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

April 30, 2005

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EXECUTIVE SUMMARY

The Andean Trade Preference Act (ATPA), as amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA) (together referred to as ATPA/ATPDEA), requires the U.S. Trade Representative to submit a report to Congress on the operation of the program no later than April 30, 2003, and every two years thereafter during the period the program is in effect. Congress directed that these reports include a general review of the ATPA/ATPDEA beneficiary countries based on the eligibility criteria and considerations described in the statute. This is the second such report, and covers the period 2003 through 2004, unless otherwise indicated.

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

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

In furtherance of this objective, in May 2004, the United States initiated free trade agreement (FTA) negotiations with Colombia, Ecuador and Peru. Bolivia is participating as an observer in the negotiating sessions and as a full participant in the trade capacity building talks. The United States intends to include Bolivian in the agreement at a later stage. The four Andean countries collectively represented a market of about $8.5 billion for U.S. exports in 2004, and were home to about $7.2 billion in U.S. foreign direct investment.

The United States is seeking an agreement with affirmative obligations related to many of the ATPA/ATPDEA criteria including strong protection of intellectual property rights, strong protection for investors, and protections for labor and the environment. The United States is also seeking an agreement that provides for reciprocal market access, including with respect to U.S. export priorities. The United States expects to address many of the issues identified in the report below in the negotiation of the FTA.

The report is organized as follows. Chapter 1 briefly describes the key sections of the ATPA/ATPDEA, including the new ATPDEA requirements and the designation of ATPDEA beneficiary countries. Chapter 2 highlights trade between the United States and the ATPA/ATPDEA beneficiary countries. It notes that U.S. trade with the countries has grown substantially since ATPA was enacted in 1991, including 13 percent in 2003 and 27 percent in

2004. Chapter 3 evaluates the beneficiary countries' compliance with the eligibility criteria in the statute and discusses the ATPA/ATPDEA's effect on economic development and the creation of viable economic alternatives to coca production in each of the beneficiary countries. It finds that the countries have been meeting the eligibility criteria of the program, but that there are several areas that they need to continue to address. The chapter also finds that the program is having a positive effect on the countries' economic development, which in turn supports their counternarcotics efforts.

Chapter 4 summarizes private sector and non-governmental organization responses to the Administration's Federal Register notice requesting comments on the program, as mandated by Section 203(f) of the ATPA/ATPDEA. Finally, Chapter 5 describes how the process of considering the petitions seeking the review of the program has operated.

Chapter 1

DESCRIPTION OF THE ATPA/ATPDEA

Key Provisions

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

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

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

In response to the requirement in Section 3103(d) of the Trade Act of 2002, USTR has published final regulations establishing a petition process relating to the eligibility of the countries for the benefits of the program. (These regulations may be found at 15 CFR 2016.) Pursuant to these regulations, USTR conducts reviews of petitions at least annually. The President may withdraw or suspend ATPA/ATPDEA designation, or withdraw, suspend or limit benefits, if a country's performance under the eligibility criteria is no longer satisfactory.

Country Eligibility

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

Each ATPA/ATPDEA beneficiary country is eligible for the enhanced trade benefits of the ATPDEA if the President designates it as an ATPDEA beneficiary country, taking into account: (1) the criteria contained in sections 203(c) and 203(d) of the ATPA/ATPDEA; and (2) additional eligibility criteria provided for in section 204(b)(6)(B) of the ATPA/ATPDEA. These criteria are discussed in detail in Chapter 3, which also contains a discussion of each country's compliance with the criteria since being designated. On October 31, 2002, the President designated all four ATPA beneficiary countries as ATPDEA beneficiary countries eligible for the ATPDEA's enhanced benefits. These four countries have also satisfied the requirements of section 204(b)(5)(A)(ii)(I) of the ATPA/ATPDEA, related to customs cooperation.

Product Eligibility

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

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

Petition Process

Pursuant to Section 3103(d) of the ATPDEA, in July 2003 USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) establishing a petition process to review the eligibility of countries and articles for the benefits of the ATPA as Amended. Under these provisions, on an annual basis USTR announces that it will be conducting the review and provides an opportunity for the submission of petitions for the withdrawal or suspension of certain benefits of the program. Those petitions need to indicate the eligibility criterion that the petitioner believes warrants review. USTR, on behalf of the Trade Policy Staff Committee (TPSC), then publishes a list of the responsive petitions filed. The Andean Subcommittee of the TPSC conducts a preliminary review of the petitions. As a result of the review, the U.S. Trade Representative may recommend that action be taken. If the President decides to pursue a proposed action, USTR first provides an opportunity for public comment.

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.

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

Reports on the Impact of the ATPA

Section 206 of the ATPA requires the U.S. International Trade Commission (USITC) to submit annual reports to the Congress on the impact of the ATPA on the U.S. economy generally and on U.S. industries and consumers, and its effectiveness in promoting drug-related crop eradication and crop substitution efforts of beneficiary countries. The USITC submitted its most recent (Tenth) report covering 2003 to Congress in September 2004.

The USITC reports have consistently found that the overall effect of ATPA-exclusive imports (i.e., those ineligible for other tariff preferences) on the U.S. economy and consumers, including in the year 2003, has been negligible. The tenth report estimated that U.S. imports of ATPA/ATPDEA-exclusive products could have potentially significant effects on domestic industries producing asparagus; fresh-cut roses; and chrysanthemums, carnations, anthuriums, and orchids. This report also found that the ATPA/ATPDEA continues to have a positive (albeit small and indirect) effect on drug-crop eradication and crop substitution in the Andean region. In addition, it found that recent investments would probably generate increased U.S. imports of textile and apparel articles in the future.

Section 207 of the ATPA/ATPDEA 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/ATPDEA 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 (Tenth) report covering 2001 to 2002 was submitted to Congress in 2004. The Department of Labor’s reports have consistently found that the ATPA/ATPDEA dos not appear to have had an adverse impact on, or have constituted a significant threat to, U.S. employment. The Ninth Report found that although declines in production and possibly employment in some sectors of the cut flower industry (standard carnations, standard and pompon chrysanthemums and roses) may have been affected by ATPA/ATPDEA tariff preferences, other factors might also have contributed to production and employment declines.

Chapter 2

U.S. TRADE WITH ATPA/ATPDEA COUNTRIES

U.S. trade with the ATPA/ATPDEA countries has continued to grow substantially during the two years since the submission of the last report on the operation of the ATPA/ATPDEA. In 2004, two-way trade increased 27 percent, following a 13 percent increase in 2003. Strong economic performance in the United States as well as in each of the four ATPA/ATPDEA countries in 2004 fueled trade in both directions. U.S. imports from the region grew 33 percent to $15.5 billion in 2004 compared with 2003 and U.S. exports grew 17 percent to $7.7 billion, resulting in a trade deficit of $7.8 billion in 2004. Since 1991 when ATPA was enacted, U.S. imports from the region have tripled and U.S. exports have doubled. (See Table 2-1.)

Table 2-1.--U.S. Trade with ATPA/ATPDEA Countries, 1991 - 2004

Year	U.S. Exports*	ATPA/ATPDEA Countries' Share of U.S. Exports to the World	U.S. Imports**	ATPA/ATPDEA Countries' 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
2000	6,295.1	0.9	11,117.2	0.9	-4,822.1
2001	6,363.3	1.0	9,568.7	0.8	-3,205.3
2002	6,463.8	1.0	9,611.5	0.8	-3,147.7
2003	6,525.7	1.0	11,639.5	0.9	-5,113.8
2004	7,663.6	1.1	15,489.8	1.1	-7,826.2

*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/ATPDEA BENEFICIARIES

U.S. imports from ATPA/ATPDEA countries reached record levels in 2003 and again in 2004. They rose 33 percent in 2004 to $15.5 billion following a 21 percent increase in 2003. U.S. imports from ATPA/ATPDEA countries also increased during this time period as a share of U.S. imports from the world, accounting for 1.1 percent of total U.S. imports in 2004, the highest share recorded since ATPA was enacted in 1991.

U.S. imports from ATPA/ATPDEA countries consist primarily of derivatives of raw materials, agricultural products and apparel. Mineral fuels, mainly petroleum, accounted for 45 percent of imports in 2004, up from 41 percent in 2002 and 36 percent in 1999. In 2004, higher oil prices and new supplies from Ecuador following the completion of a heavy crude oil pipeline contributed to the growth. Other leading imports from ATPA/ATPDEA countries in 2004 were precious metals, gemstones and jewelry; apparel; cut flowers; fruits and nuts, primarily bananas; coffee; copper articles, primarily cathodes; and fish and crustaceans; unwrought tin; and, edible vegetables, primarily asparagus.

Nearly 90 percent of U.S. imports from ATPA/ATPDEA countries now enter the U.S. market duty-free under ATPA/ATPDEA, GSP, or Normal Trade Relations (NTR) tariff rates (formerly known as Most Favored Nation (MFN) duty rates). (See Table 2-2.) All 20 leading imports from the region except for the dutiable portion of tuna in airtight containers (canned tuna) were eligible for duty-free treatment in 2004. With the implementation of ATPDEA in late 2002, the duty-free portion of U.S. imports jumped from approximately 53 percent in 2002, to 85 percent in 2003 and nearly 90 percent in 2004. One-third of U.S. imports from the region entered duty-free under NTR tariff rates in 2004. Such traditional U.S. imports from ATPA countries as coffee, bananas, shrimp, and bituminous coal enter the U.S. market NTR duty-free. Another 2 percent of U.S. imports entered under the GSP. The remaining 54 percent of imports from the region entered under ATPA/ATPDEA in 2004, rising from 50 percent in 2003 and an average of 18 percent in the three years prior to the implementation of ATPDEA.

U.S. imports under ATPA/ATPDEA preferences climbed 43 percent to $8.4 billion in 2004 from $5.8 billion in 2003. About 78 percent, or $6.5 billion, represented U.S. imports under ATPDEA. U.S. imports under the original ATPA (ATPA excluding ATPDEA) accounted for the remaining 22 percent, or $1.8 billion. Imports under both ATPDEA and the original ATPA increased in 2004, by 55 percent and 13 percent, respectively.

Petroleum-based imports accounted for nearly two-thirds (63 percent) of U.S. imports under ATPA/ATPDEA in 2004. Apparel was the next largest category of imports under ATPA/ATPDEA, accounting for 14 percent of the total. Since 2002, U.S. apparel imports from the region overall (not just under ATPA/ATPDEA) have grown over 75 percent. The third largest category of imports under ATPA/ATPDEA in 2004 was cut flowers, and copper cathodes ranked fourth. Other important imports under ATPA/ATPDEA were gold jewelry, asparagus, and cigarettes. U.S. imports of all of these products increased in 2004 compared to 2003, except copper cathodes.

Table 2-2.–U.S. Imports from ATPA/ATPDEA Countries, Total and Under Import Programs, 2002-2004, (*thousands of dollars*)

Country	Import Program	2002[1]	Percent of total	2003	Percent of total	2004	Percent of total
Bolivia	Total	160,220	100.0	184,937	100.0	260,830	100.0
	GSP	31,520	19.7	8,499	4.6	16,632	6.4
	ATPA[2]	37,015	23.1	63,334	34.2	75,609	29.0
	ATPDEA	105	0.1	31,119	16.8	44,753	17.2
	MFN free	62,917	39.3	76,084	41.1	99,466	38.1
Colombia	Total	5,382,368	100.0	6,346,159	100.0	7,360,558	100.0
	GSP	204,241	3.8	159,186	2.5	186,569	2.5
	ATPA[2]	284,012	5.3	613,377	9.7	717,113	9.7
	ATPDEA	120,136	2.2	2,295,315	36.2	3,171,775	43.1
	MFN free	2,207,506	41.0	2,046,176	32.2	2,248,856	30.6
Ecuador	Total	2,115,973	100.0	2,692,525	100.0	4,183,617	100.0
	GSP	74,618	3.5	48,740	1.8	49,604	1.2
	ATPA[2]	85,713	4.1	241,018	9.0	272,202	6.5
	ATPDEA	92,021	4.3	1,312,586	48.7	2,475,133	59.2
	MFN free	764,142	36.1	778,323	28.9	792,204	18.9
Peru	Total	1,952,921	100.0	2,415,843	100.0	3,684,761	100.0
	GSP	165,467	8.5	110,220	2.9	107,211	2.9
	ATPA[2]	381,807	19.6	706,919	29.3	771,445	20.9
	ATPDEA	8	0.0	572,363	23.7	831,228	22.6
	MFN free	569,477	29.2	831,778	34.4	1,898,037	51.5
All	Total	9,611,482	100.0	11,639,464	100.0	15,489,766	100.0
ATPA	GSP	475,847	5.0	326,644	2.8	360,016	2.3
Countries	ATPA[2]	788,547	8.2	1,624,648	14.0	1,836,369	11.9
	ATPDEA	212,269	2.2	4,211,384	36.2	6,522,889	42.1
	MFN free	3,604,042	37.5	3,732,360	32.1	5,038,562	32.5

[1] The year 2002 was atypical for U.S. imports under ATPA. ATPA expired in December 2001 and was not renewed until August 6, 2002. In addition, ATPDEA benefits were implemented on October 31, 2002.
[2] ATPA in this table refers to the original ATPA (ATPA excluding ATPDEA).

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

U.S. Imports under the ATPA/ATPDEA by Country

Colombia has been the leading source of U.S. imports under the ATPA/ATPDEA in every year since the program began, except 2000. In 2004, Colombia provided 47 percent of all U.S. imports under the ATPA/ATPDEA. Ecuador ranked second, with 33 percent; Peru was third, with 19 percent; and Bolivia was fourth, with 1 percent of the total. (See Table 2-3.) With the eligibility of petroleum products under the ATPDEA, Ecuador displaced Peru as the second largest source of U.S. imports under the ATPA in 2003.

In 2004, U.S. imports under the ATPA/ATPDEA from Colombia rose 34 percent to $3.9 billion. Petroleum-related products was the dominant category ($2.7 billion), accounting for 70 percent of ATPA entries from Colombia in 2004. The second largest U.S. import under ATPA/ATPDEA was apparel ($443 million), and the third largest was cut flowers ($414 million). These two products each accounted for 11 percent of ATPA/ATPDEA entries from Colombia in 2004. Other imports under ATPA/ATPDEA from Colombia were cigarettes ($55 million), plastics ($45 million), ceramics ($31 million), and gold jewelry ($14 million), all of which increased in 2004 compared with 2003.

Table 2-3.--U.S. Imports for Consumption under the ATPA, by Country, 2002-2004

Country	2002	2003	2004	2004 share of total
	1,000 dollars	***1,000 dollars***	***1,000 dollars***	***Percent***
Colombia	404,148	2,908,692	3,888,888	46.5
Ecuador	177,734	1,553,604	2,747,335	32.9
Peru	381,814	1,279,283	1,602,673	19.2
Bolivia	37,119	94,453	120,363	1.4
Total	1,000,816	5,836,032	8,359,258	100.0

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

In 2004, ATPA/ATPDEA entries from Ecuador increased 77 percent, from $1.6 billion in 2003 to $2.7 billion in 2004. The leading U.S. import under ATPA/ATPDEA was petroleum products ($2.4 billion), which accounted for 88 percent of U.S. imports under ATPA/ATPDEA from Ecuador in 2004. U.S. imports of petroleum products have climbed significantly since the completion of the Transandean heavy crude pipeline in 2003. The second largest ATPA/ATPDEA entry was cut flowers ($134 million), which increased 27 percent in 2004. Other important ATPA/ATPDEA entries in 2004 were tuna ($54 million); fruits, including primarily fresh pineapples and mangoes and frozen fruits ($26 million); vegetables ($20 million); and fruit and vegetable preparations ($19 million). U.S. imports of all of these product categories increased in 2004 compared to 2003.

U.S. imports under the ATPA/ATPDEA from Peru increased 25 percent, from $1.3 billion in 2003 to $1.6 billion in 2004. The leading ATPA/ATPDEA entry from Peru was apparel, which increased 46 percent to $662 million in 2004, accounting for 41 percent of total ATPA/ATPDEA entries from Peru. The second largest U.S. import under ATPA/ATPDEA was refined copper cathodes, which declined 6 percent to $422 million in 2004. Other leading ATPA entries from Peru included petroleum products ($168 million), fresh asparagus ($98 million), jewelry and parts ($68 million), and vegetable and fruit preparations, primarily artichokes and asparagus ($27 million), all of which increased in 2004 compared to the previous year.

U.S. imports under the ATPA from Bolivia rose 27 percent, from $94 million in 2003 to $120 million in 2004. The top U.S. import under ATPA/ATPDEA from Bolivia was jewelry (primarily gold) and parts, which accounted for 51 percent of ATPA/ATPDEA entries in 2004. U.S. imports of jewelry and parts from Bolivia increased 24 percent, from $50 million in 2003 to $62 million in 2004. The second largest ATPA/ATPDEA entry was apparel ($35 million), which accounted for 29 percent of ATPA/ATPDEA entries from Bolivia in 2004. U.S. imports of apparel from Bolivia under all programs increased 16 percent to $39 million in 2004 compared to 2003, and by 113 percent compared to 2002 when ATPDEA entered into effect. Other leading ATPA/ATPDEA entries in 2004 were petroleum products ($9 million), soybean oil ($6 million), and articles of wood, primarily doors ($5 million).

U.S. EXPORTS TO ATPA/ATPDEA BENEFICIARIES

U.S. exports to ATPA/ATPDEA countries grew 17 percent in 2004 to $7.7 billion, faster than the 12-percent increase recorded for all U.S. exports. As a result, the ATPA/ATPDEA countries' share of U.S. exports to the world grew to 1.1 percent in 2004. (See Table 2-1.)

The leading category of U.S. export to ATPA/ATPDEA countries in 2004 was nonelectrical machinery, equipment, appliances, and parts, which accounted for 22 percent of total U.S. exports to the region. U.S. exports of nonelectrical machinery and parts, destined principally for oil and gas extraction, mining, and data processing, increased 5.7 percent to $1.7 billion in 2004. U.S. exports of organic chemicals, which was the second largest export, increased by 33 percent in 2004 to $746 million. All other categories of U.S. exports among the top ten to the region also increased in 2004 compared to the previous year, including electrical machinery ($725 million); cereals ($578 million); plastics ($544 million); and mineral fuels, primarily petroleum products ($360 million).

Colombia was the largest market for U.S. exports at $4.1 billion, representing 54 percent of U.S. exports to ATPA countries in 2004. Peru ranked second with $1.9 billion in U.S. goods, Ecuador was third with $1.5 billion, and Bolivia was fourth with $177 million. U.S. exports to each of the ATPA countries increased in 2004.

Chapter 3

COUNTRY ELIGIBILITY REPORTS

This chapter outlines the detailed country eligibility criteria in the ATPA/ATPDEA, then discusses each of the four beneficiaries' adherence to the criteria. The country reports also examine the effects of the ATPA/ATPDEA on trade, investment and economic development in the beneficiary countries and on creating sustainable economic alternatives to coca production. The country reports are based on information provided by U.S. embassies in the region. They are an update of USTR's April 30, 2003, First Report to the Congress on the Operation of the Andean Trade Preference Act as Amended.

The ATPA/ATPDEA contains two types of criteria: mandatory and discretionary. The President may not designate an ATPA/ATPDEA country as a beneficiary if the country fails to meet the mandatory criteria, described in the statute as "limitations on designation," unless the President finds that designation would be in the national economic or security interest of the United States. The President must take the discretionary criteria, described in the statute as "factors affecting designation," into account in determining whether to designate any country a beneficiary country, but he is not barred from designating beneficiary status to a country that fails to meet those criteria. The ATPA/ATPDEA retains these criteria, which apply equally to the expanded benefits of the program contained in the ATPDEA. The ATPDEA also contains an additional set of factors affecting designation that apply only to the expanded benefits.

DETAILED ELIGIBILITY CRITERIA

Mandatory criteria *(for renewed ATPA benefits and ATPDEA benefits)*:

The President shall not designate any country:

(1) if such country is a Communist country;

(2) if such country:

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

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

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

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

(3) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(4) if such country affords preferential treatment to the products of a developed country, other than the United States, and if such preferential treatment has, or is likely to have, a significant adverse effect on United States commerce, unless the President:

- has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and
- reports those assurances to the Congress;

(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent or such country fails to work towards the provision of adequate and effective protection of intellectual property rights;

(6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and

(7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 507(4) of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

The first, second, third, fifth, and seventh criteria shall not prevent the designation of any country as a beneficiary country under this title if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefore.

Discretionary criteria *(for renewed ATPA benefits and ATPDEA benefits)*:

(1) an expression by such country of its desire to be so designated;

(2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

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

(4) the degree to which such country follows the accepted rules of international trade provided for under the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 2 of the Uruguay Round Agreements Act);

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

(6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

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

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

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

(11) whether such country has met the narcotics cooperation certification criteria set forth in section 481(h)(2)(A) [deemed to be a reference to section 490 of the Foreign Assistance Act of 1991 by section 6(a) of Public Law 102-583] of the Foreign Assistance Act of 1961 for eligibility for United States assistance; and

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

Discretionary criteria *(for ATPDEA benefits only)*:

(1) Whether the beneficiary country has demonstrated a commitment to undertake its obligations under the WTO, including those agreements listed in section 101(d) of the Uruguay Round Agreements Act, on or ahead of schedule, and participate in negotiations toward the completion of the FTAA or another free trade agreement;

(2) the extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act;

(3) the extent to which the country provides internationally recognized worker rights, including:
- the right of association;
- the right to organize and bargain collectively;
- a prohibition on the use of any form of forced or compulsory labor;
- a minimum age for the employment of children; and
- acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(4) whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974;

(5) the extent to which the country has met the counternarcotics certification criteria set forth in section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) for eligibility for United States assistance;

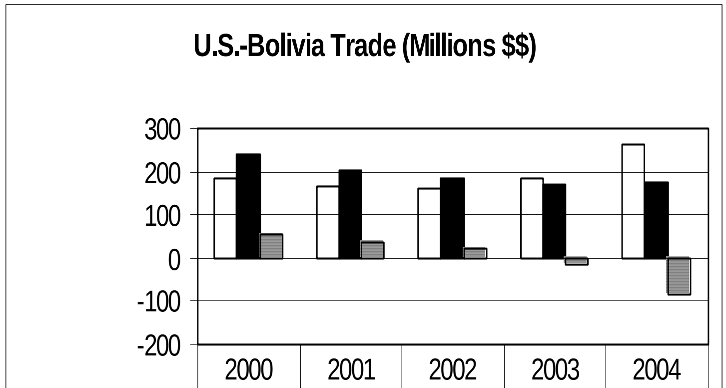
(6) the extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption;

(7) the extent to which the country applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement described in section 101(d)(17) of the Uruguay Round Agreements Act, and contributes to efforts in international fora to develop and implement rules on transparency in government procurement; and

(8) the extent to which the country has taken steps to support the efforts of the United States to combat terrorism.

BOLIVIA

Population: 8,724,156
(July 2004 est.)
GDP per capita, purchasing power parity: $2,400
(2003 est.)
Source: 2004 World Fact Book - CIA



	2000	2001	2002	2003	2004
U.S. Imports	184	165	160	185	261
U.S. Exports	241	202	182	172	177
Trade Balance	56	37	22	-13	-84

Effect of the ATPA/ATPDEA: Between 2000 and 2004, Bolivian exports to the United States grew on average 16 percent per year, with 2004 registering the highest export growth in that period ($332.1 million in total exports). ATPA/ATPDEA had positive localized effects on the Bolivian economy in 2004. About 45 percent of Bolivian exports to the United States in 2004 entered under ATPA/ATPDEA, with a total value of $149.4 million. Exports of wooden doors and wood products, sugar, gold and gold jewelry increased in 2004, while leather exports remained unchanged. Agricultural exports under ATPA/ATPDEA included leguminous vegetables, almonds, palm hearts, dried beans, and cut flowers.

Bolivia enjoys several advantages over its neighbors. Bolivia enjoys lower electricity rates (4.57 cents per watt-hour in 2004) than the other ATPA/ATPDEA countries. Bolivia also has nine free trade zones (six currently in operation). Although it lacks an ocean port, Bolivia enjoys a relatively competitive air cargo rate of $1.40/kg, though this is the highest among Andean countries.

Unfortunately, Bolivia has faced difficulties in taking full advantage of ATPA/ATPDEA opportunities. Jet fuel prices are among the highest in South America, tax advantages to entice exporters are cumbersome and only cost effective for large exporters, and industry-wide job training programs are lacking. Social and political unrest has discouraged ATPA/ATPDEA-related industries from investing. Further, lack of knowledge of the U.S. market among Bolivian firms limits sales, as does the failure to meet quality and service standards required by U.S. buyers. Despite numerous attempts, the Bolivian Government has also been ineffective in the dissemination of information about the ATPA/ATPDEA program and in the general promotion of Bolivian exports in world markets.

Still, ATPA/ATPDEA continues to be an important incentive to nurture a progressive entrepreneurial class in Bolivia and the small business sector. To illustrate the impact of ATPA/ATPDEA, a large textile exporter in Bolivia currently employs around 2,200 people. In contrast, one estimate put the total number of workers in Bolivia's hydrocarbons sector – the most dynamic in this otherwise depressed economy – at no more than 1,500. Many small and medium-sized businesses are also successfully exporting labor-intensive goods to the United States under ATPA/ATPDEA. With unemployment at 9.1 percent in 2004 and underemployment estimated much higher, ATPA/ATPDEA-related jobs are desperately needed in Bolivia.

Expropriations: Article 22 of the Bolivian Constitution provides that property may be expropriated for the public good or when the property does not fulfill a “social purpose” – a term that is not defined well in Bolivian law. It also stipulates that just compensation must be provided. Economic regulatory laws grant concessions to exploit natural resources such as hydrocarbons and mining resources. The laws also provide means to expropriate land and guarantee rights of way needed to develop those concessions.

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

In 2005, the Bolivian government enacted a Supreme Decree to amend and dissolve a water concession for the city of El Alto. Interested parties are still discussing the terms under which the international operator will leave. The Government is poised to enact a new hydrocarbons law in the first half of 2005, and some have expressed concern that a new law may result in expropriation, confiscatory taxation, or unilateral contract changes in this sector.

Arbitral Awards: Bolivia is a member of the International Centre for 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 the most comprehensive framework under Bolivian law for national and international arbitration. The law decrees that international agreements, such as the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, will be honored. The law also mandates the recognition of all foreign decisions and awards and establishes procedures for the national Supreme Court to make enforceable in Bolivia particular arbitral decisions.

Reverse Preferences: The U.S. Government has no indication that Bolivia has granted such preferences to the products of a developed nation.

Intellectual Property: Patents, trademarks and industrial designs are protected by Andean Community Decisions 486 (the Common Industrial Property Regime) and 345 (Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties). Copyrights are protected by Andean Community Decision 351 (Common Regime on Copyright and Neighboring Rights). These decisions, which were adopted in 2000, 1992 and 1993, respectively, are comprehensive and represent a significant improvement over earlier standards of protection for intellectual property in the Andean Community countries. Unfortunately, enforcement of IPR protections is not consistent.

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

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

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

Bolivia has been on the Special 301 Watch List since October 1996. The U.S. copyright industry (as represented by the International Intellectual Property Alliance (IIPA)) estimates that trade losses due to copyright infringement in Bolivia in 2002 amounted to $26.5 million, with $15 million from the recording industry, $6.0 million from software and $5.5 million from books. Estimates on losses to the film industry are not available, although pirated videodisks are often for sale on Bolivian streets even before films are shown in theaters. Enforcement of existing laws to protect intellectual property rights is weak, and piracy in Bolivia continues largely unabated.

In September 1997, the Government of Bolivia consolidated the industrial and intellectual property portfolios under one administrator, the National Intellectual Property Service (SENAPI), which is in charge of registering patents and trademarks. SENAPI has extremely limited resources. Its technical staff has a high rate of turnover because of higher salaries in the private sector.

In 2003 and 2004, USAID sponsored a study on how to improve Bolivia's IPR regime. The study, completed in May 2004 and conducted in close cooperation with SENAPI and the Ministry of Economic Development, laid out a complete plan for the institutionalization of SENAPI, including staffing needs and merit-based hiring, fee structures and financial sustainability, and improving customer service and effectiveness. In December 2004, the Government began implementing the plan, including:

- Institutionalization of all but the highest-ranking positions in SENAPI and hiring more qualified, technical personnel;
- Authorization for SENAPI to be the sole responsible entity handling all administrative processes related to IPR, thus eliminating an often political appeal process; and

- Passage of a Supreme Decree permitting SENAPI's Copyright Office to carry out raids against counterfeit products in the country.

To keep the reform momentum going, USAID helped SENAPI process its backlog of IPR petitions; develop an information technology platform and databases for the efficient processing of future petitions; and create a plan for completing the institutionalization process. The reform plan calls for a single contact point to initiate all IPR filings so that applicants can avoid multiple lines and potential points of corruption. USAID will help SENAPI implement the personnel and operational systems needed for this to function effectively.

Although these recent actions lay a solid groundwork for future progress in IPR, there have been few concrete accomplishments in limiting piracy in the market.

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

Extradition: An extradition treaty with the United States permits the extradition of U.S. citizens.

Workers' Rights: Bolivia has ratified seven of the eight ILO core labor conventions.

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

About 25 percent of Bolivia's workers in the formal economy belong to labor unions. Many workers in the informal economy also participate in some form of labor union or trade association. Although a limited number of trade union leaders are protected from unjust dismissal, trade union members are not, and labor advocates claim that anti-union firings are a common tool used by employers to prevent unionization.

To call a legal strike, private sector workers must first resort to lengthy government mediation, and then obtain an authorization to strike by a vote of 75 percent of the workers. The workers rarely meet these hurdles and illegal strikes are common and frequent, although the government does not normally prosecute strikers. While solidarity strikes are illegal under the current labor code, the Government does not routinely enforce this law and in practice allows such strikes. The Government has the power to declare a strike illegal and has done so on occasion.

With the exception of health workers and teachers, the labor code formally denies civil servants the right to organize and prohibits strikes in public services, including banks and public markets. In practice, however, the rate of unionization in the public sector (just over 50 percent of salaried workers) is twice that of the private sector workers and strikes are common. Recent studies indicate that, since the mid-1990s, the number of public sector strikes and conflicts has risen significantly.

Collective bargaining without the participation of the Government is limited. The current labor code was written in a period in which the Bolivian Labor Confederation (the *Central Obrera Boliviana* (COB)) had quasi-governmental status and the exclusive authority to negotiate with state-owned enterprises. The practice was for the COB and the Government to negotiate a global agreement on salaries, minimum wages and other working conditions each year for public servants. Since the "capitalization" (privatization) of most of these enterprises in the mid-1990s, the COB's official role has diminished markedly and the practice of direct employee-management negotiations in individual enterprises is expanding. Sectoral negotiations by teachers, health workers, transit drivers and many others often also eclipse the COB's annual negotiation with the Government.

Bolivian labor laws are in some aspects highly rigid, with a range of benefits stipulated for full-time salaried workers. Due to contradictions embedded in the frequently amended body of labor law, workers frequently do not receive the full range of pay, vacation, and severance benefits. Moreover, employers have shifted significantly towards forms of temporary or informal employment that do not require payment of the same benefits. Over 50 percent of the workforce has no formal labor contract. Labor codes drafted by the two most recent governments were never submitted to the legislature, largely due to COB opposition. The Government is obliged to legislate reforms to the Code – including greater labor flexibility – under the terms of the Heavily Indebted Poor Country (HIPC) program and other commitments to various international financial institutions, but has yet to do so.

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

Economic Conditions: Bolivia made strong economic advances between 1985 and 2000, transforming itself from one of the most unstable economies in Latin America to one with sound, market-driven macroeconomic policies.

In the late 1980s and throughout the 1990s, Bolivia removed restrictions on foreign investment, opened natural resource ventures to foreign participation, sold Government-owned businesses, modernized banking laws, freed currency convertibility, removed trade restrictions and lowered tariffs. During this period, trade surpluses and large inflows of foreign aid and investment resulted in growing foreign exchange reserves. The official exchange rate was then, and is now, set daily by the Government's exchange house, which is under the supervision of the Central Bank. The official rate is always within 1 percent of the parallel market rate.

Since 2000, however, the Government has been steadily moving away from free market policies because of political pressure from left-wing social and civil groups that have created near-permanent social unrest. Total foreign direct investment (FDI) increased from around $130 million in 1992 to over $1 billion in 1999, but then fell to $567 million in 2003. The greatest tumble in FDI came after the resignation of then-President Gonzalo Sanchez de Lozada in late 2003, with 2004 FDI estimated at just $136 million. Furthermore, foreign companies have been the victims of social demonstrations and unrest, including roadblocks, occupations of facilities, looting, vandalism, and even extortion attempts. Government modifications of tax codes and other regulations have caused great concern among foreign investors about the continued sanctity of contracts in Bolivia.

Bolivia's inflation rate in 2004 was 4.5 percent. Bolivia's real growth in its Gross Domestic Product (GDP) during 2004 was 3.6 percent and marked 11 consecutive years of positive growth. 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 2004, Bolivia's debt totaled $4.9 billion. Through the HIPC initiative, and its subsequent enhanced framework (HIPC II), Bolivia became eligible for debt forgiveness totaling nearly $2 billion ($854 million in net present value) until 2015. This should free up $120 million in government resources annually over the next 10 years for social sector spending. In 2004, the Administration continued the "National Dialogue" in order to develop its Poverty Reduction Strategy Paper (PRSP), which sets out spending priorities for attacking poverty. Nevertheless, Bolivia still suffers from chronic budget deficits that often lead to instability. The Government hopes to extend its current Stand-By Agreement (SBA) with the IMF for another 12 months (March 2005- April 2006), at which time it hopes to sign a mid-term agreement.

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

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

WTO Agreements: Bolivia acceded to GATT in 1989 and ratified its membership in September 1990. The Bolivian Congress ratified Bolivia's membership in the WTO in late 1995. In 2002, Bolivia ratified the Fifth Protocol of the WTO on Financial Services. Bolivia's implementation of TRIPS is not yet complete.

Participation in Free Trade Negotiations: In May 2004, the United States initiated free trade agreement negotiations with three Andean nations – Colombia, Ecuador and Peru. Bolivia is participating as an observer in the negotiating sessions and as a full participant in the trade capacity building talks. The United States intends to include Bolivian in the agreement at a later stage.

Bolivia participates in the FTAA negotiations as part of the Andean Community. From 2002 - 2003, a Bolivian official served as Chair of the Committee of Government Representatives on the Participation of Civil Society.

Subsidies or Other Requirements that Distort International Trade: While Bolivia has eliminated many of its export subsidy programs, Bolivia has notified to the WTO that it provides export subsidies through its "Free Zones" and "Temporary Import Regime for Export Promotion." Notably, Bolivia is a country listed in Annex VII of the SCM Agreement, which permits it to maintain certain export subsidies that might otherwise be WTO-inconsistent.

Trade Policies that Revitalize the Region: Bolivia participates in the Andean Community. In 2004, Bolivian exports to the Andean Community totaled $498 million, representing 22 percent of total exports. Imports from the Community in 2004 were 11 percent of Bolivia's total.

At the Andean President's Council meeting on January 31, 2002, the five member countries of the Andean Community (Bolivia, Colombia, Ecuador, Peru and Venezuela) agreed to establish an Andean free trade zone, a common external tariff (CET), and a customs harmonization policy by January 2004.

The CET agreement established a unified tariff schedule that was to have become effective at the end of 2003. In the second half of 2002, the Andean members started to negotiate the CET in order to provide initial offers in the Free Trade Area of the Americas FTAA) negotiations, and reached agreement on 62 percent of tariff items. Peruvian industry representatives and economists raised concerns that negotiations of a CET on the remaining 38 percent of items could lead to increased tariffs on several consumer products and lower competitiveness. As a result, finalization of negotiations on the CET with Andean neighbors will be difficult to achieve. No part of the CET has been implemented.

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

Narcotics and Counter-terrorism Cooperation: On September 16, 2004, Bolivia received full certification for its cooperation with the United States on counter-narcotics issues under the Foreign Assistance Act. . Today Bolivia supplies to world markets far less coca base and cocaine hydrochloride (HCL) than either Colombia or Peru. Bolivia's cultivation of coca is about half what it was at its peak in 1989, dropping from 52,900 hectares to 24,600 hectares in 2004. Bolivian law authorizes the cultivation of up to 12,000 hectares of coca for licit uses.

The Bolivian Government's commitment to forced eradication in the Cochabamba area has been sustained across four presidents and through periods of great political uncertainty. As President Carlos Mesa has stated on several occasions, it is a state policy to eliminate illegal cultivation in that district. The challenge going forward, however, is how to address expanding illicit coca cultivation in the Yungas, the traditional area for licit coca growing.

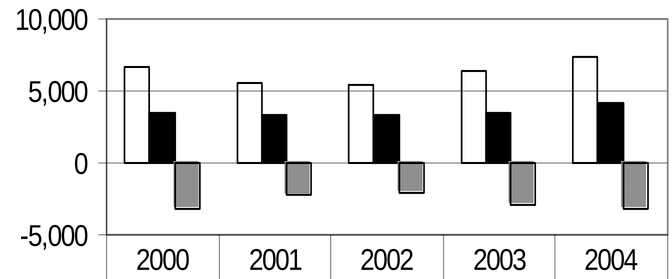
The eradication policy is complemented by those of interdiction (of drugs and precursors) and integrated development (the provision of viable, licit agricultural alternatives). The trend lines for interdiction are consistently upwards: in 2004, the Government interdicted 14.5 percent of the country's total potential cocaine production, 8.7 MT of cocaine and cocaine base. The number of operations mounted rose by roughly 25 percent, as did the number of maceration pits and base labs destroyed. The amount of liquid precursors seized rose by 24 percent, to 678,750 ltr. The amount of solid precursors rose by 210 percent, to 1,672 MT.

USAID figures demonstrate that there has been a steady increase in the cultivation of licit crops and pastures in the Cochabamba area from 40,613 hectares in 1986 to over 143,800 hectares in 2004. Community development activities in the Yungas and agricultural extension services and access to road infrastructure in Cochabamba have proven to be effective ways to reach a larger number of families in those regions. The number of farm families assisted through integrated development in the Chapare and Yungas regions totaled 44,493 in 2004, over half of the total number of farm families in those regions. The wholesale value of licit agricultural products leaving the Chapare reached $46.1 million in 2004. Some of the Chapare-grown products are now being marketed and sold in Argentina, Chile, the United States, Israel and Europe.

COLOMBIA

Population: 42,310,775
(July 2004 est.)
GDP per capita, purchasing power parity: $6,300
(2003 est.)
Source: 2004 World Fact Book - CIA

U.S.-Colombia Trade (Millions $$)



	2000	2001	2002	2003	2004
U.S. Imports	6,681	5,623	5,382	6,346	7,361
U.S. Exports	3,475	3,392	3,345	3,496	4,145
Trade Balance	-3,206	-2,231	-2,037	-2,850	-3,216

Effect of the ATPA/ATPDEA: Under the ATPA/ATPDEA, total Colombian exports to the U.S. market grew to a record $7.36 billion, an increase of over $2 billion since the ATPDEA program went into effect. US exports to Colombia increased over $800 million in the same period, to $4.2 billion, with the growth focused in ATPDEA-benefited sectors. Use of the ATPDEA program increased 39 percent from $2.4 billion in 2003 to $3.3 billion in 2004. Since 1993, Colombian exports to the U.S. market have increased in value and as a percentage of total Colombian exports every year, except for 2001 when Colombian exports under ATPA declined due to the 8-month transition period between expiration of ATPA in December 2001 and the restoration of ATPA benefits under the original ATPA program.

Petroleum and its derivatives are currently the most important ATPA/ATPDEA export, followed by coal, the flower sector, apparel and textiles (including leather products), construction material (mainly glass and ceramic products), gold products, and fresh fruit, accounting for more than 90 percent of Colombian exports by value to the United States under the ATPA/ATPDEA. (Petroleum and coal account for 69 percent of Colombian exports by value under ATPA/ATPDEA, due to the boost in international oil prices in the last year). According to estimates from the Colombian Ministry of Foreign Trade, between 1992 and 2001 the ATPA program generated a total of $1.5 billion worth of output and more than 123,000 direct jobs. In the same period, the ATPA program has also had a positive impact on investment, as Colombia has diversified its export-oriented production. The Colombian Government estimates that the new benefits granted under ATPDEA could generate as many as 140,000 new jobs and several hundred million dollars in exports annually. Textile and apparel producers have already spent approximately $100 million in new capital goods (mostly from the United States) to expand capacity. The total new investment expected in the textile, apparel and leather industries is well over $500 million, with a vast majority from the United States.

Expropriations: Colombia is not known to have expropriated property of foreign investors without providing adequate compensation 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 acquisition of private property in cases of public necessity (e.g. a public transit system) and social interest (e.g. agrarian reform). Colombian law guarantees indemnification in such cases. Confiscation is allowed for property used in, or the "fruit" of, criminal 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.

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

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

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.

In August 2002, the Colombian Government enacted Decree 2085, granting protection for confidential data used in registrations for health licenses. The decree, the first in the Andean region, grants 3 to 5 years of protection to confidential data. In addition, the Colombian Government has played a key role in blocking attempts within the Andean Community to weaken the protection afforded to agrochemicals under Decision 486. In March 2003, the

Agricultural Ministry promulgated Decree 502, providing similar protection for agricultural chemicals. However, the subsequent passage of Law 822 on July 10, 2003 established additional norms in relation to the registration, control and sale of generic agro-chemicals, which, along with the related Resolution 770 of March 27, 2003, appear to weaken significantly the data secrecy protections established by Decree 502. Colombia does not provide the desired level of patent protection to “second-use” innovations. The United States seeks to address both of these issues in the FTA negotiations.

The Superintendency of Industry and Commerce acts as the local patent and trademark office in Colombia. Despite recent efforts to manage more effectively the application process, this agency still suffers greatly from a backlog of trademark and patent applications. Enforcement of trademark legislation in Colombia is showing some progress, but contraband and counterfeiting are widespread.

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: $131.6 million in 2004, $131.8 million in 2003, and $123.3 million in 2002 according to the IIPA.

In January 2005, Law No. 890 took effect and included two amendments to the Colombian criminal code concerning copyright enforcement. First, Article 14 increased the minimum prison sentence by one-third and the maximum prison sentence by one-half (the new range is now between 2 years and 7.5 years). Second, Article 5 modified the parole requirements in the criminal code. Under the new amendment, judges may only grant parole if the convict has completed two-thirds of the prison term and shown good behavior. In addition, granting parole will be conditioned on the full payment of fines imposed and indemnification of the victim. In addition, Law No. 906 (effective January 1, 2005) requires incarceration for piracy cases where the value of the seized merchandise exceeds 150 times the minimum wage (approximately $20,000). Although the passage of these laws may provide greater deterrents to copyright infringers, addressing a major concern of U.S. industry, Colombia continues to have high levels of piracy and problems with enforcement and successful prosecution.

Extradition: Extradition is based on the Colombian Penal Code. A constitutional amendment permits extradition of Colombian nationals for crimes committed after December 17, 1997. Over 200 extraditions have taken place during the Administration of President Uribe. The Colombian government in committed to imprisoning convicted narcotics traffickers and Colombian law enforcement agencies cooperate with the U.S. Department of Justice.

Workers’ Rights: Colombian has ratified all eight of the core ILO conventions.

Its 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 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 provides for the right to strike, and workers exercise this right in practice; however, members of the Armed Forces, Police, and persons executing "essential public services", as defined by law, are not permitted to strike. Before staging a legal strike, public sector unions must negotiate directly with management and accept mediation if they cannot reach agreement. The law prohibits the use of strikebreakers. Legislation that prohibits public employees from striking is still in effect, although it often was overlooked. By law, public employees must accept binding arbitration if mediation fails.

The Department of State's annual *Human Rights Report* indicates that labor leaders—as well as others in civil society—continue to be targets of attacks by illegal armed groups, primarily for political reasons. Although the Uribe Administration has taken important measures since coming into power to lessen this threat, union leaders contend that perpetrators of violence against workers operate with virtual impunity. Colombia is working closely with the ILO in a Special Technical Cooperation Program to address the issues of violence against trade unionists and to improve industrial relations. This cooperation has supported the Uribe Administration's efforts to step up government protection of union members and to revive the moribund Inter-agency Commission for the Promotion and Protection of Worker's Human Rights as a forum for discussion with labor.

There have been few successful prosecutions for crimes committed against trade union members. However, with funding from the United States under the Plan Colombia program, Colombia has undertaken significant reform in its criminal justice system. Among other things, Colombia began the implementation of a new Criminal Procedure Code in 2005, which should help Colombia overcome problems in the old system that makes it ineffective. The problems that the reforms seek to address included excessive formalism, corruption and intimidation. The reforms are being implemented on a judicial district by judicial district basis and are scheduled to be completed by the end of 2008.

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

Forced or compulsory labor is prohibited by law. 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. The Colombian Government is making efforts to address the problem through several initiatives, including ILO child labor programs funded by the U.S. Department of Labor. Colombia has also ratified ILO Convention 182 on the worst forms of child labor.

The Government establishes national minimum wages annually. Colombia has extensive regulations providing for the occupational safety and health of workers, but regulations are difficult to enforce for workers in the informal sector who are not covered by the social insurance systems.

Economic Conditions: Colombia's economy has staged a strong recovery during the past two years despite a serious armed conflict. Colombia's economy ended the 2004-year with lower unemployment, a budget deficit at half the target (only 1.2 percent of GDP), increased trade, a record level of exports and the lowest inflation in five decades. However, the administration of President Uribe continues to face ongoing economic problems, ranging from reforming the pension and tax systems to reducing unemployment.

The decline in oil production is of particular concern for Colombia's bottom line and its ability to control its fiscal deficit. Although Colombia has recently welcomed back some of the major multinational hydrocarbons companies, new hydrocarbon exploration is still needed to offset declining oil reserves and the prospective need to import crude oil. Coffee prices have recovered from previous lows, leading the coffee industry to pursue greater market share abroad.

Under the Uribe Administration, the Government's democratic security strategy has engendered a growing sense of confidence in the economy, leading to major inflows of remittances as well as increased foreign direct investment. Increased investor confidence also led the Colombian stock exchange to be the world's best performer in 2004. Pursuant to this strategy, Colombia continues to seek additional support from the international community to boost peace prospects with paramilitaries and insurgent groups. Colombia's GDP grew an estimated 4.1 percent in 2004, up slightly from an estimated 3.9 percent GDP growth in 2003. President Uribe has stated publicly that the government expects GDP growth for 2005 to reach 4 percent of GDP.

Market Access: Trade and investment barriers have been substantially reduced since 1990 under the Government's economic liberalization plan. 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 2 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 banned. Stiff restrictions still exist for used medical equipment and used clothing. Colombia also applies a value added tax (VAT) for distilled spirits that favors whiskeys aged 12 or more years, and that discriminates against beverages with alcohol content above 35 percent, which captures most imported products. Several Colombian states are applying discriminatory practices to imports of distilled spirits, which has restricted the ability of U.S. distilled spirits companies to conduct business in Colombia.

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 16 percent VAT.

WTO Agreements: There continues to be concern regarding the WTO consistency of some of Colombia's policies. In June 2002, the Andean Community removed canned pet food from the Andean Price Band system, but dry pet food continues to be included in the system.

Participation in Free Trade Negotiations: In May 2004, the United States initiated free trade agreement negotiations with three Andean nations – Colombia, Ecuador and Peru. Bolivia is participating as an observer in the negotiating sessions and as a full participant in the trade capacity building talks.

Colombia participates in the FTAA negotiations as part of the Andean Community. Since 2002, a Colombian official has served as chair of the FTAA Negotiating Group on Market Access.

Subsidies or Other Requirements that Distort International Trade: Colombia has been working to eliminate export subsidies since its GATT accession. This process has continued under the WTO Agreement on Subsidies and Countervailing Measures. However, free trade zones and special import-export zones will maintain their special customs and foreign exchange regimes. In June 2003, the Colombian government announced that it would eliminate the tax benefits linked to exports and will replace them with other incentives for employment generation and investment in new technologies. To date no decree has been issued.

Colombia's tax rebate certificate program (CERT) is a tax reimbursement certificate representing a credit that can be applied to taxes on income, customs duties and certain other taxes. It also is freely negotiable and can be sold in a secondary market. The CERT is intended to promote non-traditional export products (specifically excluded from the CERT program are coffee, petroleum, and petroleum by-products). In late 2002, the Colombian government suspended use of the CERT, reducing it to 0 percent. Although this means that the subsidy component has disappeared, the CERT has not been eliminated, and it could be increased in the future when Colombia's budgetary conditions improve.

The other export subsidy, known as the *Plan Vallejo*, allows for duty exemptions on the import of capital goods and raw materials used to manufacture goods that are subsequently exported. In July 2004, the Colombian government proposed to eliminate the Plan Vallejo by December 31, 2006 in the hopes that a signed FTA between Colombia and the United States would be in place, which would provide for duty free importation of many capital goods.

Colombia also operates producer-financed export subsidies under the price stabilization funds for sugar, palm oil, beef and dairy.

In 2004 and early 2005, Colombian exporters, particularly banana and flower growers, were affected by the peso's appreciation against the U.S. dollar. In an attempt to compensate for these losses and the 14 percent increase in the value of the peso against the dollar in 2004, the Uribe Administration enacted a program to subsidize the banana and flower exports. In February 2005, Colombia passed the *Incentivos de Cobertura Cambiaria* (ICC), or "Incentives for Exchange Rate Coverage," offering the banana and flower exporters 200 pesos for every dollar of goods exported to the United States, conditioned on the exporters buying either options or dollars in the futures market to hedge against future exchange rate fluctuations.

Trade Policies that Revitalize the Region: Colombia is a member of the Andean Community. Colombian exports to the Community during 2004 represented 19.4 percent of its total exports ($3.2 billion); imports from the Community in 2004 accounted for 12.2 percent of Colombia's total ($1.9 billion). Colombia has continued its efforts to conclude trade agreements with other countries in Latin America and the Caribbean. Colombia provides duty-free access to 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 an FTA with Venezuela and Mexico (the "G-3" Agreement) on January 1, 1995. In addition, Colombia concluded a partial FTA with Chile in 1993. Colombia also extends preferential tariffs to a more limited number of products to member states of the Latin American Integration Association (ALADI).

Narcotics and Counter-terrorism Cooperation: Colombia is a committed partner of the United States in the fight against narco-terrorism. President Uribe has publicly declared his solidarity with the war on terrorism. The links between narcotics and terrorism in Colombia are undeniable. On September 16, 2004, Colombia received full certification for its cooperation with the United States on counter-narcotics issues under the Foreign Assistance Act. The United States works closely with Colombian law enforcement and military authorities to eradicate coca, capture illegal drugs, prosecute narco-traffickers and terrorists, and extradite those who have violated U.S. law. Through USAID, the U.S. Government has provided approximately $584 million, from 2000-2005, to support alternative development programs, democracy building and assistance to internally displaced persons. The focus is the development of income generation options in areas affected by illicit crops and the strengthening of institutional linkages between the state and their citizens.

The concrete results of this strategy show that in Colombia in 2004 terrorist events dropped by 42 percent, kidnappings dropped by more than 35 percent, homicides by 15 percent, and other major crimes substantially, according to Colombian National Police figures. According to the U.S. International Narcotics Control Strategy Report (INCSR), the eradication program (the backbone of our counter-narcotics effort) has also achieved significant results. In 2002, there was a 21 percent reduction in cultivation. In 2003, there was a 15 percent reduction. In 2004, the U.S.-supported Anti-Narcotics Police Directorate (DIRAN) sprayed a record 136,555 hectares of coca and 3,060 hectares of opium poppy. Manual eradication accounted for the destruction of an additional 10,991 hectares of coca and 1,497 hectares of opium poppy. Colombia's military forces are beginning the second year of *Plan Patriota*, a major offensive in the former demilitarized zone ("zona de despeje"), territory historically controlled by the Revolutionary Armed Forces of Colombia (FARC). Additionally, as of March 10, 2005, the Colombian authorities have sprayed more than 40,000 hectares of coca. On the interdiction front, in 2004, with U.S. support, the Colombian national police and public forces destroyed 200 major drug production laboratories in Colombia and seized 178 metric tons of cocaine hydrochloride and cocaine base.

The effect of the ATPA/ATPDEA on drug crop eradication efforts has been indirect. Much of ATPA/ATPDEA-related investment has flourished in regions where there is no presence of illegal crops. However, the ATPDEA has helped counter-narcotics efforts in Colombia by providing employment alternatives to Colombians who might otherwise support the drug trade. In addition to cacao, rubber, spices, specialty coffee and African palm, the flower sector is particularly relevant in this respect. It generates approximately 75,000 direct jobs and nearly 50,000 indirect jobs. In many cases, displaced persons and migrants fleeing from violence in drug producing regions are recruited to work on flower plantations. Enhanced benefits under APTDEA are expected to have an even greater effect. The Colombian Government estimates that over 140,000 new jobs will be directly created because of efforts to take advantage of new benefits for textiles, apparel, shoes and leather goods. These jobs are focused in areas where people displaced from successful counter-narcotics efforts are resettling.

ATPA/ATPDEA preferences also bolster efforts by the Colombian private sector to press the government on counter-narcotics reforms. The U.S. Government has enjoyed strong support from the private sector for important U.S. counter-narcotics goals, including the passage of legislation on asset forfeitures and money laundering, increased penalties for narcotics offenses, increased eradication efforts and the passage of a strong extradition law.

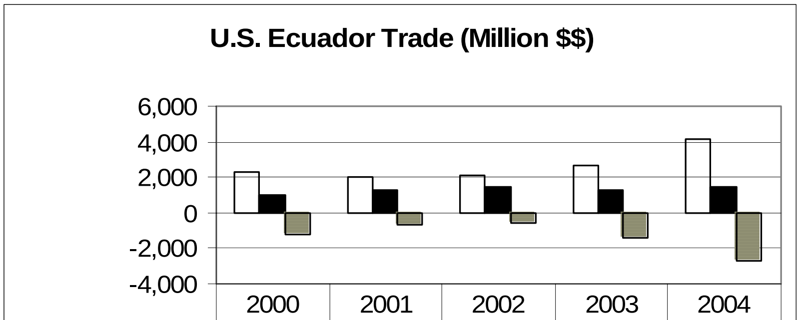
Government Procurement: The Government Procurement and Contracting Law (Law 80/93) established procedures for the selection of suppliers, mainly through public tenders. In order to qualify as a potential supplier to the Government of Colombia, foreign firms must register with the local chamber of commerce and appoint a local representative. Registration must be renewed annually and includes certification of experience, finances, technical expertise and organization. The certifications are used to qualify and classify suppliers based on *bona fide* criteria. Foreign firms must demonstrate a commercial presence in Colombia in order to participate in government procurement, making the registration process particularly costly.

In July 2003, the Colombian government promulgated Law 816 to protect national industries in government procurement. Law 816 mandates that all public entities adopt criteria that support national industries and accord preferential treatment to bids that incorporate Colombian goods or services. National companies are given a 10-20 percent "bonus" in their evaluation score, and companies using Colombian goods or services are given a 5-15 percent bonus. Bids without any Colombian component are scored 5-20 percent lower than bids with such a component. Additionally, Law 816 requires foreign suppliers without local headquarters in Colombia to obtain certification from a Colombian diplomatic mission in the suppliers' home country stipulating that the government procurement laws in the suppliers' home country meet reciprocity requirements. To date, this new system, and specifically the lack of an established certification process, has made it more difficult for U.S. suppliers to obtain government procurement contracts.

There have been complaints of non-transparency with respect to the awarding of major government contracts. The Colombian government has taken positive steps to fight corruption, such as working with non-governmental organizations to launch probity programs aimed at promoting entrepreneurial and public ethics. The transparency of government procurement decisions has improved significantly in the last several years. However, Colombia is not a signatory of the WTO Agreement on Government Procurement. According to industry analysts, the elimination of barriers in the government procurement sector could yield an increase in U.S. exports in the range of $100-$500 million.

ECUADOR

Population: 13,212,742
(July 2004 est.)
GDP per capita, purchasing
power parity: $3,300
(2003 est.)
*Source: 2004 World Fact
Book - CIA*



	2000	2001	2002	2003	2004
U.S. Imports	2,267	1,975	2,116	2,693	4,184
U.S. Exports	1,000	1,319	1,496	1,306	1,484
Trade Balance	-1,267	-656	-620	-1,386	-2,700

Effect of the ATPA/ATPDEA: Although the ATPA/ATPDEA provides duty-free entry for a wide range of Ecuadorian products, the country's exports remain concentrated in petroleum. In 2004 petroleum and derivative products accounted for 67 percent of exports to the United States However, cut flowers, a nontraditional export, have benefited significantly from duty-free treatment, with $201 million in exports to the United States in 2004. Overall, exports of nontraditional products to the United States increased from $719 million in 2002 to $876 million in 2004, with some products, such as broccoli and pineapple, experiencing double-digit increases. In 2004, coffee exports to the United States rose by 47 percent, to $8.7 million and shrimp exports reached $174 million. Cacao exports to the United States leveled off at $39 million in 2004, after experiencing a substantial increase in 2003. On the other hand, banana exports to the United States have declined since 2002, reaching $228 million in 2004 compared to $256 million in 2002. Ecuador expects to increase significantly its exports of tuna in pouches due to the inclusion of the product in the ATPDEA.

Foreign direct investment (FDI) has risen moderately over the last few years, from $1.28 billion in 2002 to $1.4 billion in 2003. The oil sector accounted for most of the increase. FDI in other sectors 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 potential investment benefits associated with the ATPA/ATPDEA, it will need to improve its investment climate by providing greater transparency and certainty for foreign investors.

***Expropriations*:** While claims of expropriation have been infrequent, two foreign investors have outstanding claims based on land and squatter disputes. Under Ecuadorian law, individuals have the right to petition a judge to establish the appropriate price for expropriated holdings. The Agrarian Development Law restricts the grounds for expropriation of agricultural land and provides for adjudication of disputes in the courts. Foreign and domestic investors are treated equally under the law. The extent to which investors receive prompt, adequate and effective compensation varies from case to case. Under Ecuador's Bilateral Investment Treaty (BIT) with the United States (which entered into force in May 1997), expropriation can only be carried out for a public purpose, in a nondiscriminatory manner, and upon payment of prompt, adequate, and effective compensation.

Arbitral Awards: The U.S.-Ecuador BIT provides for international arbitration of disputes at the investor's option. Ecuador is a member of the International Centre for Settlement of Investment Disputes (ICSID). In 2004, one U.S. company won an arbitral award in a dispute over the company's eligibility for value-added tax (VAT) refunds, based on a contract with the government, but shortly after the award was announced, Ecuador's Solicitor General (Procurador) launched an investigation of the company. He subsequently declared there were legal grounds to void the company's contract and seize its considerable assets in Ecuador. The Procurador does not have the final word on the matter and the case is currently being reviewed by other Government entities. The Procurador has also sought a judicial review of the award, which is still pending.

There are other high profile legal cases brought by and against foreign companies. In early 2005, Ecuador modified the Arbitration and Mediation Law to prohibit international arbitration if the national interest could be affected. This appears to be inconsistent with Ecuador's obligations under the BIT and the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. This is one of many issues that the United States is addressing in the current FTA negotiations.

Reverse Preferences: The U.S. Government has no indication that Ecuador has granted such preferences to the products of a developed nation.

Intellectual Property**:** Ecuador's intellectual property regime is governed by the "Law on Intellectual Property" adopted in 1998. The law provides criminal and administrative relief to right holders. 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. Also applicable is Andean Community Decision 486 (the Common Regime on Industrial Property), which improves intellectual property protection by expanding the definition of patentability and strengthening data exclusivity.

The Government of Ecuador 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;
- Geneva Phonograms Convention;; and
- Paris Convention for the Protection of Industrial Property.

In April 2001, USTR removed Ecuador from its Special 301 Watch List to reflect improvements in Ecuador's intellectual property regime. However, weakened enforcement (particularly in the area of pharmaceuticals) led to the re-listing of Ecuador on the Watch List in 2003. Ecuador remained on the Watch List in 2004.

Government of Ecuador health authorities continue to approve the commercialization of new drugs that are the bioequivalents of already approved drugs, thereby denying the originator companies the exclusive use of their data. In effect, the Government of Ecuador is allowing the test data of registered drugs from originator companies to be used by others seeking approval for their own version of the same product. Some local pharmaceutical companies that produce or import pirated drugs have successfully blocked improvements in patent protection and enforcement of data protection.

There is widespread local trade in pirated audio and video recordings, computer software, and counterfeit activity regarding brand name apparel. However, local registration of unauthorized copies of well-known trademarks has been reduced.

The IPR law extends patent protection for 20 years from the 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. Although Andean Community Decision 486, issued in late 2000, represents a significant improvement over Decision 344, it still does not provide the desired level of protection for "second use" patents.

Producers of branded pharmaceuticals are concerned that the "Law on Generic Drugs", which was passed in 2000, enshrines discrimination against branded pharmaceuticals into law. The law mandates that Government entities buy only generic drugs. The law also lowers drugstore gross profit margins on branded medicines to 20%, while maintaining the margins for generic drugs at 25%. Under the law, drugstores are also required to devote a certain percentage of shelf space to generic pharmaceuticals. The Government is proposing to reduce further permissible profit margins on pharmaceutical sales.

Printed and recorded works are protected under the IPR law for the life of the author plus 70 years. Computer programs and software are also protected. However, pirated CDs, DVDs and computer software (at prices beginning at $1) are widely sold, without consistent enforcement of the IPR laws. Ecuador's Education Law appears to allow educational institutions to copy software without regard to such protections.

Trademark registration is permitted for renewable 10-year periods. Registration may be canceled if the mark is not used in the Andean region for a period of 3 years. The IPR law provides protections for well-known trademarks. A trademark registration cannot be voluntarily surrendered without the consent of the licensee.

The IPR law provides protection for industrial designs and extends protection to industrial secrets and geographical indicators. Semiconductor chip layouts are protected. Plant varieties and other biotechnology products are also protected. However, in 2004, U.S. Customs seized and destroyed cut flower exports by Ecuadorian companies that were not paying royalties to holders of plant variety rights.

The Ecuadorian Intellectual Property Institute (IEPI) was established in January 1999 to handle patent, trademark and copyright registrations on behalf of the Ecuadorian Government. IPR enforcement remains a serious problem in Ecuador. The Ecuadorian National Police and the CAE are responsible for carrying out IPR enforcement orders, but they often do not recognize the authority of the IEPI or enforce IEPI orders. Some foreign companies have complained that authorities have been increasingly reluctant to issue and carry out IPR enforcement orders. IEPI has reduced its enforcement efforts due to funding and staffing constraints and an apparent reduction in the Ecuadorian government's emphasis on IPR protection. Industry sources have also expressed concern about the premature dismissal of the former president of IEPI and the possible politicization of the institution.

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

Workers' Rights: Ecuador has ratified all eight of the ILO core labor conventions.

Ecuador's current Labor Code: provides for a 40-hour workweek, 15 calendar days of annual paid vacation, restrictions on child labor, general protection of worker health and safety, minimum wages and bonuses, maternity leave and employer-provided benefits. By law, companies must distribute at least 15 percent of pre-tax profits to their employees. Rigid laws on job tenure make it difficult to lay-off permanent workers.

Most workers in the private and parastatal sectors have the constitutional right to form trade unions, and local law allows for unionization of any company with more than 30 employees. Private employers are required to engage in collective bargaining with recognized unions. The Labor Code provides for resolution of conflicts through an arbitration and conciliation board process, in which representatives of labor, business, and the government participate. Although the Code prohibits discrimination against union members, the Department of State's annual *Human Rights Report* indicates that the government's protection of these rights is inadequate.

Many employers use subcontractors to obtain additional flexibility in hiring and firing workers, and to avoid costly benefits. In addition, some companies have taken advantage of the law that prohibits unions from organizing at companies that have fewer than 30 employees by sub-contracting with several shell companies, each of which has fewer than 30 workers. Under the Labor Code, these subcontracted workers have no legal right to freedom of association or right to bargain collectively. Nor do they have legal protection against anti-union discrimination. New regulations aimed at restricting the use of subcontractors to circumvent trade union rights through shell subcontractors were issued in 2004.

Except for public servants and workers in some parastatal companies, workers by law have the right to strike. Legally striking employees are entitled to full pay and benefits and may occupy the premises under police protection, although there are restrictions on solidarity strikes. Most public sector employees are technically prevented from joining unions, but most are members of a labor organization. In fact, most labor actions are illegal strikes by public employees. Although trade union political influence has declined in recent years, labor groups occasionally attempt to stage national strikes to protest economic reform measures. Ecuador has recognized the need to reform and modernize its labor law.

In practice, enforcement of laws protecting the rights of workers is weak. In an isolated but highly publicized incident, violent tactics were employed to break a strike on the Los Alamos banana plantations in 2002, and resulted in serious injury to workers. The Government of Ecuador issued new police procedures on responding to strikes in 2003 and no similar incidents have occurred.

The Constitution and the labor code prohibit forced labor. The law also prohibits the employment of persons under the age of 15, except in special circumstances such as an apprenticeship. Enforcement of this provision is uneven, especially in rural communities. In urban areas, many children under the age of 15 work in family businesses in the informal sector. Child labor is still common on plantations, large and small. In 2004, Ecuador hired child labor inspectors in an effort to combat the child labor problem. Ecuador is working with the ILO International Programme for the Elimination of Child Labor (ILO-IPEC) on a Time-Bound Program to eliminate the worst forms of child labor.

Most organized workers in state industries and in the formal sector (private enterprises) earn more than the minimum wage and are provided other significant benefits through collective bargaining. The majority of workers work in the large informal sector, without recourse to the minimum wage or legally mandated benefits.

Economic Conditions: Ecuador adopted the U.S. dollar as its national currency in 2000 in response to the most serious economic crisis in its history. Dollarization, combined with recent responsible fiscal policies, has helped to tame inflation and bring the country back to positive growth. However, to sustain dollarization in the medium term Ecuador must enact structural economic reforms and improve its ability to compete in the global marketplace. According to the Central Bank of Ecuador, Ecuador’s GDP grew an estimated 2.7% in 2003, and 6.6% in 2004. This increase was largely the result of increased oil exports and record high oil prices.

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

Ecuador requires prior authorization from various government agencies, for example from the Ministry of Agriculture (MAG), for importation of most commodities, seeds, animals, and plants. In addition, the Ministry of Health must give its prior authorization (i.e. sanitary registration) before the importation of processed, canned and packed foods, as well as food ingredients and beverages, cosmetics, and pharmaceutical products. Another administrative hurdle agricultural importers must overcome is the MAG's use of "Consultative Committees" (Committees). The Committees, mainly composed of local producers, often advise the MAG against granting import permits to foreign suppliers. The MAG often requires that all local production be purchased at high prices before authorizing imports.

Ecuador also maintains a pre-shipment inspection (PSI) regime. PSI by an authorized inspection company (both before shipment and after specific export documentation has been completed at the intended destination) results in delays far exceeding the time saved in customs clearance. Customs authorities sometimes perform spot-checks, causing further delays. These practices generally add 6 to 8 weeks to shipping times. The expedited clearance provisions that the United States is seeking in the U.S.-Andean FTA would address these delays.

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

Ecuador's foreign investment policy is governed largely by the national implementing legislation for Andean Community Decisions 291 and 292, of 1991 and 1993, respectively. Foreign investors are accorded the same rights of entry as Ecuadorian private investors, may own up to 100% of enterprises in most sectors without prior government approval, and face the same tax regime. There are no controls or limits on transfers of profits or capital. There are no performance requirements, with the exception of the automotive sector. As stated above, Ecuador entered into a BIT with the United States (which entered into force in May 1997), guaranteeing access to binding international arbitration.

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

WTO Agreements**:** Ecuador acceded to the WTO in January 1996. Not all non-tariff barriers have been eliminated. Those remaining include requirements for prior authorization for certain goods before the Central Bank can issue an import license, and the Ministry of Agriculture's denial of import permits for certain agricultural products in order to protect local producers.

Participation in Free Trade Negotiations: In May 2004, the United States initiated free trade agreement negotiations with three Andean nations – Colombia, Ecuador and Peru. Bolivia is participating as an observer in the negotiating sessions and as a full participant in the trade capacity building talks.

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

Subsidies or Other Requirements that Distort International Trade**:** Ecuador does not use export subsidies.

Trade Policies that Revitalize the Region**:** Ecuador acceded to the Andean Community in early 1993. Ecuador's trade is gradually reorienting toward the Community. In 2003, the Andean Community absorbed 17.47 percent of Ecuador's exports and provided 22.8 percent of its imports**.** Ecuador also extends preferential tariffs on a limited number of products to member states of the Latin American Integration Association (ALADI).

Narcotics and Counter-terrorism Cooperation**:** On September 16, 2004, Ecuador received full certification for its cooperation with the United States on counter-narcotics issues under the Foreign Assistance Act. With the support of the U.S. Government, Ecuador maintains an active drug detection and interdiction program. Its programs focus on demand reduction, interdiction, training in police investigations, drug detection, information sharing and control of money laundering. A program initiated in 1996 targets the modernization of the judicial system. However, Ecuador's current money laundering law is largely ineffective and needs to be reformed. A proposal to reform the money laundering law was presented to the Ecuadorian Congress in 2004, but little progress has been made in getting it enacted.

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. Nonetheless, it appears that, despite Ecuadorian efforts, transshipment of narcotics through Ecuadorian maritime and land routes to the United States is widespread.

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

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

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

Government Procurement: Ecuador is not a signatory to the WTO Agreement on Government Procurement. Government procurement of goods, equipment, and services is regulated by the Public Contracting Law, issued in 2001. Purchases made by the state-owned telephone and electric power distributors and by military-owned companies are not required to follow this law. Foreign bidders must be legally represented in Ecuador. Ecuadorian companies and those of the foreign country sponsoring the bid may participate in public bids financed by government-to-government credits. Association with an Ecuadorian company is only required for the execution of government-to-government public works contracts and those that are carried out with direct or supplier credits. For these types of contracts, the foreign company needs to retain at least double the capital of its Ecuadorian associate. Foreign contractors may not use national credit for the execution of their contracts.

Procurement by public invitation involves various steps. The government agency usually inserts announcements in newspapers and trade journals inviting potential suppliers to present bids for specific types of equipment or services desired. Bid documents containing detailed information must be purchased by the interested party. The bids must be completed in Spanish, using the format specified by the inviting agency, and be delivered to the contracting agency in person.

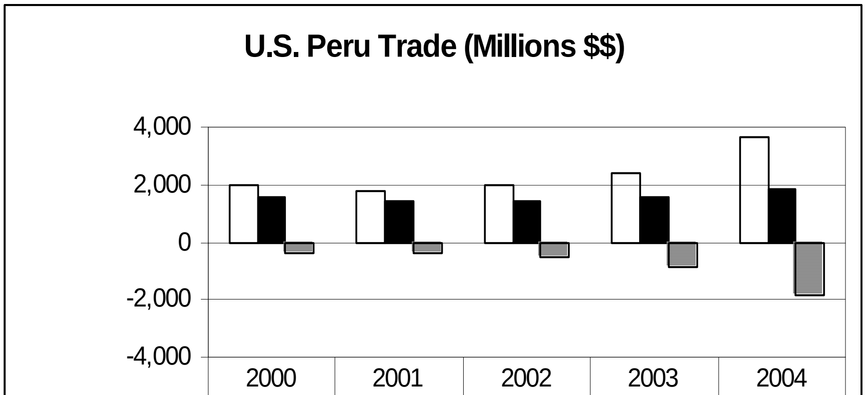
Bidding for government contracts can be cumbersome, and competitors from other countries do not operate under the restrictions of the U.S. Foreign Corrupt Practices Act (FCPA). There is no formal discrimination against U.S. suppliers.

Under the Public Contracting Law, the government requires either a bank-issued guarantee or an insurance guarantee to cover 5 percent of the contract, to ensure execution of the contract. (Military contracts, however, permit only bank-issued guarantees.) A guarantee of money advances made by the Government is also required from the supplier. Before a Government contract is approved, it must have authorization from both the Comptroller and Attorney General.

The Public Contracting Law prohibits government institutions from purchasing used equipment.

PERU

Population: 27,544,305 (July 2004 est.)
GDP per capita, purchasing power parity: $5,100 (2003 est.)
Source: 2004 World Fact Book – CIA



	2000	2001	2002	2003	2004
U.S. Imports	1,985	1,806	1,953	2,416	3,685
U.S. Exports	1,580	1,450	1,441	1,552	1,858
Trade Balance	-406	-355	-512	-864	-1,827

Effect of the ATPA/ATPDEA: The growing importance of the U.S. market for Peruvian exporters is reflected by the almost doubling of the U.S. share of Peru's total exports from about 16 percent to 29 percent between 1994 and 2004. Exports under ATPA/ATPDEA have assumed an increasingly important role in Peru's economy, as exporters have discovered that the ATPA/ATPDEA offers greater advantages than benefits offered under the GSP. Of the $3.7 billion of goods that Peru exported to the United States in 2004, $1.6 billion worth of goods entered the United States under ATPA/ATPDEA. Between 1997 and 2004, Peru supplied 28 percent of all Andean exports under ATPA.

Under original ATPA benefits, four products (copper, asparagus, jewelry and zinc) of the roughly 5,500 covered items represented more than 90 percent of the value of ATPA exports from Peru. In 2004, the United States imported copper valued at $458 million and asparagus valued at $98 million. Under the ATPA/ATPDEA, large increases have taken place in a wide range of non-traditional exports such as apparel, jewelry and various agricultural products. Peruvian exports to the United States under ATPA/ATPDEA more than tripled through 2003 and rose by an additional 25 percent in 2004. This momentum propelled total Peruvian export increases to the United States of 24 percent in 2003 and 53 percent in 2004.

Peru’s textile and apparel sector, a key job-provider, anticipates continued substantial growth as a result of new ATPDEA benefits. Prior to the ATPDEA, Peru's apparel exports entered the United States with tariffs averaging about 21 percent. With the duty-free treatment provided for under the ATPDEA, the National Society of Industries (SNI) estimates that apparel exports to the United States from Peru could increase from $400 million in 2002 to $2 billion in 2006. The Government of Peru estimated that exports of products made with local alpaca fiber, included under the ATPDEA, grew by 25 percent in 2004. Industry and government sources consider that the textile and apparel industry could generate up to 200,000 new jobs (including in cotton cultivation) in Peru through 2006 (compared with 270,000 in 2004). Due to the high rate of unemployment and underemployment, economic development is vital to job creation in Peru.

Increased cotton cultivation in support of Peru’s apparel industry could serve as a valuable new alternative to illicit coca growing. During the first ten years of the ATPA, asparagus exports were the most significant direct alternative development benefit of the program. The asparagus producers estimate that 60,000 people worked directly in asparagus cultivation and processing in 2004.

Expropriations: According to Peru’s Constitution, the Government can only expropriate private property on public interest (e.g. for public works projects) or national security grounds. Any expropriation requires the passage of a specific act of the Congress. The Government of Peru has expressed its intention to comply with international standards concerning expropriations. Adequate payment to owners of agricultural lands expropriated by the Peruvian Government in the late 1960s and early 1970s is still at issue. In 2002, the Government of Peru committed to the U.S. Government to resolve one such claim involving an American company.

Arbitral Awards: Peru accepts binding international arbitration of investment disputes between foreign investors and the state, in accordance with national legislation or international treaties in force. A law permitting international arbitration of disputes between foreign investors and the Government or state-controlled firms was issued by decree in December 1992, and such recourse to arbitration was provided for in the 1993 Constitution. Although the Government of Peru accepts binding arbitration, on several occasions parastatal companies disregarded unfavorable judgments. Instead, they challenged the arbitration awards in national courts, leading to significant delays in their resolution, and, ultimately, decisions by the companies to abandon the cases. Peru is a party to the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards.

Peru's adherence to the ICSID Convention has improved the Government's ability to conclude bilateral investment agreements. Disputes between foreign investors and the state regarding contracts predating Peru’s accession to the ICSID Convention in 1993 must still be submitted to national courts. “Juridical stability agreements” between an investor and the government permit investors to submit contract disputes with the Government to national or international arbitration by common agreement. There are two types of juridical stability agreements under Peruvian law: tax stability agreements, which freeze the tax regime for individual companies working in the natural resource sector; and legal stability agreements, which seek to ensure a level regulatory environment for all sectors.

Several private organizations, including the American Chamber of Commerce and the Lima Chamber of Commerce, operate private arbitration centers. The quality of these centers varies, however. In one 2001 case involving the Lima Chamber of Commerce’s arbitration center, a U.S. investor discovered irregularities in the way the case had been handled by the center.

Reverse Preferences: The U.S. Government has no indication that Peru has granted such preferences to the products of a developed nation.

Intellectual Property: Protection of intellectual property rights (IPR) in Peru has improved significantly over the past decade, but still falls short of U.S. and international standards in several areas. After two years on the U.S. Government's "Priority Watch List" under the Special 301 provisions of the 1988 Trade Act, Peru was moved to the "Watch List" in 2001 in recognition of progress on copyright issues. In 2003 and 2004, Peru remained on the Watch List due to concerns about Peru's enforcement of its IPR laws, particularly with respect to the relatively weak penalties that have been imposed on IPR violators. Although the Peruvian government in July 2004 increased the minimum penalty for piracy to four-years of imprisonment, there have yet to be any convictions under the new law. Other factors contributing to continued placement on the "Watch List" include Peru's lack of protection for confidential test data that is submitted for the marketing approval of pharmaceutical and agrochemical products.

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 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;
- Paris Convention for the Protection of Industrial Property;
- and Brussels Satellites Convention.

In December 2001, the Public Ministry created the first office of a special prosecutor for the enforcement of IPR, thus increasing the efficiency and quantity of IPR enforcement actions. In August 2002, the Interior Ministry entered into an agreement with the IPR administrative agency, INDECOPI, to facilitate greater interagency cooperation on IPR enforcement actions, including police raids.

Sound recordings, textbooks, books on technical subjects, motion picture videos and software are widely pirated. While the Government, in coordination with the private sector, has conducted numerous raids over the last few years on large-scale distributors and users of pirated goods and has increased other types of enforcement, piracy continues to be a significant problem for legitimate owners of copyrights. However, progress is being made on the government's legalization of computer software: the Government published a decree in February 2003 requiring all government entities to use legal software and establish effective controls to ensure such legal use by March 31, 2005.

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

U.S. drug manufacturers are concerned that Peru does not provide sufficient protection for data submitted to regulatory authorities in connection with marketing approval for pharmaceutical products. The Government of Peru does not provide for a fixed period of data exclusivity for pharmaceutical producers. Peru's health regulatory agency provides sanitary registrations to copies of innovative pharmaceutical products. Peru also does not provide the desired level of patent protection to second-use innovations.

Extradition: A new extradition treaty entered into force in August 2004. It specifies a list of extraditable offenses and permits the extradition of nationals.

Workers' Rights: Peru has ratified all eight of the ILO core labor conventions.

The Constitution and statutes provide for the right of association. About 5 percent of the formal sector workforce of 5 million belongs to organized labor unions. Peru's 2004 total workforce was 13 million. Approximately 8.3 million (62 percent) work in the informal sector, with 5 million workers employed in the formal sector. About 91 percent of the economically active population has some kind of employment, but 57 percent work less than 35 hours a week or earn less than is necessary to cover the minimum basic consumption needs of a typical household in Peru.

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

In the past, labor advocates asserted that laws promulgated by the Fujimori administration in the 1990s, as well as provisions in the 1993 Constitution, failed to protect the rights of workers to form unions and bargain collectively. In January 2003, President Toledo signed into law legislation to address the primary concerns raised by the ILO with respect to Peru's labor code. The 2003 labor law includes provisions to allow apprentices to join unions, reduces to 20 the number of individuals required to form a union, recognizes the right to strike and allows for collective bargaining by sector.

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

The 2003 labor reforms remedied some of the ILO's longstanding concerns over Peruvian law in the areas of collective bargaining and the right to strike. The new law allows unions to bargain collectively at both the firm and sector levels, and removes a 1992 requirement that a majority of workers in an enterprise, regardless of union membership, must vote in favor of any strike. A second decision by the Supreme Court in March 2004 guaranteed the right of industry-wide collective bargaining by workers in the civil construction industry.

In the area of illegal dismissals for union activity, the main union confederations criticized the Employment Promotion Act, amended in 1995 and 1996, for restricting the rights of workers. Unions complained that the law eliminated the right of dismissed workers to compulsory reinstatement if they prove that employers dismissed them unjustly. In practice, companies sometimes offered financial compensation instead of reinstatement as the legislation allows. Although the law prohibits companies from firing workers solely for involvement in union activities, this provision was not enforced rigidly. In November 2000, the ILO's Committee of Freedom of Association recommended that the Government enforce legislation protecting workers from dismissal because of membership in a union or participation in union activities. In the first such action by the judiciary, in September 2002 the Constitutional Tribunal ruled that a major company, Telefonica, had to rehire over 400 workers suspected of being fired for their union affiliation.

In July 2002, Congress passed a law regarding collective dismissals that reinstated workers' rights in this area. During 2003 and 2004 over 14,000 former state workers received some form of compensation for dismissals during the Fujimori era, including payments, reinstatement into their old jobs or reassignment to other jobs in the state sector. At the end of 2004, the Government was considering petitions from other workers who claimed coverage under the 2002 law. The workers were among those deemed to have been fired unjustly during the Fujimori Administration.

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

The Constitution recognizes the right of public and private sector workers to organize and bargain collectively. However, it specifies that the right to strike must be exercised in harmony with broader social objectives, such as ensuring that citizens are not harmed by long strikes resulting in the loss of health care or fire protection services. As stated above, labor regulations provide that workers may form unions based on their occupation, employer affiliation or geographic territory. The law does not prohibit temporary employees from joining a union, but they may not join the same union as permanent workers.

The Constitution prohibits forced or bonded labor, and there were no reports of forced labor during 2004. The law specifically prohibits forced or bonded labor by children. Forced labor previously was found in the gold mining industry in the Madre de Dios area. However, the changing nature of the industry and government efforts to regulate it have at least partly addressed the problem. Child labor is also found in certain sectors of the informal economy -- in domestic service, among street vendors, and related to trafficking in persons. The Peruvian Government is addressing these areas through a ten-year plan to eliminate forced labor. Given the largely informal nature of the Peruvian economy, this is a challenging task.

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

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

While occupational health and safety standards exist, labor advocates argue that the Government dedicates insufficient resources to enforce existing legislation. The Ministry of Labor receives worker complaints and intervenes in cases. When firms are found to be in violation of the law, the Government sanctions them with fines or, in some cases, closure. No provisions exist in the law for workers to remove themselves from potentially dangerous work situations without jeopardizing their continued employment.

In cases of industrial accidents, the level of compensation awarded to the injured employee usually is determined by agreement between the employer and the individual involved. The worker does not need to prove an employer's culpability in order to obtain compensation for work-related injuries.

Economic Conditions: Over the past decade, Peru has been transformed by market-oriented economic reforms and privatizations that generated many of the conditions for long-term growth. Peru’s dynamic economic performance in 2004 contrasted sharply with turmoil elsewhere in South America. The country led the hemisphere with 5.1 percent real growth, driven by investment, domestic demand and exports. GDP in 2004 reached $67.1 billion. Inflation was 3.5 percent, the currency appreciated 5.5 percent over the year and Lima unemployment fell to 8.8 percent. GDP per capita reached $2,440, up significantly from $2,100 in 2001. Fiscal accounts were under control, though the deficit hit 1.1 percent of foreign reserves, which closed the year at $12.6 billion. External debt was 45.2 percent of GDP. Banking and retail services, mining, manufacturing, agriculture and fishing are key economic sectors.

Peruvian exports reached $12.5 billion in 2004, with imports of $9.8 billion, producing a trade surplus of $2.7 billion. ATPA/ATPDEA benefits may propel exports above $13.8 billion in 2005 (provided the Peruvian Government continues to improve the investment climate). Peru’s major trading partners are the United States, China, European Union, Japan, Colombia, Brazil and Venezuela. Approximately 29 percent of Peruvian exports are destined for the United States and 20 percent of Peruvian imports come from the United States. Exports include fishmeal, copper, zinc, gold, petroleum, coffee, sugar, textiles, and apparel. Imports include machinery, vehicles, processed food, petroleum and steel. Peru’s stock of FDI was over $12.9 billion in 2004, with the United States, Spain and Britain the leading investors. FDI is concentrated in privatized sectors such as mining, electricity, telecommunications, and finance.

Peru’s economy is one of the better-managed in Latin America, but challenges remain. Growth should be near 5 percent in 2005, driven by construction, investment, domestic demand and ATPA/ATPDEA-related exports, with inflation of 2.5 percent. Tax collections are currently 13.5 percent of GDP. The Peruvian Government still faces strong social pressures to reduce its high rates of poverty (52 percent) and unemployment and underemployment (56 percent). Maintaining long-term growth will require improving the investment climate, reducing corruption and completing other reforms.

Market Access: Tariffs apply to virtually all goods exported from the United States to Peru, although rates have been lowered over the past few years. The government maintains some "temporary" tariff surcharges on agricultural goods in an effort to protect local production, assure fiscal revenues, and promote domestic investment in the sector. Under the current system, a 12 percent tariff applies to 45 percent of the products imported into Peru; 4 percent and 7 percent tariffs apply to about 23 percent and 15 percent of goods, respectively; and 17 percent and 20 percent tariffs apply to most of the rest. A few products, mostly agricultural, are assessed rates of 5 percent (because of the additional "temporary" tariffs). In March 2002 the tariff rates for most capital goods was reduced from 20 percent and 12 percent to 7 percent. On December 31, 2003, the Ministry of Economy and Finance announced the reduction of tariffs from 7 percent to 4 percent for more than one thousand capital goods, which account for 95 percent of the items previously set at the 7 percent level.

For agricultural imports, Peru has, in theory, a two-tier import tariff system (12 percent and 20 percent), but in reality it has four levels: 4 percent, 12 percent, 17 percent and 25 percent. Additionally, all products are subject to a value added tax (VAT) of 19 percent, although discounts have been granted to local production in some cases. Most products of interest to U.S. agricultural exporters are subject to high import duties. Meats, offal, dairy products, ice cream, processed potatoes, beans, fruit and vegetables (fresh and processed), rice, wheat, confectionery, chocolate, pasta, and pastry are assessed an import duty of 25 percent. Malt, wine, and beverages are assessed a 17 percent import duty, while yellow corn is subject to a 12 percent duty. Inputs such as seeds, cattle for reproduction, semen and fertilizers are imported into the country duty-free. Peru's bound levels for agricultural products under the WTO are quite high, from 80 percent to 141 percent.

Imports of "sensitive" products, including corn, rice, sugar, and powder milk, plus scores of products derived from these sensitive products, are subject to a price band. This levy is the difference between the minimum import price and an international reference price plus an adjustment for insurance, freight and other factors. On September 27, 2002, the Government of Peru increased the number of related products for categories of "sensitive" products. This new law principally affects U.S. imports of dairy products, and in September 2002, import duties on sugar were raised from 40 percent to 100 percent.

Some non-U.S. exporters to Peru have preferential access to the Peruvian market because of Peru's bilateral tariff reduction agreements. A top U.S. agricultural market access priority is the elimination of the price band system.

WTO Agreements: Peru was a founding member of the WTO and was a contracting party to the GATT beginning in 1948.

Participation in Free Trade Negotiations: In May 2004, the United States initiated free trade agreement negotiations with three Andean nations – Colombia, Ecuador and Peru. Bolivia is participating as an observer in the negotiating sessions and as a full participant in the trade capacity building talks. The United States intends to include Bolivian in the agreement at a later stage. The four Andean countries collectively represented a market of about $8.5 billion for U.S. exports in 2004, and were home to about $7.2 billion in U.S. foreign direct investment.

Peru is an active participant in FTAA negotiations. Peru hosted an FTAA vice-ministerial meeting in 2001. Peru is also a member of the Asia-Pacific Economic Cooperation Forum (APEC).

Subsidies or Other Requirements that Distort International Trade: Almost all non-tariff barriers, including subsidies, import licensing requirements, import prohibitions, and other quantitative restrictions have been eliminated. However, the following imports are banned for a variety of reasons: several insecticides, fireworks, used clothing, used shoes, used tires, radioactive waste, cars over 5 years old, and trucks over 8 years old. Used cars and trucks that are permitted to be imported must pay a 45 percent excise tax – compared to 20 percent for a new car – unless they are refurbished in an industrial center in the south of the country upon entry, in which case they are exempted entirely from the excise tax. Import licenses are required for firearms, munitions and explosives, chemical precursors (since these can be diverted to illegal narcotics production), ammonium nitrate fertilizer, wild plant and animal species, and some radio and communications equipment.

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

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

The CET agreement established a unified tariff schedule that was to have become effective at the end of 2003. In the second half of 2002, the Andean members started to negotiate the CET in order to provide initial offers for the FTAA, and reached agreement on 62 percent of tariff items. Peruvian industry representatives and economists raised concerns that negotiations of a CET on the remaining 38 percent of items could lead to increased tariffs on several consumer products and lower competitiveness. As a result, finalization of negotiations on the CET with Andean neighbors will be difficult to achieve. No part of the CET has been implemented.

Peru also extends preferential tariffs on a limited number of products to member states of the ALADI, and has negotiated a free trade agreement with the countries of Mercosur.

Narcotics and Counter-terrorism Cooperation: On September 16, 2004, Peru received full certification for its cooperation with the United States on counter-narcotics issues under the Foreign Assistance Act. Peru is the second largest cocaine producer in the world and a major exporter of high purity cocaine and cocaine base to markets in South America, Mexico, the United States, and Europe.

About 90 percent of the coca leaf harvested in Peru is used to produce cocaine or its intermediate products. The remainder is used by the local population or for legal medical and commercial consumption in the United States and Europe. Dense coca cultivation is increasing in new areas outside the traditional source zones. With U.S. Government support, Peru eradicated almost 10,000 hectares of coca in 2004. Alternative development programs supported legal productive activities on almost 20,000 hectares. Opium latex seizures are one indication of an upward trend in poppy cultivation along Peru's Andean ridge. Although the Government has not been able to measure the size of the opium poppy crop, Peruvian National police eradicated almost 100 hectares of opium poppy in 2004.

Drug traffickers continue to move coca products out of Peru by land, air, and sea, as well as opium latex and morphine across northern land borders, to U.S., South American and European markets. Mexican trafficking organizations are implicated in using Peru as a primary source of cocaine base and cocaine hydrochloride (HCl). Maritime smuggling of larger cocaine shipments is the primary method of transporting multi-ton loads of cocaine base and HCl. Law enforcement efforts in 2004 focused on maritime and port investigations and interdictions that produced record-breaking cocaine seizures. In 2004, approximately 5.7 metric tons of cocaine base and 7.11 metric tons of cocaine HCl were seized. The U.S. Government and the Peruvian Government have cooperated to improve port security and to address increased maritime smuggling at key Peruvian port locations. Importantly, the fledgling National Port Authority (APN) made very significant advances in promoting the timely attainment of International Ship and Port Security (ISPS) requirements. The U.S. Government is continuing to work with the Peruvian Government to enhance their capacity to identify and inspect suspect cargo shipments.

Peru's Congress passed a new law in July 2004 to strengthen controls over precursor chemicals used in cocaine processing. This will go into effect in early 2005. Less positive is the increased support by members of Congress for cocalero demands for more permissive coca laws. In July of 2004, the U.S. Government designated Fernando Zevallos as a drug kingpin and froze his assets in the United States, including those of his airline Aerocontinente, which has since gone out of business. The United States and Peru brought into force a new extradition treaty in August 2003. In 2004, Peruvian authorities approved requests to extradite two narco-traffickers from Peru to the United States

Although Peru is not a major financial haven, money laundering is endemic. Drug organizations transport million-dollar cash proceeds from the United States, Mexico, Colombia, and other Central/South American countries to Peru. Recently amended anti-money laundering legislation has broadened the definition of money laundering. However, procedural implementation, key currency reporting requirements, and asset forfeiture provisions are still lacking.

Peru is taking action against both international and domestic terrorism. For the second year in a row, President Toledo featured combating terrorism in his state-of-the-nation speech, and he has committed the Government to increased funding for projects in areas where Sendero Luminoso (SL) still operates on a limited basis. This action is deemed necessary because of growing indications that SL is allying itself with coca producers and narcotics traffickers, and is attempting to rebuild its base through expanding its influence in universities throughout Peru. The new National Defense and Security fund will provide $40 million to the police and military in 2005; some of this money will be used to support counterterrorism interests. The Peruvian Congress has created a national security system designed to improve intergovernmental cooperation and strengthen terrorism prosecutors. The National Police (PNP) Directorate of Counterterrorism works closely with the U.S. Embassy in counterterrorism activities. The PNP continues to break up SL camps and capture leaders. Peru aggressively prosecutes terrorist suspects. After the Constitutional Tribunal overturned numerous provisions in Fujimori-era terrorism laws in 2003, President Toledo issued new decree legislation and established the procedures for reviewing and retrying terrorism cases. Around 750 cases are being retried in 2005. Trial was set to begin in the first quarter of 2005 for eight SL members accused in the March 2002 bombing across the street from the U.S. Embassy that killed 10 people. Peru is a party to all 12 of the international conventions and protocols relating to terrorism. Peru, Colombia, and Brazil recently signed a border cooperation agreement that addresses terrorism and arms trafficking, along with other issues.

A June 2002 law passed by Congress allows prosecution of money laundering related to terrorism and also created the Financial Intelligence Unit (FIU) as a means to identify money laundering. Peru further strengthened its anti-money laundering legislation in July 2004. The law (1) included anti-terrorist finance activities among the FIU’s functions; (2) greatly expanded the FIU’s capacity to engage in joint investigations and information-sharing with foreign FIUs,; (3) enhanced the FIU’s capacity to exchange information and pursue joint cases with other agencies of the Peruvian government; and (4) requires that individuals and entities transporting more than $10,000 in currency or monetary instruments into or out of Peru file reports with Customs. The FIU may have access to these reports upon request. This legislation moves the country closer to fulfilling UN Security Council Resolution (UNSCR) 1383.

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

Chapter 4

SUMMARY OF FEDERAL REGISTER SUBMISSIONS

In compliance with section 203(f) of the ATPA as amended, USTR requested the views of interested parties (70 Fed. Reg. 23, February 4, 2005) on whether the countries designated as ATPDEA beneficiary countries in Presidential Proclamation 7616 of October 31, 2002, are meeting the eligibility criteria provided for in section 204(b)(6)(B) of the program.

USTR received four comments in response to its request. The full texts of the submissions are available at the Office of the United States Trade Representative Reading Room, 600 17th Street, NW, Washington, D.C. A summary of each submission follows.

Human Rights Watch (HRW) asserts that Ecuador has made little progress in addressing the violations of workers' rights identified by HRW in its September 2003 and September 2004 ATPA petitions, and therefore advocates the total or partial suspension of Ecuador's ATPDEA benefits. According to HRW, Ecuador does not meet the ATPA and ATPDEA workers' rights criteria of 19 USC 3202(c)(7) [Sec. 302(c)(7)], 19 USC 3202(d)(8) [Sec. 302(d)(8)], and 19 USC 3203(6)(B)(3) [Sec. 303(6)(B)(3)] because it does not uphold internationally recognized workers' rights. Ecuador allegedly fails to protect workers' rights regarding freedom of association, organization and collective bargaining, and child labor, has not adequately demonstrated a good faith intention to take steps necessary to satisfy the criteria, and has failed to fully implement the labor rights provisions of agreements it reached with the United States in October 2002 prior to receiving ATPDEA beneficiary status.

U.S./Labor Education in the Americas Project (US/LEAP) continues to believe that Ecuador does not meet the applicable worker rights eligibility criteria under the ATPA and ATPDEA. US/LEAP claims that despite substantial engagement by the U.S. administration, significant interest from members of the U.S. Congress, and extensive public attention, Ecuador has made virtually no progress on the key workers rights issues (namely, labor law deficiencies, inadequate labor law enforcement, and the test case posed by the Los Alamos banana plantation) that have been the subject of petitions, public comments and governmental consultations for over two years. In addition, US/LEAP alleges deficiencies in the new draft executive decree on subcontracting and that Ecuador has failed to address impunity and labor law violations regarding the 2002 Los Alamos violence. US/LEAP calls on USTR to suspend ATPDEA benefits for Ecuador.

ExxonMobil believes that certain actions of the Peruvian Tax Agency, SUNAT, and Peru's Ministry of Economy and Finance violate the mandatory criteria for ATPA benefits. New tax legislation, passed on December 16, 2004, does not allow the local ExxonMobil affiliate, Mobil Oil del Peru SRL ("Mobil"), to claim the reimbursement or offset Value Added Tax (VAT) credits acquired since Mobil entered the Peruvian jet fuel business in 2001. In line with international practice, Peruvian Customs has, until recently, considered jet fuel supplied to international carriers as an "export" and therefore exempt from VAT as defined by Section 54 of the Peruvian Customs General Customs Act. In its submission, ExxonMobil alleges that after auditing Mobil, SUNAT realized that the government owed large sums of money to businesses for tax credit reimbursement, and subsequently changed its interpretation of the Customs Act, thus denying all international carrier companies, including Mobil, VAT reimbursements. After complaints from business, the Peruvian Congress ultimately approved legislation reconfirming that all future jet fuel sales to international carriers are an export and exempt from VAT, but the legislation does not acknowledge the tax credit accumulated or the right to expeditious and timely reimbursement. Mobil representatives have met with key Peruvian agencies in an attempt to resolve this issue, but the Peruvian Congress has to date not granted relief from the new law.

E. & J. Gallo Winery is concerned about a recent lawsuit brought against it in Ecuadorian court by a local distributor, Andina Licores Cia. Ltd. Gallo indicated that the distribution agreement established that Andina Licores would be a non-exclusive distributor and that any dispute would be brought in and governed by the laws of the State of California. However, in September 2004 Andina Licores initiated legal action in the court of Guayaquil against Gallo, alleging that Gallo breached the distribution agreement. Andina Licores is seeking $75million in damages. Gallo fears an adverse judgment due to severe procedural irregularities and lack of due process. For instance, Gallo indicates that by the time it was able to obtain a complete copy of the complaint that was filed against it, the deadline set by the court for Gallo to submit evidence and raise arguments in its defense had already lapsed.

Chapter 5

OPERATION OF THE PETITION PROCESS

Pursuant to the procedures outlined in Chapter 1 – Description of the ATPA, in November 2003 USTR published a list of responsive petitions filed for review of the program. The notice listed twelve petitions. The review of five of those petitions has subsequently been terminated. Two of the matters were resolved through a negotiated settlement between the investor and the government (Nortel Networks with Colombia and Duke Energy with Ecuador). Two were terminated based on commitments to address the matter in the U.S.-Andean FTA negotiation (PhRMA petition relating to Ecuador and Peru). One review was concluded based on the matter having been adjudicated in Peruvian courts (Big 3 Marine).

The seven other petitions from the 2003 review have remained pending in order to monitor progress. These include three relating to worker rights in Ecuador (filed by the AFL-CIO, Human Rights Watch and U.S./LEAP), two involving gold trading companies in a dispute with Peru (Engelhard and Princeton Dover), one matter currently in international arbitration (Duke Energy versus Peru) and one in which compensation is being negotiated (between LeTourneau and Peru over an expropriation).

In November 2004, USTR published a list of four responsive petitions filed pursuant to the 2004 annual review of the program. The review of one of those petitions (American Cast Iron Pipe Company concerning Ecuador) was subsequently terminated as not relating to the eligibility criteria of the program. The review of the other three matters remains pending. These include petitions filed by Chevron Texaco and Electrolux Home Products involving Ecuador and one filed by Parsons Corporation involving Peru.

A number of the Federal Register notices relating to the ATPA reviews can be found at http://www.ustr.gov/Trade_Development/Preference_Programs/ATPA/Section_Index.html.

The Administration has also indicated in the context of the U.S.-Andean FTA negotiations that the Andean countries need to address such matters. In its November 2003 notification to Congress of its intent to negotiate the U.S.-Andean FTA, as well as in subsequent statements and contacts, the Administration has urged the resolution of these issues before the conclusion of the talks. In particular, it has called on Ecuador and Peru to ensure the fair and expeditious resolution of a number of disputes involving U.S. investors and Ecuador to address inadequate protection of worker rights. In addition, once in force, an FTA between the United States and the Andean countries would provide enhanced tools for addressing such issues in the future.