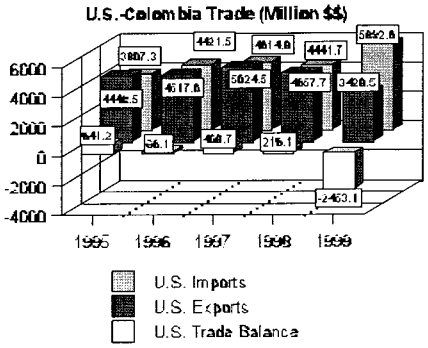
Promoting the development of agricultural industries is integral to the crop substitution strategy. The U.S. Government's alternative development consolidation project (CONCADE), administered by USAID, achieved record-breaking accomplishments during 1999 in parallel with success in achieving historic rates of coca eradication. Finding additional markets for alternative development crops is crucial in the effort to provide needed jobs to the many workers displaced by the success of the coca eradication program.

No private sector petitions have been submitted seeking relief under these provisions.

COLOMBIA

Population: 39,309,422 (1999)
National Product per capita: $6,200* (1999)
**National product: GDP - purchasing power parity*
Source: 1999 Worldfact Book - CIA

1999 Trade Statistics (thousand $)
U.S. Imports from Colombia: $5,882,599
U.S. Exports to Colombia: $3,429,513
U.S.-Colombia Trade Balance: -$2,453,087
Source: Department of Commerce



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. metro system) and social interest (e.g. agrarian reform).

Previously, a clause in Article 58 of the 1991 Constitution had expressly allowed expropriation without compensation; but in June 1999, 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. So far, few cases of asset forfeiture have actually taken place under 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 the 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).

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 in the WTO Agreements.

Intellectual Property and Government Broadcast of Copyrighted Material: 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.

On September 14, 2000, Andean Community trade ministers approved Decision 486, to replace Decision 344 as the Andean Community's common industrial property regime effective December 1, 2000. The new Decision 486 is an important improvement over Decision 344 in terms of conformance with the provisions of the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property (TRIPS), e.g., national treatment, most-favored nation treatment, and border control measures.

Nonetheless, U.S. pharmaceutical companies are concerned that Decision 486 does not go far enough in ensuring the patentability of "second use" innovations. Both the U.S. pharmaceutical and agrochemical industries are also concerned that Decision 486 is not sufficiently explicit regarding the confidentiality of data included with patent applications. The U.S. Government is currently examining the TRIPS-consistency of these provisions.

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: $151 million in 1997, $185 million in 1998, and $163 million in 1999, according to the International Intellectual Property Alliance (IIPA).

A major issue has been the need for the Colombian Government to license legitimate pay television operators and to pursue pirate operators. Colombia's Television Broadcast Law increased legal protection for all copyrighted programming by regulating satellite dishes, and enforcement has recently begun through a licensing process. As of August 2000, efforts to pursue pirate operators resulted in initiating investigations of 282 suspected pirate operators, eight of which have so far incurred sanctions.

Colombia remains on the Special 301 "Watch List" for not providing effective protection of intellectual property rights (IPR). It has been on the "Watch List" every year since 1991. An out-of-cycle review in September 1999 retained Colombia on the Watch List.

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 1991, Colombia has extradited 24 individuals (3 Colombian nationals, 9 U.S. citizens, and 12 foreign nationals) to the United States.

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. In 1998, the ILO 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 main target of right-wing paramilitary organizations and the ILO recently reported that 1,598 union members have been assassinated in Colombia since 1995. Despite the Government's public denouncement of illegal paramilitary groups and the violence against trade unionists, it has been unable to stop this wave of killings.

The Constitution provides workers the right to organize and engage in collective bargaining. However, a high level 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 standards are difficult to enforce.

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.

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: Until recent years, Colombia enjoyed real GDP growth of greater than 4 percent annually. However, economic growth slowed beginning in 1996, until the first recession since 1931 began in late 1998. Colombia faced negative growth of 4.5 percent in 1999, while unemployment rose from 11.5 percent in 1996 to over 20 percent in 1999. Growth for 2000 has been estimated at between 2 and 3 percent as a modest recovery takes hold. Colombia enjoyed single digit

inflation in 1999, though this in some measure was a result of the low level of economic activity.

The Pastrana Administration has implemented a series of measures aimed at promoting trade and investment, reducing the fiscal deficit, and achieving peace with the guerrilla insurgency. In September 1999, Colombia reached an agreement with the International Monetary Fund for a $2.7 billion Extended Funds Facility. The IMF accord entailed commitments to achieve specific macro-economic targets and to seek structural reform legislation. The Government's agreement with the IMF commits it to maintaining on a declining path both inflation and the fiscal deficit (6.3 percent of GDP in 1999), while increasing growth. Economic indicators now are beginning to show generally positive trends; the business climate shows signs of improvement. The Colombian Government is now predicting GDP growth of 3.8 percent for 2001. Passage of contemplated economic reforms and privatizations in the energy and telecommunications sectors are important if growth is to be sustained. In July 2000 the President signed the Emergency Supplemental Act, which provided $1.3 billion in assistance to support the Colombian Government's efforts to combat drug trafficking as part of the Pastrana Administration's Plan Colombia.

Colombia enjoyed an official trade surplus in 1999 of $909.5 million, which contrasted with the $3.8 billion deficit that was reported for 1998. Colombian exports increased by 6.5 percent, from $10.8 billion to $11.5 billion, while imports decreased 27.2 percent, from $14.6 billion to $10.6 billion. The rise in exports was largely due to improved international commodity prices for coffee, coal and oil and the more competitive exchange rate achieved after a series of devaluations. In 1999, bilateral trade between the United States and Colombia registered an important shift. U.S. exports to Colombia declined in 1999, while U.S. imports from Colombia rose. The main Colombian export products to the United States have remained largely unchanged over the last several years. These products include petroleum and petroleum derivatives, coffee, bananas, fresh cut roses and other types of flowers, and coal. During 1999, 14.1 percent of total Colombian exports to the United States benefitted from ATPA.

Effect of the ATPA: 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 account for more than 80 percent of Colombian exports by value to the United States under the ATPA. Some of Colombia's most important economic sectors, specifically petroleum and petroleum derivatives, apparel and textiles, and rum, are not granted special privileges under the ATPA.

According to estimates from the Colombian Ministry of Foreign Trade, between 1992 and 1999 the ATPA program has generated a total of $1.2 billion worth of output and more than 140,000 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.

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: The U.S. Government is reviewing the most recent Andean IPR decision relating to patents (see above). The U.S. Government is also considering a request by Colombia for an extension of the WTO deadline to conform to rules which prohibit its agricultural absorption agreements. These agreements require the purchase of domestic production of certain commodities as a condition of importation of like commodities. Such a practice violates the WTO rules against trade-related investment measures, or TRIMS.

Subsidies or Other Requirements that Distort International Trade: As a result of commitments made by Colombia to abide by the provisions of the GATT Subsidies Code, Colombia agreed to phase-out any export subsidies inconsistent with that code. 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 which the Government of Colombia has stated it will replace with an equitable drawback system. On January 1, 2000, the Colombian Government announced that it would eliminate the subsidy component of the CERT as per WTO requirements. However, the Colombian Government's recent efforts to increase exports have led to the formulation of a new customs code, which would provide for tariff exemptions on raw materials used by exporting enterprises. These incentives are very similar to the CERT.

Trade Policies that Revitalize the Region: Colombia is a member of the Andean Community. Colombian exports to the Community during 1999 represented 23.7 percent of its total exports ($1.6 billion); imports from the Community in 1999 accounted for 33.6 percent of Colombia's total ($1.2 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 on a more limited number of products to member states of the Latin American Integration Association (ALADI).

Narcotics Cooperation: After having been denied certification for four consecutive years for inadequate cooperation in drug control, Colombia obtained certification under the Foreign Assistance Act in 1999 and again in 2000.

Colombia remains the world's leading producer and distributor of cocaine and an important supplier of heroin. In the case of coca, small farmers of fields no larger than three hectares are responsible for 40 percent of production, while 60 percent of production comes from large commercial fields controlled by drug-trafficking organizations. In the case of poppy, most production comes from small-scale family plots of less than one hectare. Coca cultivation in Colombia increased by 20 percent in 1999. According to the Colombian National Police, official counternarcotics operations in 1999 included the seizure of almost 30 metric tons of cocaine HCL and cocaine base, 140 metric tons of coca leaves, 61 metric tons of marijuana and 644 kilos of heroin, morphine and opium, the seizure of 540 vehicles, 189 boats and 422 weapons, as well as the destruction of 44 clandestine airstrips, and the arrest of over 2,200 persons. According to statistics from the Colombian National Police, over 42,000 hectares of illicit crops were sprayed in the first half of 2000. However, recent satellite images indicate that there has been a significant increase of coca crops and, consequently, of cocaine production.

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. Progress on implementing the new asset forfeiture law has been slow but procedural changes were introduced in 1999 to streamline forfeitures. In December 1997, the Colombian Congress passed an amendment to rescind the 1991 constitutional ban on extradition of Colombian nationals. In November 1999, the first Colombian national was extradited to the U.S. following the change in the law. Improved U.S.-Colombian law enforcement cooperation was dramatically demonstrated by "Operation Millennium," the investigation which led to the arrest of 30 major narcotics traffickers by Colombian police. Extradition of these individuals to the U.S. has been requested.

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 in flower plantations. The flower industry thus provides alternative employment opportunities. The same argument can be applied to sugar cane plantations, which generate approximately 40,000 direct jobs in the conflict-ridden "Valle del Cauca" region. Access to the U.S. market for ATPA exports is important for supporting alternative crop prices at economically viable levels.

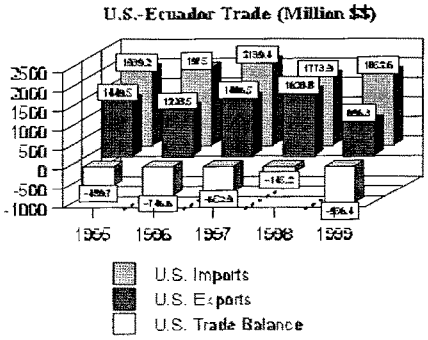
ATPA preferences also bolster efforts by the Colombian private sector to press their Government on counter-narcotics reforms. The U.S. Government has enjoyed strong support from the private sector for important U.S. counter-narcotics goals, such as passage of legislation on asset forfeitures and money laundering, increased penalties for narcotics offenses, increased eradication efforts and passage of a strong extradition law. Discontinuation of ATPA benefits would have a negative impact on alternative development and U.S. Government counter- narcotics goals.

The Colombian Government Agency for Drug Crop Substitution and Alternative Development ("PLANTE") runs an alternative development program that seeks voluntary crop substitution, reestablishing market conditions for peasants and indigenous communities. Through this program Colombia is investing in development projects in several coca and poppy growing areas. The program also complements law enforcement eradication campaigns through social projects that contribute to licit income generating opportunities. Since 1998 when President Pastrana took office, the PLANTE program has lost 75 percent of its operational resources due to budgetary cuts implemented as part of a fiscal adjustment policy. However, an agreement between PLANTE and UNDCP provided new resources amounting to $1 million. PLANTE will also receive significant U.S. Government assistance under the recently passed supplemental appropriation for Colombia. According to PLANTE figures, 16,000 peasants moved from illicit to licit crops between 1998 and 1999.

ECUADOR

Population: 12,562,496 (1999)
National Product per capita: $4,300* (1999)
**National product: GDP – purchasing power parity*
Source: 1999 World fact Book - CIA

1999 Trade Statistics (thousand $)
U.S. Exports to Ecuador: $896,255
U.S. Imports from Ecuador: $1,852,631
U.S. Trade Balance: -$956,377



Expropriations: Three foreign investors have outstanding claims based on land and squatter disputes. In each case, the Ecuadorian Government has sought to resolve the claims.

Expropriation is provided for in Ecuadorian law with appropriate compensation. Cases of expropriation have been infrequent. When they occur, the individual has 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 makes land cases subject to regular courts. The extent to which investors and lenders receive prompt, adequate and effective compensation is largely related to the particular judicial process underway. However, the treatment is legally identical for both foreign and domestic investors. 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 Administration is not aware of any problems in this area. 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).

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 current WTO member

and, accordingly, is bound by the most-favored-nation provisions in the WTO Agreements.

***Intellectual Property and Government Broadcast of Copyrighted Material*:** 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.

On September 14, 2000 Andean Community trade ministers approved Decision 486, to replace Decision 344 as the Andean Community's common industrial property regime effective December 1, 2000. The new Decision 486 is an important improvement over Decision 344 in terms of conformance with the provisions of the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property (TRIPS), e.g., national treatment, most-favored nation treatment, and border control measures.

Nonetheless, U.S. pharmaceutical companies are concerned that Decision 486 does not go far enough in ensuring the patentability of "second use" innovations. Both the U.S. pharmaceutical and agrochemical industries are also concerned that Decision 486 is not sufficiently explicit regarding the confidentiality of data included with patent applications. The U.S. Government is currently examining the TRIPS-consistency of these provisions.

In 1998, the Ecuadorian Congress passed, and the President signed a comprehensive law significantly improving the legal basis for protecting IPR, including patents, trademarks and copyrights.

The IPR law provides significantly greater protection for intellectual property rights, and enforcement of patents and copyrights has improved. However, it remains difficult to gain protection through the legal system. 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.

Ecuador's new 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 has ratified the Berne Convention for the Protection of Literary and Artistic Works and the Geneva Phonogram Convention, but not the Paris Convention for the Protection of Industrial Property. Ecuador has observer status in the World Intellectual Property Organization (WIPO).

The IPR law extends patent protection for 20 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. Pipeline applications filed in 1994 may still be processed, and a small number have been approved. 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 10-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 voluntarily surrendered without consent of 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 covers software.

Ecuador remains on the Special 301 "Watch List" for serious problems of enforcement of intellectual property rights (IPR). Pirating of recorded material, textbooks and software programs is rampant. The national police and the customs service are responsible for carrying our IPR enforcement orders. In the past, it has been difficult to get court orders enforced or to secure effective police action. However, there are reports this situation is improving substantially.

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 permits 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 nonrevenue 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.

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.

The labor code requires all private employers with 30 or more employees belonging to a union to negotiate collectively when so requested by the union. The labor code prohibits discrimination against unions and requires that employers provide facilities for union activities upon the union's request. The revised labor code provides for resolution of labor conflicts through an arbitration and conciliation board comprised of one representative of the Ministry of Labor, two from the union and two from management.

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 compulsory labor. The law also prohibits the employment of persons under the age of 14 years old, except in special circumstances such as an apprenticeship. Enforcement of this provision is uneven, especially in rural communities. In the cities, many children under 14 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*:** Since the end of 1997, Ecuador has experienced one of the most profound and wrenching economic crises of its history. After years of weak growth, Ecuador's GDP tumbled 7.3 percent in 1999. By the end of that year, the incomes of 70 percent of all Ecuadorians fell below the poverty line. The corresponding figure in 1995 was 34 percent.

In response, the Government has adopted the U.S. dollar as its national currency and embarked on a program of comprehensive economic reform, supported by a stand-by program with the International Monetary Fund. The initial results of these reform measures have been positive. Inflation, which had accelerated to an annual rate of more than 100 percent earlier in the year, has begun to subside, and there are several indications (e.g., rising imports, increased consumption of construction materials, increased deposits in the banking system) of a nascent economic recovery. To sustain this trend, the Ecuadorian Government will need to maintain fiscal discipline, improve the investment climate, and repair the country's weak financial system.

Effect of the ATPA: 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. In the first half of 2000, petroleum and its derivatives accounted for 44.5 percent of Ecuador's exports to the United States, up from 34 percent in 1992. The only economically significant nontraditional export product that has grown significantly during the ATPA's tenure is cut flowers. Since the ATPA's inception, Ecuador's exports to the United States of this product have increased more than six-fold. In 1999, cut flowers accounted for five percent of total Ecuadorian exports to the United States (over $90 million).

Inward investment flows reflect Ecuador's petroleum-dependent export profile. The oil sector accounted for more than three-quarters ($407 million out of $531 million) of the direct foreign investment (DFI) entering Ecuador in 1998, the latest year for which data is available. DFI 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 that accrue from the ATPA, it will need to alter its reputation as a country where the rules of the game for foreign investors are changed with impunity.

***Market Access*:** Ecuador's trade regime has gradually been liberalized over the last several years. Its accession to the WTO in 1996 was particularly important 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.

-- Ecuador has not yet fulfilled its 1999 bilateral commitment to the United States to accept U.S. certificates of free sale as the basis for sanitary registrations.

-- 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 the World Trade Organization (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. In February 1999, the Government of Ecuador imposed additional surcharges on imports until April 1999 to raise additional revenues. Given Ecuador's continuing fiscal problems, the surcharges could be extended indefinitely.

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, and foreign exchange is readily available. 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. However, the Government plans to attract increased foreign investment in the telecommunications, electricity and oil sectors through privatization and new legislation. Recently passed legislation allows 51 percent of the state's electrical sector facilities and telephone companies to be sold. 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. The Government of Ecuador has not complied with its WTO accession commitment to equalize the application of excise taxes between imported and domestic products. Ecuador has also failed to meet deadlines for fulfilling some of its WTO obligations to eliminate remaining nontariff barriers. These include requirements for prior authorization for certain goods before the central bank can issue an import license. In the case of certain agricultural products, the Ministry of Agriculture often denies the issuance of import permits to protect local producers. The U.S. Government is continuing to press the Government of Ecuador on these matters, and is reviewing the most recent Andean IPR decision relating to patents (see above).

***Subsidies or Other Requirements that Distort International Trade*:** Ecuador does not use export subsidies. There is 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. For Ecuador, the Community as a bloc is becoming a more important trading partner. Ecuadorian exports to the Community in the first half of 2000 represented 13.2 percent of its total exports, almost twice the share in 1996. Imports from the Community also increased from 19.6 percent in 1996 to 24.9 percent in the first half of 2000.

***Narcotics Cooperation*:** Ecuador received full certification for its cooperation in 1999 with the United States on counter narcotics issues under the Foreign Assistance Act, as described in the *International Narcotics Control Strategy Report* of March 2000.

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 new program, initiated in 1996, targets modernizing the judicial system.

The Government of Ecuador continues to work with the United States 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. There is sufficient evidence to conclude that despite Ecuadorian efforts, transshipment of narcotics through Ecuadorian maritime and land routes to the United States is widespread.

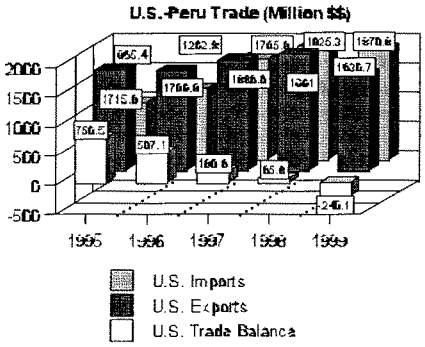
The ATPA has played an important role in providing trade opportunities in agricultural industries in Ecuador. Such opportunities have provided the citizenry with jobs, thus preventing them from becoming involved in growing narcotics crops and, consequently, preventing the entrenchment of narcotics trafficking 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 agricultural industries in Ecuador would help preclude Ecuador's transformation into a major coca-producing country. Ecuador's proximity to Colombia and Peru, respectively the world's leading coca leaf and cocaine hydrochloride suppliers, warrants a continuing need for vigilance to prevent illicit crop cultivation in Ecuador.

PERU

Population: 26,624,582 (1999)
National Product per capita: $4,400* (1999)
**National product: GDP - purchasing power parity*
Source: 1999 Worldfact Book - CIA

1999 Trade Statistics (thousand $)
U.S. Imports from Peru: $1,870,819
U.S. Exports to Peru: $1,630,743
U.S.-Peru Trade Balance: -$240,076
Source: Department of Commerce



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; recent expropriations of agricultural land south of Lima and of land adjacent to the Lima international airport have not elicited complaints of lack of due process or prompt, adequate compensation. Neither of these recent cases involved foreign investors. Adequate payment to owners of agricultural lands expropriated by the Peruvian Government in 1968 is still at issue, and one such claim involving an American citizen has been brought to the Embassy's attention. The claimant has not yet pursued domestic remedies, however. The Embassy is not aware of any other current investment dispute between U.S. citizens or companies and the Government of Peru.

Arbitral Awards: The Administration is not aware of any problems in this area. 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. Peru is a party to the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. The Embassy is aware of a case in

which a U.S. contractor has endeavored unsuccessfully to bring to arbitration its dispute with Peru's National Program for Potable Water and Sewage (PRONAP). However, arbitration is listed as an option rather than an obligation in the contract in question.

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 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 current WTO member and, accordingly, is bound by the most-favored-nation provisions in the WTO Agreements.

Intellectual Property and Government Broadcast of Copyrighted Material: 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 six years on the U.S. Government's "Watch List" under the Special 301 provisions of the 1988 Trade Act, Peru was raised to the "Priority Watch List" in 1999. Peru remains on the Priority Watch List due to concerns about the adequacy of Peru's enforcement of its IPR laws, particularly with respect to the relatively weak penalties that have been imposed on IPR violators.

Peru's Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) was established in 1992 and is charged with promoting and defending intellectual property rights pursuant to Peruvian law and relevant Andean Community decisions. Patents, trademarks, and industrial designs are protected by Legislative Decree 822 of 1996 and by Andean Community Decisions 344 (the Common Industrial Property Regime) and 345 (the Common Regime to Protect Plant Varieties). Copyrights are protected by Legislative Decree No. 822 of 1996 and 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. The Government of Peru published a Supreme Decree on June 6, 1997 to ensure that the provisions of the 1996 Intellectual Property Law Legislative Decree 823 would be interpreted consistently with the TRIPS agreement.

On September 14, 2000 Andean Community trade ministers approved Decision 486, to replace Decision 344 as the Andean Community's common industrial property regime effective December 1, 2000. The new Decision 486 is an important improvement over Decision 344 in terms of conformance with the provisions of the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property (TRIPS), e.g., national treatment, most-favored nation treatment and border

control measures.

Nonetheless, there is some question within the Andean Community about whether national law or the Community Decisions on IPR would prevail in the case of conflict between them. Although it had been previously thought that the higher standard would prevail, the Andean Community Secretariat issued rulings in 2000, which determined that Peru violated Decision 344 by issuing "second use" patents. These rulings (Andean Community resolutions 358 and 406) threaten to undermine the ability of member states to implement national laws that are stronger than Andean Community norms. U.S. pharmaceutical companies are particularly concerned that, in light of resolutions 358 and 406, ambiguities in the new Decision 486 regarding the patentability of "second use" innovations could undermine the Peruvian Government's ability to enforce second use patents. Both the U.S. pharmaceutical and agrochemical industries are also concerned that Decision 486 is not sufficiently explicit regarding the confidentiality of data included with patent applications, thereby opening the way to the possible erosion of protections for such information. The U.S. Government is currently examining the TRIPS-consistency of these provisions.

No allegations of unauthorized broadcast of U.S. copyrighted material by a government-owned entity have been made. There have been complaints in recent years of cable television piracy of videos.

The Government of Peru 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 Organisations;
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms;
- Treaty on the International Registration of Audiovisual Works; and
- Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels).

Extradition: A treaty on extradition was signed in Lima on November 28, 1899, and entered into force on February 22, 1901. The treaty permits the extradition of U.S. citizens. It specifies a list of extraditable offenses and excludes the extradition of nationals. The U.S. has been negotiating a new extradition treaty with Peru aimed at incorporating the principle of dual criminality and allowing the extradition of nationals. Two 1998 negotiating sessions in Washington and in Lima resulted in agreement in September 1998 on the text of a new treaty initialed by both sides. However, a final treaty remains to be concluded.

Workers' Rights: Peru's 1993 Constitution assures the right of freedom of association and the right to form a labor union without authorization. The Constitution expressly provides public and private sector

workers the right to organize, bargain collectively and strike. It is illegal for employers to condition employment on union membership or nonmembership. Employees cannot legally be dismissed for union affiliation or activities. With persistently high levels of unemployment (8 percent) and underemployment (45 percent), the proportion of Peru's workforce affiliated with labor unions has dropped in recent years from five percent to about three percent.

In addition, the ILO has expressed concerns regarding the lack of unionization in Peru and has repeatedly urged the Government to reform its labor code to address provisions that violate internationally recognized worker rights. The 1992 Industrial Relations Act and the subsequent 1995-96 amendments include the following controversial provisions:

- A majority of both workers and of enterprises within a single sector as well as employer agreement is a prerequisite to negotiating a collective bargaining agreement.
- The elimination of compulsory reinstatement for workers who are found to have been unjustly fired for engaging in union activities.
- A majority of all workers, regardless of union membership, must vote for a strike.
- A broad definition of "essential services" that includes prisons, transport and judicial organizations.
- Powers given to the Government to stop strikes if the extend for an "excessive" period of time.
- Repeal of occupational safety and health law except in the most dangerous enterprises.

The ILO Committee on Freedom of Association (Case No. 1648/1650) notes that the "majority of all workers" requirement to strike violates freedom of association. ILO/CFA Case No. 1845 states that the provision that allows the Government to end strikes is open to "subjective interpretation" and should be revised.

The 1995-96 amended Peruvian Labor Code also permits enterprises to employ up to 30% of their workforce from youth workers between the ages of 16 and 25 who are precluded from union membership and participation. The ILO has commented that this provision of the labor code violates Convention 87 on Freedom of Association, and has urged the Government to "take the necessary steps so as to guarantee the right [of association] to the workers concerned both in law and in practice…" (See Case 1796, Par. 464).

Also excluded from joining unions are workers hired through work cooperatives, temporary service companies and auxiliary services. The Labor Code allows companies to employ up to 20% of their work force in this manner, and due to the workers' relationship with a third party organization they are precluded from having a "direct relationship' with the enterprise. In this case the ILO has urged the Government to take the necessary steps to protect the rights of temporary workers.

There are no restrictions on union membership in international labor organizations. Several major unions and labor confederations belong to international labor organizations such as the ICFTU, the

international trade secretariats and regional bodies.

The Constitution prohibits forced or compulsory labor. There were no reports last year of forced labor. The Constitution does not prohibit specifically forced or bonded labor by children. There were occasional allegations of such labor in the informal gold mines of Madre de Dios department in recent years. However, information obtained in 1999 indicates that the practice is no longer a problem.

The minimum legal age for employment is 14 and education through secondary school is compulsory. However, children between the ages of 12 and 14 may work in certain jobs to help support their families if they obtain special permission from the Ministry of Labor and certify that they are also attending school. In certain sectors of the economy, higher minimum legal ages are in force: 14 in agricultural work, 15 in industrial, commercial, or mining work, and 16 in the fishing industry.

The 1993 Constitution provides that workers should receive a "just and sufficient" wage to be determined by the Government in consultation with labor representatives, and workers are expected to be protected against lost wages resulting from arbitrary dismissal from their jobs. Resource constraints complicate enforcement of occupational health and safety standards.

Economic Conditions: Peru is essentially a free market economy, the result primarily of economic reforms instituted by the Fujimori Administration since 1990. During the past decade the Government has implemented a wide-ranging privatization program, strengthened and simplified its tax system, opened the country to foreign investment and lifted exchange controls and restrictions on remittances of profits, dividends and royalties.

One result of this program has been the approximate doubling of U.S. exports to Peru over five years. Not only did bilateral trade rise to nearly $4 billion in 1997 (the last year of rapid growth for Peru) but that trade blossomed with near balance between exports and imports. The U.S. continues to be the largest source of Peru's imports (with an approximate 30 percent share of the total) and the main destination of its exports (also approximately a 30 percent share). Direct and indirect investment flows from the U.S. to Peru also grew sharply through the mid-1990s, and the U.S. ranks with Spain as Peru's top investor.

In 1998 and 1999 a series of climatic and external financial shocks combined to produce a recession in Peru. To these negative factors were added the electoral and political turmoil surrounding the July 2000 re-election of President Alberto Fujimori to an unprecedented third five-year term. The economy showed a marked recovery in the first half of 2000, growing 6 percent over 1999's low base. Nonetheless, unemployment persisted at about 8 percent, with underemployment at approximately 45 percent. In its multi-annual macroeconomic framework, the Government of Peru set the following targets for 2000, assuming no new external shocks: five percent GDP growth, inflation of four percent, a budget deficit of 1.9 percent of GDP, and a current account deficit of four percent of GDP.

By September 2000 the Government had initiated a democratic reform agenda under the observation of an Organization of American States (OAS) mission and had announced short-term economic measures aimed at tightening the Government's fiscal discipline and promoting greater foreign investment. However, in late September, a political crisis led to President Fujimori's resignation and removal from office. While new elections have been scheduled for April 2001, it is likely that political uncertainties will slow the pace of economic recovery.

Effect of the ATPA: 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 nearly 30 percent in 1999. In August 1993 Peru became eligible for preferential trade under ATPA. Peru's exports under ATPA have since gained an increasingly important role in Peru's economy, as exporters have discovered that ATPA offers greater advantages than the benefits offered under the Generalized System of Preferences (GSP). According to Peru's Trade Ministry, in 1994 only fourteen percent of Peru's exports to the U.S. entered under the ATPA. In 1999, some 34 percent of Peru's $1.87 billion in exports to the U.S. entered under the ATPA. Meanwhile, the proportion of Peru's exports entering the U.S. under the GSP program declined steadily over the same period and represented only three percent of Peru's 1999 exports.

Among traditional export products, ATPA has particularly benefitted Peru's copper exporters. Exports of refined copper, which is excluded from GSP benefits, are included in the ATPA, allowing preferential treatment for Peru's top export to the United States. U.S. imports of Peruvian copper totaled approximately $356 million in 1999. Peru's nontraditional export sector has also obtained important benefits from the ATPA. For example, Peru's asparagus exports to the U.S. also appear to have benefitted from the ATPA program. Peru's asparagus exports to the U.S. totaled $37 million in 1999.

The ATPA has also helped to bolster the Government of Peru's alternative development programs aimed at promoting the cultivation of licit crops such as coffee and cacao in areas of illicit coca cultivation. The Government of Peru estimates that the area under coffee cultivation has doubled since 1997, growing from 9,672 hectares to 19,422 hectares in 2000. The area under cacao cultivation has nearly tripled in the same period, growing from 1,530 hectares in 1997 to 4,482 hectares in 2000. Meanwhile, Peru's area under coca cultivation has dropped by 66 percent in the last four years.

The Peruvian Government has stated that it attaches a high priority to seeking the renewal of the ATPA and its expansion to include Peruvian textile products. In the past year, the Government of Peru and the private sector formed a public-private consortium, "ExporAmerica," aimed specifically at promoting this objective. Peru's apparel exports to the United States, which enter with tariffs averaging about 21 percent, currently total about $307 million per year. ExporAmerica estimates that inclusion of textile products in the ATPA could boost this sector's growth by about 40 percent per year and generate some 32,000 direct new jobs and 78,000 indirect new jobs over the next three years.

Market Access: Peru imposes 12 percent duties on 95 percent of the items on its tariff schedule and 20 percent on the rest (primarily textiles, footwear and some agricultural products). The weighted-average tariff is approximately 13 percent, down from 80 percent in mid-1990. Most imports are also subject to an 18 percent value added tax, as are domestically produced goods. In addition, an excise tax (ISC) is applied to certain products such as automobiles. There are no quantitative import restrictions and almost all other nontariff barriers (subsidies, import licensing requirements and most import prohibitions) have been eliminated.

In March 1991, Peru introduced a "temporary" 5 percent tax plus import surcharge (variable levy) on some basic agricultural commodities, of which rice, corn, sugar and milk products remain taxed. The Government argued that the surcharges were necessary to offset subsidies by exporting countries. The surcharges are calculated on a weekly basis, according to prevailing international prices for each commodity. As a condition for disbursement of a trade-sector loan from the Inter-American Development Bank, the Government agreed to phase out the surcharges over a three-year period ending in 1997. The Government began reducing the surcharges in increments in April 1994, but they continue on several products.

WTO Agreements: Peru was a founding member of the World Trade Organization and was a contracting party to the GATT beginning in 1948. Although Peru and its Andean Community partners were obliged to bring their IPR regime into compliance with the WTO TRIPS agreement by January 1, 2000, their negotiations of corresponding changes to Andean Community Decision 344 remained incomplete until September 14, 2000.

The Peruvian Government adopted the WTO Customs Valuation Code for 50 percent of the tariff codes on January 1, 2000, and the remaining half on April 1, 2000.

In February 2000, BellSouth complained to USTR that the Government of Peru's telecommunications regulator, Osiptel, had not fully complied with the WTO Basic Telecommunications Agreement by mandating cost-based interconnection rates for new telecom providers to connect with Peru's dominant telecom carrier, Telefonica del Peru. Osiptel later approved a fixed-to-fixed interconnection agreement between BellSouth and Telefonica.

The U.S. Government has not identified any significant violations by Peru of the WTO Agreements at this time, though it is reviewing the most recent Andean IPR decision relating to patents (see above).

Subsidies or Other Requirements that Distort International Trade: The Fujimori Administration eliminated trade distorting actions, such as export subsidies, and put in place measures to ensure that reference prices, sanitary regulations, and antidumping mechanisms are not used as protectionist measures.

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 (FTA) by December 2005. Nonetheless, a majority of its trade within the Community is already free of tariffs. Peru does not adhere to the Community's CET, maintaining its own, flatter tariff structure.

As part of the Andean Community, Peru has participated in lengthy negotiations to establish a free trade area with MERCOSUR. On April 16, 1998, the Andean Community signed a framework agreement with MERCOSUR as the first step toward building a South American free trade zone. Although negotiations with MERCOSUR came to a standstill in 1998, the Andean Community concluded a trade liberalization agreement with Brazil that entered into force in Peru in August 1999. This agreement gives preferential treatment for about 98 percent of Peru's exports to Brazil, while 44 percent of Peruvian imports from Brazil were granted preferential treatment.

Within the framework of the Latin American Integration Association (ALADI), Peru has signed bilateral trade agreements with Argentina, Brazil, Chile, Cuba, Mexico, Paraguay and Uruguay. Although tariff concessions under most of these agreements are relatively limited, Peru's 1998 agreement with Chile calls for the elimination of all trade barriers by the year 2016, with most tariffs removed in the next four years.

Narcotics Cooperation: On March 1, 2000 Peru received full certification for its cooperation with the United States on counter narcotics issues under the Foreign Assistance Act. President Clinton's determination regarding Peru noted that Peru continued to pursue its comprehensive counter-drug strategy throughout 1999, achieving excellent progress towards the goal of eliminating illegal coca cultivation. An additional 24 percent was eliminated in 1999, for an overall reduction of 66 percent over the last four years. Peru's counter-drug alternative development program, working through 103 local governments, almost 700 communities, and more than 15,000 farmers, significantly strengthened social and economic infrastructure in the illicit growing areas and helped shift the economic balance in favor of licit activities. However, these gains are threatened by rising coca prices, which are a consequence of new trafficking routes and patterns bypassing previous aerial means of transportation.

Because of losses incurred in the mid-1990s through the Government of Peru's aerial interdiction of narcotics (airbridge denial program), narcotics traffickers are using maritime shipment of cocaine from Callao and other Peruvian ports, riverine transport and overland transport to move drugs out of Peru. Maritime transport of drugs is believed to have increased in 1999. Nonetheless, 1999 successes have included major precursor chemical seizures, arrests of principals in several drug-trafficking rings and the destruction of several cocaine hydrochloride laboratories.

Available information indicates that the ATPA has helped to create alternatives to coca production. Some exporters who use ATPA's preferential market access provisions have said that they have

created alternatives to coca farming. Exporters of cut flowers, for example, have noted that their labor-intensive industry in one of the country's coca producing regions draws peasants away from growing coca. In addition, crops eligible for ATPA preferences, such as hearts of palm, are being developed in coca growing regions. Finally, because the ATPA has been responsible for some investment, generating employment in a country with a high unemployment rate, ATPA is an element in creating viable economic alternatives to coca production.

Despite the successes noted above, counter-narcotics authorities expect to encounter strong resistance from coca growers as eradication efforts begin moving into single crop (coca) areas for the first time. Further, as there are not yet any substitute crops that can compete with current coca leaf prices in prime growth areas, the Government of Peru believes that the ATPA should afford greater preference to substitute crops under its alternative development program in order to foster a viable market for licit crop development.

Chapter 4

SUMMARY OF FEDERAL REGISTER SUBMISSIONS

There were thirteen responses to the Federal Register Notice (65 Fed. Reg. 48041, August 4, 2000) that requested public comment on the operation of the ATPA. The full texts of the submissions are available in the Office of the United States Trade Representative Reading Room, 600 17th Street, NW, Washington, D.C. A summary of each submission follows.

The Council of the Americas made five major points in support of the ATPA. First, the Council asserts that the ATPA is a "vital component of the overall U.S. trade, economic and foreign policy in the Western Hemisphere." The ATPA represents a "commitment by the U.S. to promote prosperity, stability and democracy in the beneficiary countries," and is a "building block for broader U.S. leadership efforts in the Hemisphere." Second, the Council points out that even though the amount of trade benefitting exclusively from the ATPA is small, it is significant because of its symbolic importance as a demonstration of U.S. friendship and leadership to the Andean countries. Third, the Council says that the ATPA is an important step towards successful and timely completion of Free Trade Area of the Americas (FTAA) negotiations because it provides momentum for further integration by demonstrating U.S. commitment to the region. Fourth, the Council credits the ATPA with playing both a substantive and symbolic role in U.S. anti-drug efforts by providing opportunities for alternative sources of income. Finally, the Council supports reauthorization of the ATPA and expansion of the program. According to the Council, the small volume of ATPA trade is not an indication of the effectiveness of the program, but rather it demonstrates the need for expanded benefits, particularly in light of the deterioration of the margin of preference under the ATPA vis-a-vis tariff reductions under the Uruguay Round, NAFTA and the enhanced Caribbean Basin Economic Recovery Act (CBERA).

The American Farm Bureau Federation, Michigan Farm Bureau, National Onion Association, Northwest Horticultural Council, and California Grape and Tree Fruit League wrote that the ATPA has "measurably affected trade in certain horticultural and specialty products and has had a significant impact on domestic production of these commodities." As a result, these organizations propose two major changes to the ATPA, "should it be renewed at all." First, they request that duty-free treatment under the ATPA not be accorded to products wherein a country is deemed economically competitive, which would mirror the criteria now used under the U.S. Generalized System of Preferences (GSP) program. Instead, the product should face the most-favored-nation (MFN) tariff. Second, they propose instituting an automatic, transparent and temporary safeguard mechanism to address import surges of perishable agricultural commodities.

In a separate submission, the **Michigan Farm Bureau** recommends making the same two changes to the ATPA as were proposed in the submission summarized above. The Michigan Farm Bureau further notes that Michigan is the country's third largest producer of asparagus, which is used primarily for

processing. The Bureau claims that ATPA trade preferences have enhanced the Peruvian asparagus industry, which was already competitive prior to the enactment of the ATPA, and generated a ten-fold increase in U.S. asparagus imports since 1990. In particular, the Michigan Farm Bureau alleges that U.S. imports of Peruvian frozen asparagus "are displacing U.S. frozen asparagus production at an alarming rate." Furthermore, the Bureau says that the ATPA's effect on drug-crop eradication "is highly questionable" because asparagus and drug crops are grown in different regions of Peru. **Asparagus USA, Michigan Asparagus Advisory Board, and Washington Asparagus Commission** submitted a separate submission but voiced the same concerns as the Michigan Farm Bureau with respect to the impact of providing duty-free treatment under the ATPA to Peruvian asparagus. Similarly, these organizations recommend the same two changes be made to the ATPA, should it be renewed.

The International Intellectual Property Alliance (IIPA) prepared a submission that contains a summary of the status of copyright protection and enforcement in the ATPA region and country reports on Peru and Colombia from IIPA's February 2000 Special 301 submission to USTR. According to the IIPA, inadequate and ineffective copyright enforcement continues to inflict significant trade distortions in the Andean region. IIPA estimates that trade losses due to copyright piracy in 1999 were at least $281 million in the ATPA countries. The IIPA notes that the IPR criteria in the ATPA permit the U.S. to halt or limit ATPA privileges to beneficiary countries that refuse to stop illegal piracy or provide equitable and reasonable market access to U.S. copyrighted products and services, and recommends that the criteria "be used to provide incentives for substantial improvements in the copyright laws and enforcement practices throughout the Andean region."

The General Secretariat of the Andean Community made four primary comments in its submission. First, the Andean Community Secretariat cites data to show that the ATPA has promoted greater trade and investment flows between the United States and the beneficiary countries, and has contributed to the diversification of such trade flows. With respect to diversification, the Andean Community Secretariat points out that ATPA country exports to the United States covered 2,630 subheadings under the Andean Community tariff nomenclature in 1991 versus 3,645 such tariff subheadings in 1997. Second, the Andean Community Secretariat says that the ATPA has contributed to the economic growth and development of the beneficiary countries and supported the internal economic reforms implemented by these countries. In addition, the Secretariat claims that the ATPA helped ameliorate the effects of the global financial crisis that began in 1997 and severely affected the region's economies. Third, according to the Secretariat, the ATPA has encouraged the efforts of the beneficiary countries to fight drugs and has helped ameliorate the associated costs by promoting economic growth and opportunities for licit employment. Fourth, the Andean Community Secretariat recommends that the ATPA be renewed and expanded, and include Venezuela. The Secretariat argues that the ATPA should be extended for an indefinite period like the CBERA, in order to encourage greater investment flows to ATPA countries. With respect to Venezuela, the Secretariat says its inclusion would increase the use of the program as co-production among beneficiary countries would increase. Finally, the Andean Community Secretariat believes that all products should be eligible

for ATPA preferences, particularly in light of the expansion of U.S. trade preferences to CBERA beneficiaries under the Trade and Development Act of 2000. Such differences in the preferences accorded CBERA and ATPA products are, according to the Andean Secretariat, generating instability in trade and investment flows between the United States and the ATPA countries and will likely undermine the ATPA's effectiveness.

The Ministry of External Relations and Culture of Bolivia wrote that the ATPA should be renewed and expanded to cover other sectors, such as textiles, leather manufactures, and quota-free sugar, to preserve current trade flows and generate new exports. Such trade is necessary to expand economic development and consolidate the significant achievements of the Bolivian Government in its fight against drugs. According to the Bolivian Government, Bolivia has eradicated more than 80 percent of illicit coca and intends to eliminate all illicit coca by 2002. However, eradication has generated significant unemployment. Bolivia operates an alternative development program to provide employment, but progress has been insufficient because of scarce resources and the difficulties associated with commercializing the alternative products. The Government acknowledges that Bolivia has not taken full advantage of the ATPA, attributing this largely to higher costs than its Andean competitors and lack of investment in ATPA-eligible products. However, it argues that the ATPA's role in generating nontraditional exports and promoting economic development has been and will continue to be critical to win the fight against drugs.

The Colombian Government Trade Bureau describes how the ATPA has benefitted the Colombian economy and supported Colombia's antinarcotics efforts by strengthening the legitimate economy and creating alternative employment opportunities. The Colombian Government cites U.S. trade data and analysis conducted by the Andean Community to show that ATPA has expanded U.S.-Colombian trade and investment flows and has had a significant socio-economic impact on Colombia, as well as all ATPA countries. According to the Government of Colombia, Colombia's exports to the United States under the ATPA have increased and diversified significantly, particularly in the chemicals sector. Also, their analysis shows that as of 1999, the ATPA accounted for $1.21 billion of Colombia's output and 140,000 Colombian jobs. The Colombian Government recommends renewing the ATPA , particularly in light of the country's deep recession and high unemployment rate, and expanding the ATPA to provide benefits similar to those accorded to CBI countries under the new Trade and Development Act of 2000 (TDA). Equally important, the Government notes, is immediate passage of U.S. emergency relief for the Colombian apparel industry, which suffered under NAFTA and now is likely to suffer "further losses and virtual elimination due to the TDA." The submission also includes an overview of Colombian antinarcotics efforts in the 1990s and a description of Colombia's compliance with the ATPA eligibility criteria that goes above and beyond what is currently required under the statute.

According to **Ambassador Ivonne A-Baki of Ecuador**, the ATPA has had a very significant effect on Ecuador by spurring nontraditional exports and economic development, which have helped contain the spread of illegal drug trafficking. In particular, the ATPA has promoted new sectors that have become growth engines in formerly marginal rural areas. The ATPA has also provided a small cushion

during the recent severe recession. The Ambassador strongly recommends renewal of the ATPA to sustain the achievements to date and to contribute to Ecuador's anti-drug strategy, particularly along the Colombian border. The Ambassador also recommends that the ATPA be enhanced to include canned tuna, textiles and apparel, and leather goods to provide ATPA goods U.S. market access equivalent to products from Mexico and CBI countries.

The Ministry of Industry, Tourism, Integration and International Commercial Negotiations of Peru recommends that the ATPA be extended for at least ten more years and that it be expanded to cover textiles and apparel to achieve parity with NAFTA and CBI products on the U.S. market. The Government of Peru asserts that the ATPA has been very successful, but that it could do more. The Government points out that the ATPA has generated new and expanded exports to the United States that otherwise would face GSP restrictions, for example, copper cathodes and asparagus. The ATPA has also supported Peru's alternative development efforts. However, the program contributes most to Peru's fight against drugs by creating broad based economic growth and legal jobs to stem the migration of the unemployed to illicit activities. The Government of Peru points out that those farmers involved in coca cultivation usually are migrants from other parts of the country in search of employment and new lands to farm. The ATPA's role in creating growth and job opportunities at the national level is critical, but could be enhanced if textiles and apparel were covered, Peru's most important and competitive nontraditional sector. According to the Peruvian Government, because the sector is labor intensive and higher value added, significant jobs could be created.

Juan de Jesus Montilla, Minister of Production and Commerce of Venezuela, requests inclusion of Venezuela in the ATPA. According to the Minister, since the ATPA began, drug trafficking through Venezuela has increased considerably and "reached alarming levels." In addition, Venezuela's exports to the United States, its largest trading partner, are at a disadvantage with respect to the exports of its Andean partners. Venezuela exports to the United States under the GSP program, but product eligibility under GSP is less stable than the ATPA and the GSP program has lapsed at times, requiring U.S. importers to pay provisional duties. In conclusion, the Minister requests inclusion of Venezuela in the ATPA to equalize preferential access to the U.S. market among all Andean countries and provide the opportunity for Venezuela to diversify its trade beyond that of oil and its derivatives.

The submission by the **Association of Apparel Exporters to the United States (EXPORAMERICA) of Peru** details the positive impact inclusion of textiles and apparel in the ATPA would have on economic growth and employment in Peru. EXPORAMERICA explains that Peru's success in battling illegal drugs will be at risk if the country's significant unemployment problem is not addressed. Although alternative development projects provide legal alternatives in the coca producing areas, profitable employment opportunities are required nationally to discourage migration into these areas. According to EXPORAMERICA, inclusion of textiles and apparel in the ATPA would significantly address the unemployment problem. Compared to Peru's traditional raw material exports to the United States (primarily low value-added minerals) the vertically integrated textiles and apparel sector is much more labor intensive and involves more value-added production. EXPORAMERICA

estimates that ATPA coverage of this sector would create 32,100 new direct jobs and another 78,324 indirect jobs in cotton production and other related sectors and services. Furthermore, EXPORAMERICA warns that Peru's exports of textiles and apparel to the United States are already at risk because of the better access conditions facing the products of Mexico, the Caribbean, and Central America, as well as the future elimination of quotas for China and other Asian countries in accordance with WTO commitments.

The Association of Exporters (ADEX) of Peru cites statistics to show that the ATPA has had a positive effect on Peru's exports to the United States. According to ADEX, Peru's exports to the United States have grown more rapidly than Peru's total exports since the program began. Also, the portion of Peru's exports to the U.S. under the ATPA has gradually increased to account for nearly one-third. ADEX notes that exports of nontraditional agricultural products have particularly benefitted, growing steadily -- unlike Peru's traditional agricultural exports, which are very erratic. Such nontraditional exports are playing an important role in providing alternatives to coca cultivation. However, ADEX points out that expansion of the program to cover apparel and leather manufactures would rapidly generate new jobs in Peru and would lessen the risk this sector faces in light of the trade preferences the U.S. accords these products from Mexico and Central America.