

# Fourth Report to the Congress on the Operation of the Andean Trade Preference Act as Amended

April 30, 2009



*prepared by*

THE OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE

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

**April 30, 2009**

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## EXECUTIVE SUMMARY

The Andean Trade Preference Act (ATPA), as amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA) (jointly 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 that 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 fourth such report, and covers the period 2007 through 2008, 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 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, as amended, was set to expire on December 31, 2006, but Congress has enacted several extensions. Most recently, Congress extended the program through December 31, 2009 for Colombia and Peru, and through June 30, 2009 for Ecuador and Bolivia. With respect to Ecuador, the country will continue to be a beneficiary of the program through the end of 2009 unless the President determines, before June 30, 2009, that Ecuador is not meeting the program's eligibility criteria. Bolivia may also be eligible for benefits through December 31, 2009, but only if the President determines, before June 30, 2009, that Bolivia is satisfying the program's eligibility criteria.

On September 15, 2008, the President designated Bolivia as a country that had failed demonstrably over the previous 12 months to adhere to its obligations under international counternarcotics agreements and to take the measures set forth in the Foreign Assistance Act of 1961. On November 25, 2008, based on Bolivia's failure to meet ATPA/ADPDEA eligibility criteria related to counternarcotics cooperation, the President suspended Bolivia's designation as a beneficiary country under the ATPA/ATPDEA, effective December 15, 2008. Bolivia's designation remains suspended at this time.

The objectives of the ATPA/ATPDEA are to promote broad-based economic development, diversification of exports, consolidation of democracy, and to 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 the ATPA/ATPDEA beneficiary countries. The four Andean countries collectively represented a market of about \$21.5 billion for U.S. exports in 2008, and were home to about \$13.3 billion in U.S. foreign direct investment in 2007. Thus, the ATPA/ATPDEA has benefited the trade of both the Andean region and the United States.

In furtherance of the ATPA/ATPDEA's objectives, in May 2004, the United States initiated free trade agreement (FTA) negotiations with Peru, Colombia and Ecuador, with Bolivia participating as an observer. On December 7, 2005, the United States and Peru concluded negotiations on the United States-Peru Trade Promotion Agreement (PTPA) and signed the agreement on April 12, 2006. The PTPA entered into force on February 1, 2009. The United States and Colombia concluded negotiations on the United States-Colombia Trade Promotion Agreement (CTPA) on February 27, 2006 and signed the agreement on November 22, 2006. Negotiations with Ecuador took place through March 2006, but did not conclude. The United States did not initiate negotiations on an FTA with Bolivia.

The report is organized as follows. Chapter 1 briefly describes the key sections of the ATPA/ATPDEA, including the ATPDEA requirements and the designation of ATPDEA beneficiary countries. Chapter 2 highlights trade between the United States and the ATPA/ATPDEA beneficiary countries. This chapter documents that U.S. trade with the countries has continued to grow substantially during the two years since the last report on the operation of the ATPA/ATPDEA. Two-way trade increased about 4 percent in 2007 and 36 percent in 2008, though the latter increase largely reflected a rise in the value of petroleum imports. Chapter 3 evaluates the beneficiary countries' compliance with the eligibility criteria of 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.

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

## Chapter 1

### DESCRIPTION OF THE ATPA/ATPDEA

#### Key Provisions

The ATPA was enacted 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 provided reduced-duty or duty-free treatment to most of these countries' exports to the United States.

The ATPDEA, which renewed and amended the ATPA, was enacted on August 6, 2002, as part of the Trade Act of 2002. The renewal of the ATPA applied as of December 4, 2001, the date on which the ATPA had expired. The ATPDEA program provides for the possibility of enhanced trade benefits for the four ATPA beneficiary countries. The ATPDEA amended the 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.

In response to the requirement in Section 3103(d) of the Trade Act of 2002, USTR 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 has conducted annual reviews of petitions submitted. The President has the authority to withdraw or suspend ATPA/ATPDEA designation, or withdraw, suspend or limit benefits, if a country's performance under the eligibility criteria has been found to be no longer satisfactory. On November 25, 2008, after a period for public comment, the President suspended Bolivia's designation as a beneficiary country under the ATPA/ATPDEA, effective December 15, 2008. He cited as the reason Bolivia's failure to meet the program's eligibility criteria related to counternarcotics cooperation.

The ATPA/ATPDEA was initially set to expire on December 31, 2006. Before the program's expiration, Congress enacted extensions of the program through June 30, 2007, February 29, 2008, and December 31, 2008. Most recently, Congress extended the ATPA/ATPDEA through December 31, 2009 for Colombia and Peru. The same legislation extended the ATPA/ATPDEA for both Ecuador and Bolivia through June 30, 2009. Provisions extending ATPA/ATPDEA benefits for the remainder of calendar year 2009 differ for the two countries. ATPA/ATPDEA benefits will continue for Ecuador unless the President determines, before June 30, 2009, that Ecuador does not satisfy the eligibility requirements set forth in the ATPA/ATPDEA. Bolivia will remain in the program only if the President determines, before June 30, 2009, that it has satisfied the ATPA/ATPDEA eligibility requirements. As noted above, Bolivia's designation as an ATPA/ATPDEA beneficiary is currently suspended.

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.

### **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 and the President has designated all four countries as ATPA/ATPDEA beneficiary countries, although Bolivia's designation was suspended effective December 15, 2008. 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. Section 204(b)(5)(A)(ii)(I) of the ATPA/ATPDEA also includes criteria 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.

As noted, 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. In addition, 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.

### **Petition Process**

Pursuant to Section 3103(d) of the ATPDEA, in July 2003, USTR promulgated regulations (15 CFR Part 2016) (68 Fed. Reg. 43922) regarding reviews of the eligibility of countries and articles under the ATPA as amended. Under these provisions, USTR conducts reviews and provides an opportunity for the submission of petitions for the withdrawal or suspension of certain benefits of the program. Petitions must indicate the eligibility criterion that the petitioner

believes warrants review. USTR, on behalf of the Trade Policy Staff Committee (TPSC), publishes a list of the petitions filed. The Andean Subcommittee of the TPSC conducts a preliminary review of the petitions. The U.S. Trade Representative has not recommended the withdrawal or suspension of ATPA/ATPDEA designation, or the withdrawal, suspension or limitation of benefits for any of the beneficiary countries based on the results of the reviews of petitions filed under these procedures.

### **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. This affected imports of 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 biennial 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 (thirteenth) report covering 2007 to Congress in September 2008.

The USITC reports have consistently found that the overall effect of imports benefiting exclusively under the ATPA program (*i.e.*, those ineligible for other tariff preferences) on U.S. consumers and the economy as a whole, including in the year 2007, has been negligible. The thirteenth report estimated that U.S. imports of ATPA/ATPDEA-preference products could have potentially significant effects on domestic industries producing asparagus; fresh-cut roses; and fresh-cut chrysanthemums. 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, as well as job growth in export-oriented industries, in the Andean region.

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. employment. 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 (fifteenth) report covering 2007 was submitted to Congress in 2008. The Department of Labor's reports have consistently found that the ATPA/ATPDEA does not appear to have had an adverse impact on, or to have constituted a significant threat to, overall U.S. employment. The Fifteenth Report found that, at the industry-level, trends in U.S. domestic production and U.S. imports

from the beneficiary countries since implementation of the ATPA/ATPDEA suggest that increased imports of certain fresh cut flowers and asparagus due to the ATPA/ATPDEA trade preferences may have displaced some growers and workers in the United States; however, given the complexities involved it is difficult to isolate conclusively the factors responsible for these trends.



## **U.S. Imports from ATPA/ATPDEA Beneficiaries**

U.S. imports from ATPA/ATPDEA countries reached a record level of \$28.5 billion in 2008, following a 6 percent decline in 2007 to \$21.2 billion from \$22.6 billion in 2006. The share of U.S. imports from ATPA/ATPDEA countries among all U.S. imports increased in 2008 to 1.4 percent, the highest level recorded since the ATPA was enacted in 1991. (See Table 2-1.)

U.S. imports from ATPA/ATPDEA countries consist primarily of derivatives of raw materials, agricultural products, and apparel. Mineral fuels, mainly petroleum, accounted for 60 percent of imports in 2008, up from 51 percent in each of the previous 3 years. In 2008, higher oil prices were primarily responsible for the increased share, although the quantity of crude oil imports also increased. Other leading imports from ATPA/ATPDEA countries in 2008 were precious metals, gemstones and jewelry, primarily nonmonetary gold; apparel; coffee; copper articles, mainly cathodes; fruits and nuts, primarily bananas; cut flowers; fish and crustaceans; unwrought tin; and edible vegetables, primarily asparagus.

About 90 percent of U.S. imports from ATPA/ATPDEA countries 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) tariff rates). (See Table 2-2.) All 20 leading imports from the region were eligible for duty-free treatment in 2008. 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 90 percent in 2008. Twenty-seven percent of U.S. imports from the region entered duty free under NTR tariff rates in 2008. Such traditional U.S. imports from ATPA/ATPDEA 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. Sixty-one percent of U.S. imports from the region entered under ATPA/ATPDEA in 2008, 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 climbed 40 percent to \$17.2 billion in 2008, following a 9 percent decline in 2007 to \$12.3 billion from \$13.5 billion in 2006. Over the past 3 years, the share of U.S. imports from the region that entered under ATPA/ATPDEA has been stable at around 60 percent; however, the portion of ATPA/ATPDEA imports entering under the original ATPA (ATPA excluding ATPDEA) has declined (from 22 percent in 2006 to 15 percent in 2008), whereas the share of imports under ATPDEA has increased (from 78 percent to 85 percent), primarily reflecting the increased value of petroleum imports under ATPDEA. In 2008, U.S. imports under the original ATPA declined 5 percent to \$2.7 billion compared with 2007 and imports under ATPDEA increased 53 percent to \$14.6 billion.

Petroleum-based imports accounted for over three-fourths (77 percent) of U.S. imports under ATPA/ATPDEA in 2008, and were largely responsible for the 40 percent increase in U.S. imports under ATPA/ATPDEA in 2008. Apparel was the next largest category of imports under ATPA/ATPDEA, accounting for 6 percent of the total. The third largest category was copper cathodes, and cut flowers ranked fourth. Other important imports were fresh asparagus and vegetable and fruit preparations, including preparations of artichokes, asparagus, pimientos, and

other peppers. Excluding petroleum-related products, U.S. imports under ATPA/ATPDEA of all of these products declined between 2007 and 2008, with the exception of vegetable and fruit preparations. Imports of gold jewelry, a previously leading import under ATPA/ATPDEA, have plummeted over the past two years, declining by half since 2007 and by more than two-thirds since 2006.

Table 2-2.--U.S. Imports for Consumption from ATPA/ATPDEA Countries, Total and Under Import Programs, 2006-2008, (thousands of dollars)

Country	Import Program	2006	Percent of total	2007	Percent of total	2008	Percent of total
Bolivia	Total	362,449	100.0	333,611	100.0	540,435	100.0
	GSP	21,667	6.0	40,727	12.2	47,632	8.8
	ATPA <sup>1</sup>	107,060	29.5	91,282	27.4	56,958	10.5
	ATPDEA	59,156	16.3	56,865	17.0	83,009	15.4
	MFN free	141,091	38.9	138,665	41.6	248,325	45.9
Colombia	Total	9,239,815	100.0	9,251,233	100.0	13,058,845	100.0
	GSP	181,626	2.0	236,416	2.6	235,815	1.8
	ATPA <sup>1</sup>	926,980	10.0	864,673	9.3	811,454	6.2
	ATPDEA	3,864,207	41.8	3,662,986	39.6	6,527,779	50.0
	MFN free	3,289,799	35.6	3,492,051	37.7	4,314,317	33.0
Ecuador	Total	7,011,414	100.0	6,131,024	100.0	9,043,832	100.0
	GSP	71,222	1.0	76,599	1.2	57,137	0.6
	ATPA <sup>1</sup>	325,753	4.6	289,145	4.7	283,655	3.1
	ATPDEA	4,999,441	71.3	4,324,647	70.5	6,311,119	69.8
	MFN free	1,128,223	16.1	1,104,012	18.0	1,261,953	14.0
Peru	Total	5,896,917	100.0	5,207,070	100.0	5,839,906	100.0
	GSP	179,384	3.0	245,529	4.7	271,000	4.6
	ATPA <sup>1</sup>	1,565,255	26.5	1,565,012	30.1	1,520,109	26.0
	ATPDEA	1,636,596	27.8	1,452,232	27.9	1,648,593	28.2
	MFN free	2,399,510	40.7	1,727,786	33.2	1,986,905	34.0
All ATPA countries	Total	22,510,596	100.0	20,922,939	100.0	28,483,018	100.0
	GSP	453,900	2.0	599,270	2.9	611,584	2.1
	ATPA <sup>1</sup>	2,925,048	13.0	2,810,112	13.4	2,672,175	9.4
	ATPDEA	10,559,400	46.9	9,496,730	45.4	14,570,499	51.2
	MFN free	6,958,624	30.9	6,462,513	30.9	7,811,500	27.4

<sup>1</sup>ATPA in this table refers to the original ATPA (ATPA excluding ATPDEA).

Source: USITC dataweb compiled from official statistics of the U.S. Department of Commerce.

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

Colombia was the leading source of U.S. imports under the ATPA/ATPDEA in 2008, overtaking Ecuador, which had been the leading source in 2006 and 2007. Colombia supplied 43 percent in 2008; Ecuador, 38 percent; Peru, 18 percent; and Bolivia, less than 1 percent. (See Table 2.3.) Both Colombia and Ecuador supplied \$6.2 billion of U.S. petroleum imports under ATPA/ATPDEA in 2008, but Colombia's non-petroleum-related exports to the United States outpaced those from Ecuador. U.S. imports under the ATPA/ATPDEA declined from each of the countries between 2006 and 2007, but increased from each of the countries except Bolivia between 2007 and 2008.

Country	2006	2007	2008	2008 share of total
	<i>1,000 dollars</i>	<i>1,000 dollars</i>	<i>1,000 dollars</i>	Percent
Colombia	4,791,187	4,527,659	7,339,233	42.6
Ecuador	5,325,193	4,613,792	6,594,774	38.2
Peru	3,201,851	3,017,244	3,168,702	18.4
Bolivia	166,216	148,148	139,966	0.8
Total	13,484,448	12,306,843	17,242,675	100.0
<i>Source: USITC Dataweb compiled from official statistics of the U.S. Department of Commerce.</i>				

U.S. imports under ATPA/ATPDEA from Colombia increased 62 percent to \$7.3 billion in 2008, faster than from any other ATPA/ATPDEA country. Petroleum-related products were primarily responsible for the increase, accounting for 84 percent (\$6.2 billion) of ATPA/ATPDEA entries from Colombia in 2008, up from a 73 percent share (\$3.3 billion) in 2007. Other major U.S. imports under ATPA/ATPDEA from Colombia declined in 2008 compared with 2007, including cut flowers, the second largest import (\$499 million), and apparel, the third largest import (\$313 million). These products accounted for 6.8 percent and 4.3 percent of ATPA/ATPDEA entries from Colombia, respectively, in 2008. Other important imports under ATPA/ATPDEA from Colombia were plastics (\$75 million), aluminum products (\$38 million), ceramics (\$30 million), articles of leather (\$24 million), and vegetable and fruit preparations (\$17 million), all of which declined in 2008 compared with 2007, except vegetable and fruit preparations.

ATPA/ATPDEA entries from Ecuador increased 43 percent to \$6.6 billion in 2008, from \$4.6 billion in 2007. Petroleum products (\$6.2 billion) overwhelmingly dominated such imports from Ecuador, accounting for 94 percent in 2008, higher than the 92 percent share in each of the previous three years. Other important imports under ATPA/ATPDEA from Ecuador in 2008 were cut flowers (\$133 million), down 7 percent in 2008 compared with 2007; tuna (\$83 million), up 8 percent; vegetables (\$43 million), up 22 percent; vegetable and fruit preparations (\$28 million), up 22 percent; and fruits, primarily fresh pineapples, fresh mangoes, and frozen fruits (\$27 million), down 13 percent.

U.S. imports under ATPA/ATPDEA from Peru increased 5 percent, from \$3.0 billion in 2007 to \$3.2 billion in 2008. The leading ATPA/ATPDEA entry from Peru was copper-related articles, primarily refined copper cathodes, which declined 12 percent to \$903 million in 2008, accounting for 28 percent of total ATPA/ATPDEA entries from Peru. The second largest U.S. import under ATPA/ATPDEA from Peru was petroleum products, which increased 32 percent to \$871 million in 2008, displacing apparel, which ranked third in 2008 at \$774 million, down 2 percent from 2007. Other leading ATPA/ATPDEA imports from Peru in 2008 were fresh asparagus (\$153 million); vegetable and fruit preparations (\$129 million); and fruits, primarily grapes and mangoes (\$66 million). U.S. imports under ATPA/ATPDEA of fresh asparagus declined 5 percent in 2008, but imports of vegetable and fruit preparations and fruits rose substantially, up 59 percent and 33 percent, respectively. Also increasing significantly were U.S. imports from Peru of paprika (\$41 million), which have climbed 55 percent since 2007 and 132 percent since 2006.

In 2008, U.S. imports under ATPA/ATPDEA from Bolivia fell nearly 6 percent, from \$148 million in 2007 to \$140 million in 2008, and by 16 percent from their peak of \$166 million in 2006.<sup>1</sup> Precious metal jewelry, primarily gold jewelry, the leading U.S. import under ATPA/ATPDEA from Bolivia since the ATPA was implemented, fell to second place for the first time in 2008. U.S. imports of petroleum products ranked first, climbing 92 percent to \$72 million in 2008, accounting for over 50 percent of U.S. imports under ATPA/ATPDEA from Bolivia. U.S. imports of precious metal jewelry ranked second (\$35 million); apparel ranked third (\$11 million); and articles of wood ranked fourth (\$3 million), each of which declined 35 percent or more between 2007 and 2008.

### **U.S. Exports to ATPA/ATPDEA Beneficiaries**

U.S. exports to ATPA/ATPDEA countries grew 35 percent to \$21.5 billion in 2008, faster than the 11 percent increase recorded for all U.S. exports. As a result, the ATPA/ATPDEA countries' share of U.S. exports to the world expanded to 1.7 percent in 2008, the highest share ever recorded.

The leading category of U.S. exports to ATPA/ATPDEA countries in 2008 was nonelectrical machinery, equipment, appliances, and parts, destined principally for oil and gas extraction, mining, and data processing. U.S. exports of nonelectrical machinery and parts increased 38 percent to \$5.2 billion in 2008, and have consistently accounted for 23-25 percent of total U.S. exports to the region over the past 5 years. U.S. exports of mineral fuels, primarily refined petroleum products, which ranked second in 2008, increased 99 percent to \$2.7 billion in 2008. All other categories of U.S. exports among the top ten to the region also increased in 2008 compared with 2007, including electrical machinery (\$1.5 billion), plastics (\$1.4 billion), cereals (\$1.2 billion), and organic chemicals (\$1.2 billion).

Colombia was the largest market for U.S. exports at \$10.6 billion, representing 53 percent of U.S. exports to ATPA/ATPDEA countries in 2008. Peru ranked second as a destination for U.S.

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<sup>1</sup> Bolivia lost trade preferences under ATPA/ATPDEA on December 15, 2008, so U.S. imports from Bolivia under the program in 2008 are likely slightly less than they would have been had ATPA/ATPDEA been in effect through the end of the year.

exports, with \$5.7 billion in U.S. goods (29 percent); Ecuador was third, with \$3.2 billion (16 percent); and Bolivia ranked fourth, with \$358 million (2 percent). Over the past 5 years, U.S. exports to each of the ATPA/ATPDEA countries have increased in every year.

## Chapter 3

### COUNTRY ELIGIBILITY REPORTS

This chapter first outlines the detailed country eligibility criteria in the ATPA/ATPDEA and proceeds to discuss each of the four beneficiaries' performance under the criteria. Each country report also examines the effects of the ATPA/ATPDEA on trade, investment and economic development in the beneficiary country and on creating sustainable economic alternatives to coca production. These country reports are based on information provided by U.S. embassies in the region. They are an update to USTR's April 30, 2007, Third Report to the Congress on the Operation of the Andean Trade Preference Act as Amended.

As summarized below, 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 as a beneficiary country, but he is not barred from designating a country that fails to meet those criteria as a beneficiary.

#### SUMMARY OF 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 the Andean Trade Preference Act, as amended.

Discretionary criteria (*for ATPDEA benefits only*):

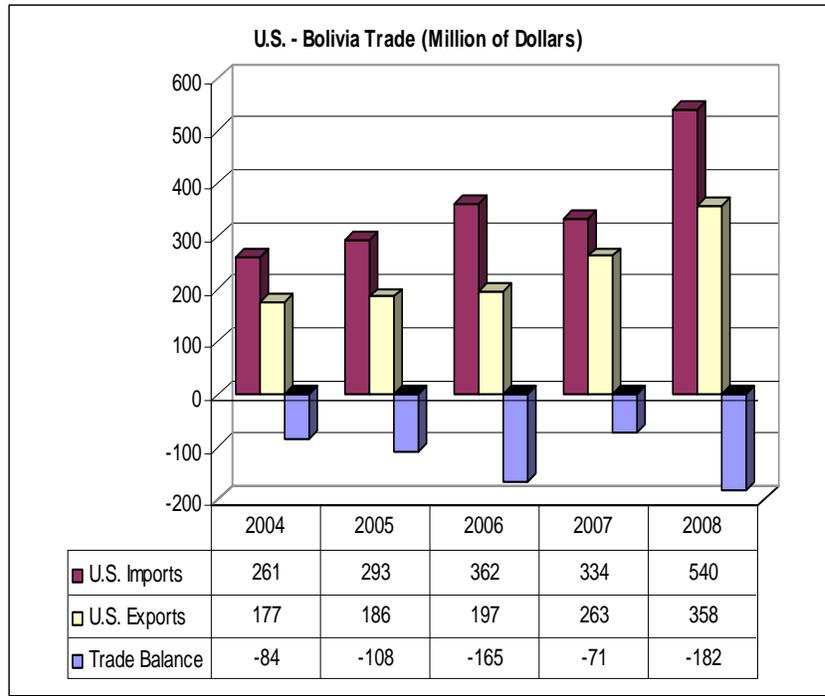
- (1) Whether the beneficiary country has demonstrated a commitment to undertake its obligations under the WTO, including those agreements listed in section 101(d) of the Uruguay Round Agreements Act, on or ahead of schedule, and participate in negotiations toward the completion of the FTAA or another 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. 2291(j)) 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: 9,247,816 (July 2008 est.)

GDP per capita (purchasing power parity (PPP)): \$4,700 (2008 est.)

Source: 2009 World Fact Book



**Effect of ATPA/ATPDEA:** U.S. goods imports from Bolivia increased 41 percent, from \$363 million in 2007 to \$511 million in 2008. However, U.S. imports under the ATPA/ATPDEA from Bolivia declined over the same period by 6 percent, from \$148 million in 2007 to \$140 million in 2008, and by 16 percent from its peak of \$166 million in 2006.<sup>2</sup> For the first time since the ATPA was enacted, precious metal jewelry, primarily gold jewelry, did not rank first among U.S. imports under the ATPA/ATPDEA from Bolivia. Instead, U.S. imports of petroleum products ranked first, climbing 92 percent to \$72 million in 2008. U.S. imports of precious metal jewelry ranked second (\$35 million); apparel ranked third (\$11 million); and articles of wood ranked fourth (\$3 million), each of which declined 35 percent or more between 2007 and 2008.

As evidenced by the significant reduction in ATPA/ATPDEA imports over the past years, both uncertainty concerning possible expiration of the program and the business climate in Bolivia have hurt the private sector. Bureaucracy and nationalizations have caused major decreases in foreign investment. Programs aiming to replace exports to the U.S. market, mainly to Venezuela in textiles, have seen limited results as of early 2009.

<sup>2</sup> Bolivia lost trade preferences under ATPA/ATPDEA on December 15, 2008, so U.S. imports from Bolivia under the program in 2008 are likely slightly less than they would have been had ATPA/ATPDEA been in effect through the end of the year. See section on Narcotics and Counter-Terrorism Cooperation.

According to a Bolivian private sector study, the ATPA/ATPDEA has contributed to the creation of about 12,000 direct jobs in Bolivia in the textiles sector, and up to 85,000 jobs if indirect employment is included.

**Expropriations:** Article 56 of the new 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 fully defined in Bolivian law. Article 56 also stipulates that just compensation must be provided. Economic regulatory laws grant concessions to exploit natural resources such as hydrocarbons and minerals. The laws also provide a means of expropriating land and guaranteeing rights of way needed to develop concessions.

In 2005, the Bolivian government enacted a supreme decree to amend and dissolve a water concession in the city of El Alto. The international operator left Bolivia in January 2007 after the Bolivian government agreed to assume the firm’s outstanding debts and compensate shareholders for the company’s investment.

In 2006, the Bolivian government issued a supreme decree “nationalizing” the hydrocarbons sector. The decree restated the provisions of a 2005 law, giving companies six months to negotiate new service contracts, transferring to the state control over the entire production chain, and offering YPFB, the state-owned oil company, a majority share of five companies, including two with U.S. investment. All production companies signed new contracts in October 2006, and agreed to pay 50 percent in taxes and royalties, plus providing a varying equity stake for YPFB ranging from zero to 32 percent. In May 2008, Bolivia further moved to consolidate state control over the industry by mandating a 50 plus one percent control over the companies that were privatized in the 1990s: Chaco (Pan American Energy), Andina (Repsol), and Transredes, the principal pipeline operator, partially owned by Ashmore Energy International (AEI), headquartered in Houston, Texas. By 2009, as negotiations over operational control broke down, the Bolivian state took over 100 percent of both Transredes and Andina. U.S. interest in the sector is now minimal, with only Vintage Petroleum in operation.

**Arbitral Awards:** A United States-Bolivia bilateral investment treaty entered into force in June 2001. In October 2007, Bolivia became the first country ever to withdraw from the International Centre for the Settlement of Investment Disputes (ICSID), a World Bank body that provides a procedural mechanism for resolution of investment disputes between foreign investors and host countries. Under the new constitution, the Bolivian government accepts binding international arbitration in all sectors, if provided for under a bilateral investment treaty or free trade agreement. The Investment Law (Law 1182, 1990) provides for arbitration in accordance with the Bolivian Constitution and international norms, while the Arbitration and Conciliation Law (Law 1770, 1997) outlines arbitration procedures and enforcement mechanisms. While these laws state that international agreements, such as the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) and the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”), must be honored, the new constitution requires renegotiation of international treaties and bilateral investment agreements. However, until a treaty is renegotiated or terminated, the constitution protects the integrity of all international agreements. For those

investments not covered by an international agreement, the constitution also limits foreign companies' access to international arbitration in the case of conflicts with the government.

**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 (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, adopted in 2000, 1992, and 1993, respectively, represent a significant improvement over earlier standards of intellectual property protection in Bolivia. Inadequacies remain in some areas, including copyright law, and IPR enforcement is almost non-existent.

The Bolivian government is a member of several international conventions that concern intellectual property, including the following:

- World Intellectual Property Organization (WIPO) Convention;
- Paris Convention for the Protection of Industrial Property; and
- Berne Convention for the Protection of Literary and Artistic Works.

Bolivia is also a signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Bolivia has been on the Special 301 Watch List since October 1996. Enforcement of existing laws to protect intellectual property rights is weak, and piracy in Bolivia continues largely unabated.

In late 1999, the Bolivian government consolidated the industrial and intellectual property portfolios under one administrator, the National Intellectual Property Service (SENAPI), which oversees the registration of patents and trademarks. SENAPI has extremely limited resources and experiences a high staff turnover rate, as personnel leave for the private sector. The organization initiated a USAID-supported restructuring process in 2003. USAID subsequently helped SENAPI process its backlog of applications; develop an information technology platform and databases for the efficient processing of future applications; and create a plan for completing the institutionalization process. SENAPI's restructuring process stalled in 2006 due to lack of government support, and as of 2008 remained incomplete. Currently the office is focused on the registration of traditional knowledge.

Supreme Decree number 29004, issued in January 2007, establishes a "Prior Announcement" requirement for pharmaceutical patents to allow the government, with the input of various interest groups, to determine whether a pharmaceutical patent would "interfere with the right to health and access to medicines." This additional element in the patent process increases delays in obtaining patents, raises questions of protection of proprietary information, and adds an unclear "social good" element to the patenting process. The new constitution which was approved by referendum on January 25, 2009, states that access to medicines cannot be limited by property rights, a statement that may be interpreted to disallow patents on pharmaceuticals.

Only one major international pharmaceutical manufacturer has offices in Bolivia, and no recent international pharmaceutical discoveries are currently under patent in Bolivia.

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 all eight ILO core labor conventions.

Bolivia's labor code assures workers the right to establish and join organizations of their choosing. The formation of a new trade union, however, requires approval by the Bolivian government, which may dissolve a trade union by administrative decree if it determines that the union fails to 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 workers in the formal economy belong to labor unions, and many workers in the informal economy participate in some form of labor union or trade association. Although a limited number of union leaders are protected from unjust dismissal, 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 engage in lengthy government mediation and then obtain authorization to strike by a vote of 75 percent of workers. Laborers rarely meet these hurdles, but strikes and protests are common, and 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, and strikes are common. Recent studies indicate that the number of public sector strikes and conflicts has risen significantly since the mid-1990s.

Collective bargaining without the participation of the Bolivian 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 exclusive authority to negotiate with state-owned enterprises. The practice was for the COB and the government to negotiate an annual agreement on salaries, minimum wages, and other working conditions 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 has expanded. Sectoral negotiations by teachers, health workers, transit drivers, and many others also eclipse the COB's role.

Bolivian labor laws are in some aspects highly rigid, with a range of benefits stipulated for full-time salaried employees. Due to contradictions embedded in the frequently amended body of labor law, however, workers frequently do not receive the full range of pay, vacation, and severance benefits. Moreover, employers have shifted towards forms of temporary or informal employment that do not require payment of the same benefits.

Bolivian law prohibits forced or compulsory labor, including by children; however, in 2005 the ILO reported that between 26,000 and 30,000 persons, mostly of indigenous origin, were victims of forced labor, harvesting Brazil nuts in the Beni Department. Similar conditions were reported to exist in the sugar industry in the Santa Cruz Department.

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

There are no known special laws or exemptions from national labor laws in the seven special duty-free zones.

***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.

Since 2000, political pressure from left-leaning social and civic groups has led the government to move away from free market policies. According to the United Nations Conference on Trade and Development (UNCTAD), world stock of FDI in Bolivia increased from \$1.2 billion in 1992 to \$6.6 billion in 2002, before declining to \$4.5 billion in 2005. Stock of U.S. FDI in Bolivia was \$177 million in 2005, a 21 percent decrease from 2004. Bolivia has not released breakdowns of FDI by country since 2005. According to the Bolivian Central Bank, total FDI from all countries was \$286.1 million for the period January to June 2008. Foreign companies have been the victims of social demonstrations and unrest, including roadblocks, facility occupations, looting, vandalism, and even attempted extortion. Nationalizations, now further justified by the newly approved constitution, have already happened in hydrocarbons and telecommunications, with further promised in electricity, transportation, and water.

Bolivia's real GDP grew an estimated 6.59 percent in 2008. Average inflation was estimated at 11.8 percent. High oil and gas prices helped the government build financial reserves, which should help it weather the global economic downturn, at least in the short term. The international donor community has moved for years to reduce Bolivia's stock of multilateral and bilateral debt in recognition of its economic reforms. Through the Heavily Indebted Poor Country (HIPC) initiative and its subsequent enhanced framework (HIPC II), Bolivia benefited from International Monetary Fund and World Bank debt forgiveness totaling \$1.7 billion in 2006, bringing its total external debt to an estimated \$3.2 billion.

***Market Access:*** Bolivia generally provides equitable and reasonable market access for U.S. exports, with a three-tier tariff structure allowing duty-free entry of capital goods designated

essential for industrial development and imposing a five percent tariff on non-essential capital goods and a ten percent tariff on most other goods. Measures such as quotas, variable import levies, and tariff rate quotas are no longer used, although certain import fees raise the cost of importing some products. Import licensing requirements exist for only a few goods.

In January 2009, Bolivians voted on and passed a new constitution. The document has yet to be implemented, but will likely affect all areas of business and trade. Known changes include the rights of workers to take over a company if it becomes inoperable, private property limitations, further nationalizations in several sectors and a call for renegotiation of bilateral investment treaties.

***Participation in Free Trade Negotiations:*** In May 2004, the United States initiated negotiations on an FTA with Colombia, Ecuador, and Peru. To date, the United States has concluded FTAs with Peru and Colombia. Bolivia initially participated as an observer with a view to becoming party to a free trade agreement at a later stage, but the United States did not initiate negotiations with Bolivia.

***Subsidies or Other Requirements that Distort International Trade:*** While Bolivia has eliminated many of its export subsidy programs, the Government has notified the WTO that it provides export subsidies through its “Free Trade Zones” and “Temporary Import Regime for Export Promotion.”

***Trade Policies that Revitalize the Region:*** Bolivia is a member of the Andean Community (CAN), whose other members include Colombia, Ecuador and Peru. According to the Bolivian government, Bolivian exports to the bloc totaled \$398 million or 8 percent of total exports in 2007. Imports from the Andean Community in 2007 totaled \$282 million, or nine percent of total imports.

In addition to full membership in the Andean Community, Bolivia is a member of the Latin American Integration Association (ALADI), which includes Argentina, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela. The ALADI promotes the creation of an area of economic preferences in the region, aiming at a Latin American common market through regional tariff preferences and trade agreements. Bolivia enjoys associate membership in MERCOSUR, effective since March 1, 1997. Bolivia signed an FTA with Mexico in September 1994, and has more limited trade agreements with Chile and Cuba. Bolivia is also party to an April 2006 Peoples’ Trade Agreement with Venezuela and Cuba (joined by Nicaragua in January 2007 and Dominica, Saint Vincent and Antigua in February 2007), although the economic effect of the pact is limited.

***Narcotics and Counter-terrorism Cooperation:*** On September 15, 2008, Bolivia was de-certified under the Foreign Assistance Act for “failing demonstrably” to meet its obligations under international counternarcotics agreements. On November 25, 2008 the President suspended Bolivia’s designation as a beneficiary country under the ATPA/ATPDEA, effective December 15, 2008, citing Bolivia’s failure to meet the programs’ counternarcotics cooperation criteria. The forced departure of USAID and Drug Enforcement Administration (DEA) from the coca growing Chapare region, a continued increase in coca cultivation and cocaine production,

the Government of Bolivia's policies in support of the expansion of "licit" coca, and its unwillingness to regulate coca markets led the President to determine that the Bolivian government fell well short of its obligations to the international community.

The September 11, 2008 expulsion of the U.S. Ambassador and the November 1 expulsion of DEA employees have adversely affected counternarcotics cooperation. DEA maintained 57 employees in four cities throughout the country and Bolivia served as DEA headquarters for the region. The loss of DEA presence and its information network will severely diminish Bolivia's interdiction capability in both the short and long term.

According to U.S. Government estimates, Bolivia's coca cultivation is approximately 32,000 hectares. The UN and other counternarcotics (CN) experts indicate that coca cultivation continues to increase. Bolivia's Law 1008 authorizes the cultivation of up to 12,000 hectares of coca for licit uses.

The Bolivian government achieved some successes in interdiction and meeting its minimum levels of eradication. While the government achieved its stated goal of eradicating 5,000 hectares in 2008 (reaching 5,484 hectares), the figure is one of the lowest amounts in a decade of eradication history. In addition, this level of effort is insufficient to keep pace with new plantings (UN unofficial data report continued significant coca expansion in La Asunta in the Yungas), and barely meets the minimum goal of 5,000 hectares as stated in the U.S. Government-Bolivian government bilateral agreement. The Bolivian National Drug Strategy proposed increasing permitted coca cultivation to 20,000 hectares and absorbing excess production (*i.e.*, beyond that used for traditional practices) with "industrialization," or new, non-traditional uses. World licit demand for coca leaf used in commercial flavorings and pharmaceuticals is limited and only requires the amount of coca that can be grown on approximately 250 hectares. While no new coca or CN laws have been enacted by the Morales administration, there have been public statements and administrative regulations that encourage and allow for an increased market of the coca leaf, raising further concern with Bolivia's commitment to adhering to its international obligations. Regulation and control of the licit coca commerce is virtually non-existent and leads to high levels of diversion for the production of cocaine. The U.S. Government estimated 2008 potential cocaine hydrochloride production to be 195 metric tons.

The current challenges include explicit acceptance and encouragement of coca production from the highest levels of the Bolivian government; the tolerance and attractive economic income from increased and unconstrained growth of coca cultivation in both the Yungas and the Chapare regions; and the increased and uncontrolled sale of coca to drug traffickers. Eradication efficiencies have significantly declined in the past few years. The mountainous terrain and dangerous operating environment in the Yungas present a tremendous challenge to improving efficiencies and eradication efforts. Coca cultivation in the Yungas (21,000 hectares) accounts for approximately two-thirds of all coca grown in Bolivia (32,000 hectares). Law 1008 identified the Yungas region as the traditional zone for growing 12,000 hectares of coca for licit uses.

The Bolivian government maintained its support for interdiction efforts. Interdiction of drugs and precursor chemicals continues to rise. In 2008, seizures increased to 29 metric tons of cocaine and base versus the 13.8 metric tons seized in 2007. Destruction of base labs and maceration pits increased 22 percent and 16 percent, respectively. Seizures of marijuana also increased over 163 percent. The amount of liquid precursors seized decreased by 3 percent, to 1,390,807 liters. While the Bolivian counternarcotics police (FELCN) and other CN units are improving coordination effectiveness, increased seizures also reflect increased cocaine production and transshipment from Peru. The Bolivian government estimates that of all the cocaine seized in Bolivia, approximately one-third originates in Peru, establishing Bolivia not only as a producing country, but also increasingly as a transit country for cocaine that moves from Peru primarily to Brazil and Europe.

USAID figures estimate that the cultivation of alternative crops and pastures in the Cochabamba Tropics and the Yungas of La Paz area increased steadily, from 40,613 hectares in 1986 to an estimated 150,000 hectares in 2006. Community development activities in the Yungas and agricultural extension services and improved road access in Cochabamba have proven effective ways of reaching increasing numbers of families in those regions. The cumulative number of farm families assisted through integrated alternative development projects in the Chapare and Yungas regions totaled 52,190 through 2006, or more than half of all farm families in those regions. In the last two years, 26,000 families were benefited, 8,716 new jobs were created, \$44.2 million of alternative development products' sales were generated, and 24,276 hectares of new or improved crops and areas under forest management plans were directly supported with U.S. assistance. High-value licit crop exports such as bananas, pineapple, canned palm hearts, coffee and cacao increased from \$7.5 million in 2001 to \$37.8 million in 2008. With the exception of canned palm hearts, coffee, cacao, and more recently tropical flowers, most of these goods do not reach U.S. markets. As of December 2008, approximately \$1.3 million in canned palm hearts entered the United States in 2008.

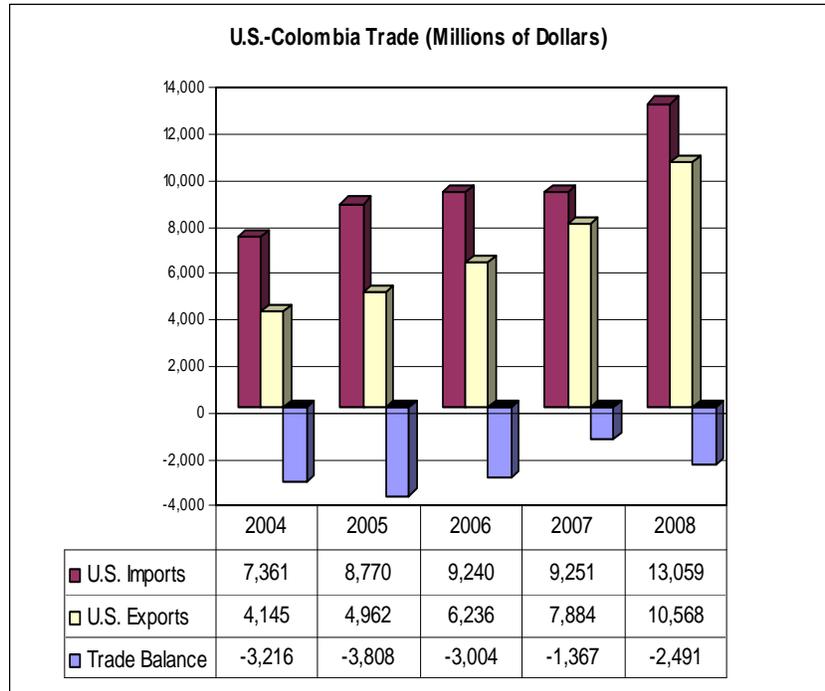
***Government Procurement:*** Importers of foreign products can participate in government tenders under \$1 million only when locally manufactured products and service providers are unavailable or when the government fails to award a contract. The government may call for international bids only for purchases between \$1 million and \$5 million. Suppliers submitting bids for purchases over \$5 million must comply with prerequisites established in bidding documents exclusive to each purchase. Domestic bidders receive a 10 to 15 percent preference, depending on the bid, to encourage local industrial development. Bolivia is neither a signatory nor an observer to the WTO Agreement on Government Procurement.

## COLOMBIA

Population: 45,013,672  
(July 2008 est.)

GDP per capita (PPP):  
\$9,000 (2008 est.)

Source: 2009 World  
Fact Book



**Effect of ATPA/ATPDEA:** In 2008, U.S. goods imports from Colombia totaled \$13.1 billion, a 39 percent (\$3.7 billion) increase from 2007. U.S. imports under the ATPA/ATPDEA from Colombia reached \$7.3 billion in 2008, up 62 percent from \$4.5 billion in 2007. Colombia regained its position as the leading source of U.S. imports under the ATPA/ATPDEA in 2008, overtaking Ecuador, which was the leading source in 2006 and 2007. U.S. imports under the ATPA/ATPDEA of petroleum-related products were primarily responsible for the increase, which climbed 88 percent to \$6.2 billion, and accounted for 84 percent of ATPA/ATPDEA entries from Colombia in 2008. Other major U.S. imports under the ATPA/ATPDEA from Colombia declined in 2008 compared with 2007, including cut flowers, the second largest import (\$499 million), which declined 1.5 percent in 2008, but remained 11 percent higher than the 2006 level; apparel (\$313 million); plastics (\$75 million); aluminum products (\$38 million); ceramics (\$30 million); and articles of leather (\$24 million). Imports of vegetable and fruit preparations, mainly mangoes (\$17 million), have steadily increased over the past 5 years, rising 18 percent between 2007 and 2008.

The ATPA/ATPDEA has fortified the fight against illegal crop production by creating jobs in the formal sector. According to the Colombian association of flower exporters, the flower industry, which benefits from the ATPA, supports 99,000 jobs directly and 84,000 jobs indirectly. Most of the employees (65 percent) are women, most with relatively low educational attainment. Many are part of the displaced population; therefore, with a minimum of training, the cut flower industry is providing a stable and safe occupation. According to the Ascoltex (the Colombian

association of textile companies, the textile and apparel industries, which are more urban-based, are also providing good jobs in the formal sector, including for displaced persons that have fled to urban centers like Bogotá and Medellín. Currently, the textile and apparel industry, which benefits from the ATPDEA, supports 130,000 direct jobs. At the same time, the pool of unemployed or underemployed workers, particularly rural workers, is very large, and it will take a long period of sustained job creation and alternative development to create the incentives for legal economic activities in areas traditionally dominated by illegal narcotics production.

**Expropriations:** The 1991 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 of property used in, or that is the “fruit” of, criminal activities is allowed.

**Arbitral Awards:** Law 315 permits the inclusion of a binding arbitration clause in contracts between foreign investors and Colombian entities, private and public. The law allows parties to set their own arbitration terms, including location, procedures, and the nationality of rules and arbitrators. In the absence of an arbitration clause, Colombian law mandates that the dispute go before a Colombian judge for settlement. Colombia is a signatory to the New York Convention, the ICSID Convention, 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 Colombian government is a member of several international conventions that concern intellectual property, including the following:

- Convention Establishing the World Intellectual Property Organization (WIPO);
- Berne Convention for the Protection of Literary and Artistic Works;
- Paris Convention for the Protection of Industrial Property;
- Patent Cooperation Treaty;
- WIPO Performances and Phonograms Treaty; and
- WIPO Copyright Treaty.

In Colombia, the grant, registration and administration of intellectual property rights (industrial property and copyright) are carried out by four different government entities. The Superintendence of Industry and Commerce acts as the Colombian patent and trademark office. This agency was given control of the government’s IPR policy effective January 2000. The Colombian Agricultural Institute is in charge of the issuance of plant variety protection and agro-

chemical patents. The Ministry of Social Protection is in charge of the issuance of pharmaceutical patents, while the Ministry of Interior and Justice is in charge of the issuance of literary copyrights. Each of these entities experiences significant financial and technical resource constraints. Moreover, the lack of uniformity and consistency in IPR registration and oversight procedures limits the transparency and predictability of the IPR enforcement regime.

In 2002, the Colombian government issued Decree 2085, which improved the protection of undisclosed data for pharmaceutical products. The decree grants a 5 year period for undisclosed data used to obtain a health registration.

Colombia's Special Investigative IPR Unit, within the Prosecutor General's Office, has focused its efforts against violations of copyrights and theft of patent and trademark rights. From 2006 to 2008 the IPR Unit dealt with a total of 1,115 copyright-related and 329 patent- and trademark-related complaints, inquiries and investigations. In spite of increased actions to combat IPR violations, deterrent penalties and serious criminal sentences are still rare, as only 15 convictions were reported for the aforementioned period.

In an effort to improve Colombia's enforcement efforts, President Uribe signed a criminal reform law (Law 1032) on June 22, 2006, establishing new offenses and increasing the penalties for violation of intellectual property rights, including the illegal broadcasting of copyrighted material. Law No. 1032 increased the penalties described in Articles 271 and 272 of the Penal Code, and established a minimum sentence of four years and fines of between 20 to 1,000 times the legal monthly minimum wage (approximately \$4,000 to \$200,000). There are also fines for evading or tampering with the copyright protection mechanisms, including for anyone who manufactures or sells devices that can be used to decode a satellite signal. The National Television Commission (CNTV) has been credited for greatly reducing the incidence of television piracy through licensing and inspections. However, Colombia was on the 2008 Special 301 Watch List.

The United States-Colombia Trade Promotion Agreement (CTPA) was signed in 2006 and, when it enters into effect, would provide for improved standards for the protection and enforcement of a broad range of intellectual property rights, which are consistent with U.S. standards of protection and enforcement and with emerging international standards.

**Extradition:** Extradition is based on the Colombian Penal Code. A constitutional amendment permits extradition of Colombian nationals for crimes committed after December 17, 1997. From 2002 through the end of 2008, Colombia has extradited over 800 individuals to the United States.

**Workers' Rights:** Although the Colombian government has taken some steps to improve enforcement of worker rights, concerns remain, in particular regarding violence against union members. In 2008, a government protection program provided protection measures to 1,929 trade unionists, accounting for 18 percent of persons under government protection. While prosecution of the perpetrators of violent actions has been criticized as inadequate, the Colombian government has taken steps to bring the perpetrators of crimes against trade unionists to justice and to combat impunity in general. With funding from the Plan Colombia program, by

December 2008 Colombia completed the transition to a new accusatorial-style criminal justice system, replacing the inquisitorial system that had proven cumbersome and inefficient.

This recent action builds on Colombia's implementation of the *Tripartite Agreement on Freedom of Association and Democracy*, an agreement reached at the 95<sup>th</sup> Meeting of the International Labor Conference held in June 2006 by the Colombian government, Colombian business representatives and Colombian labor leaders. The agreement is aimed at combating violence against union members, eliminating impunity, and reinforcing a social dialogue. The agreement also provided for the establishment of a permanent representative of the ILO in Colombia to provide support to the government-financed ILO Special Technical Cooperation Program. The Government of Colombia established an ILO office in Bogotá in January 2007. The ILO Representative on the ground in Bogota reports strong cooperation with the GOC, which dedicated \$4 million for four ILO projects. The ILO sent a commission from Geneva in November 2007, to look at labor issues, and their report was generally positive on the work done so far in implementing the tripartite agreement.

In November 2006, the Colombian Prosecutor General's Office expanded its Human Rights Office to include a sub-unit focusing on the investigation and prosecution of murder cases in which the victims were also labor union members. The sub-unit began with 8 prosecutors and in 2008 expanded to 19 prosecutors, 19 assistant lawyers, and 78 investigators, and works closely with local prosecutors around the country who are also handling murder cases in which the victims were labor union members. Since 2000, the Prosecutor General's Office has obtained convictions of 204 individuals in labor related crimes, with 126 of these convictions (60 percent of total convictions) coming since the November 2006 initiation of the labor sub-unit. The sub-unit has convicted seven people thus far in 2009. In addition, the Colombian judiciary assigned three specialized judges to hear exclusively cases involving violence against unionists.

More generally, Colombia has ratified all eight of the core ILO conventions. Colombian law recognizes the rights of workers to organize, bargain collectively and strike. Unions are free to affiliate with international labor confederations. The labor code provides for automatic recognition of unions that obtain 25 signatures from potential members and comply with a registration process. Unions claimed that this process was slow and was used to block union registration. There are penalties for interfering with workers' freedom of association and the labor code prohibits the dissolution or suspension of trade unions by administrative fiat.

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," are not permitted to strike. Before staging a strike, public sector unions must negotiate directly with management and accept mediation if they cannot reach agreement. The law prohibits the use of strikebreakers. Based on new labor legislation that went into effect in 2008, the Ministry of Social Protection (MSP) can no longer send strikes that are not resolved within 60 days to a tripartite arbitration tribunal, where a binding resolution was conducted. Instead, both parties must agree to arbitration. The new law also moved the power to declare strikes illegal from the executive branch to the judicial branch, and now the MSP only has the power to declare a strike illegal if it affects "national security."

Concerns remain, however, about the overall consistency of Colombia's Labor Code with core labor standards. In response to concerns identified by the ILO, in June 2008, the Colombian Congress passed bills that brought Colombia's laws closer to ILO standards. The new laws transfer authority for declaring whether a strike is legal from the executive to independent labor judges; make binding arbitration mandatory only if both parties request it; require workers' cooperatives to pay into the social security system and benefits programs; and levy heftier fines on cooperatives that do not comply with current laws.

Colombian law provides workers the right to organize and engage in collective bargaining. Labor unions assessed that unemployment, a large informal economic sector, antiunion attitudes, and violence against trade union leaders made organizing difficult, which limited workers' bargaining power in all sectors. Non-union workers have the right to collective bargaining. An ILO committee of experts has noted practices by business, the government and the judiciary that give preference to such bargaining with non-union workers over bargaining with existing unions, and has noted that bargaining with non-union workers should only be permitted in the absence of unions. Colombia's 15 export processing zones are not exempt from national labor laws.

Forced or compulsory labor is prohibited by law. In 2006, Colombia raised the minimum age of employment to age 15, making Colombian law compatible with ILO Convention 138. Although the labor code mandates special authorization for minors between 15-17 years of age to work, 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 ratified ILO Convention 182 on the worst forms of child labor through Law 704 in 2001. The Colombian government has designated authority to implement and enforce labor laws to the Family Ombudsman's offices, Human Rights Ombudsman's offices, Family Welfare Institute and community police officers.

In 2005, Colombia signed a Memorandum of Understanding with the ILO to cooperate in the eradication of child labor, with an emphasis on the worst forms of child labor.

The government establishes a uniform minimum wage every year through tripartite negotiations among representatives of business, organized labor, and the government. Colombia has extensive regulations providing for the occupational safety and health of workers, but regulations are difficult to enforce due to an under-resourced labor inspectorate and the large percentage of workers in the informal sector who are not covered by the social insurance systems.

The Colombian government has indicated a willingness to discuss outstanding concerns and possible actions regarding the consistency of its labor code with core labor standards.

***Economic Conditions:*** The revival of Colombia's economy in recent years can be attributed to increased security, strong internal demand (particularly in construction), a strong global market (particularly in petroleum and coal), and ATPA/ATPDEA driven exports. Real GDP growth in 2002 was 1.9 percent. However, strong economic activity through 2007 led to a five year average GDP growth of 5.6 percent, which slowed to 2.5 percent for 2008. According to UNCTAD, the stock of global FDI in Colombia increased from \$3.9 billion in 1992 to \$53

billion in 2007 and an estimated \$63 billion in 2008. The stock of U.S. FDI in Colombia was \$8.2 billion in 2007, a 20 percent increase from 2006. Unemployment was 10.6 percent in December 2008. Poverty rates dropped from 57 percent in 2002 to 45 percent in 2006.

The Colombian government promotes various initiatives to spur economic growth and employment. In 2003, Colombia revitalized the hydrocarbon industry by requiring the parastatal to compete directly with private sector companies for contracts. In 2005, Colombia adopted legislation to reform the public pension system. In 2006 reforms to the tax code and the regional revenue transfer system laid the groundwork for greater growth.

The Uribe Administration has also pushed an aggressive trade agenda, which includes FTAs, Bilateral Investment Treaties (BITs) and Double Taxation Agreements (DTA). Besides the CTPA, Colombia signed FTAs with Chile in 2006; Central America's North Triangle (Guatemala, Honduras and El Salvador) in 2007; Canada and the European Free-Trade Association- EFTA (Switzerland, Norway, Iceland and Liechtenstein) in 2008; and plans to conclude negotiations in 2009 with the European Union. With regard to BITs, Colombia has either negotiated direct agreements as was the case with Spain, Perú and Mexico; or incorporated them into FTA negotiations, as was seen with EFTA, Canada and the North Triangle. As of 2009, ten BITs were under negotiation with countries which included India, Japan and Korea.

**Market Access:** Colombia has opened its economy considerably since the early 1990s. Customs duties have been cut and many non-tariff barriers eliminated. Most duties have been consolidated into three tariff levels: 0 percent to 5 percent on capital goods, industrial goods and raw materials not produced in Colombia; 10 percent on manufactured goods with some exceptions; and 15 percent to 20 percent on consumer and “sensitive” goods.

Some important exceptions include automobiles, which are subject to a 35 percent tariff, and many agricultural products, which fall under a variable “price band” import duty system. The price band system includes 14 product groups and covers more than 150 tariff lines. When international prices surpass the price band ceiling, tariffs are reduced; when prices drop below the price band floor, tariffs are raised. At times this results in duties approaching or exceeding 100 percent for important U.S. exports to Colombia, including corn and products made from corn including pet food, wheat, rice, soybeans, pork, poultry, cheeses and powdered milk. These duties have negatively affected U.S. access.

In 2006, the United States and Colombia resolved a number of sanitary and phytosanitary (SPS) barriers to agricultural trade. In February of 2006, Colombia formalized its recognition of the equivalence of the U.S. meat and poultry inspection systems. The two sides reached agreement on the specific contents of U.S. sanitary certificates accompanying U.S. poultry and poultry products to Colombia. However, the Ministry of Agriculture through its sanitary and phytosanitary regulatory agency, the Colombian Agricultural Institute (ICA), has imposed separate import requirements, which have negatively impacted U.S. exports of cooked poultry meat, poultry meal, and egg products. Since August 2007, the National Institute for Surveillance of Food and Medicines (INVIMA) has been applying measures which appear to be inconsistent with international standards, and U.S. officials are working with the ICA to resolve these issues.

***Participation in Free Trade Negotiations:*** On February 27, 2006, the United States and Colombia announced the conclusion of negotiations on a comprehensive, state-of-the-art trade agreement. On November 22, 2006, the United States-Colombia Trade Promotion Agreement was signed in Washington, D.C. by then Deputy U.S. Trade Representative John K. Veroneau and then Colombian Trade Minister Jorge Humberto Botero. The Colombian legislature ratified the CTPA in 2007. The U.S. Congress has not yet voted on legislation approving and implementing the agreement.

***Subsidies or Other Requirements that Distort International Trade:*** Colombia has notified the WTO that the free trade zone regime, the special import-export system for capital goods (SIEX), the Plan Vallejo program, and the tax reimbursement certificate, CERT, contain export subsidies. The Colombian government issued Law 1004 in December 2005, which provides for a 15 percent profit tax on industrial and services companies operating within Free Trade Zones. The profit tax rate for companies outside of FTZs is 33 percent.

The Plan Vallejo program allows for tariff exemptions on the import of capital goods and raw materials used to manufacture goods that are subsequently exported. While the Colombian government had eliminated tariff exemptions on capital goods, they were re-authorized in June 2008, alongside the already existing exemption for raw materials. The tax reimbursement certificate (CERT) program, which was suspended in 2002, was also reactivated in 2008. The program, which provides negotiable certificates to exporters based on the level of exports, was used by the Colombian government to counter the Colombian peso's appreciation. In the first semester of 2008, payments for outstanding certificates amounted to approximately \$185 million, while the Government authorized an additional \$25 million for the second half of 2008. Since August 2008, the Government has not issued any CERTs.

Faced with a revaluation of the peso that affected labor-intensive agricultural exports, among them flowers and bananas, the Colombian government enacted several programs to reduce the negative impact of currency fluctuations. The most prominent among these have been: the "Exchange Rate Hedge Incentive," through which banana and flower exporters received 200 pesos for every hedged dollar of exports, amounting to approximately \$75 million; the "Sanitary Flowers and Foliage Incentive", which provided approximately \$100 million; the "Agricultural Goods Producers' Income Protection Program" which amounted to \$3 million; and the special credit line for agricultural exporters, through which the Government allocated \$50 million to subsidize agricultural exporters' interest on bank credits.

***Trade Policies that Revitalize the Region:*** Colombia is a member of the CAN. According to the Colombian government, Colombian exports to Andean Community countries (including Venezuela, which is bound by its CAN commitments for five years from its 2006 withdrawal) reached \$7.3 billion in 2007, about one-fourth of Colombia's total exports. Imports from these countries were \$2.8 billion in 2007, about 8.6 percent of total imports. Colombian exports to MERCOSUR were only \$558 million in 2007, while imports, primarily from Brazil, reached \$2.3 billion. Imports from Mexico reached \$3.1 billion in 2007.

The Colombian government already has or is pursuing trade accords with many of the countries in the region. It has free trade on most goods with Bolivia, Ecuador, Peru and Venezuela within

the Andean Community arrangement. Colombia is a member of ALADI, which promotes economic integration and cooperation in the region. Colombia signed a trade agreement with the members of MERCOSUR in 2004. Its trade agreement (G-2) with Mexico entered into force in 1995. The Colombian government is also working actively to join APEC.

***Narcotics and Counter-terrorism Cooperation:*** In recent years the Colombian government has met or exceeded all of its identified narcotics cooperation certification criteria under the U.S. Foreign Assistance Act of 1961. The Colombian government is firmly committed to fighting the production and trade in illicit drugs. Colombian public security forces have reached or surpassed illicit crop eradication goals for the past seven years and have sustained aggressive interdiction programs. Colombia is actively investigating and prosecuting cases against major drug traffickers and cooperating with U.S. judicial authorities to provide evidence and witnesses for prosecutions of extradited Colombian nationals facing trial in the United States. Colombia has received full certification for its cooperation with the United States on counternarcotics issues under the Foreign Assistance Act every year since 2000.

In 2008, Colombia eradicated a record 229,227 hectares of coca, an increase of over 10,000 hectares compared to 2007. Colombia dedicated more resources to manual eradication in 2008 and fielded thousands of manual eradicators and security personnel to reach the 100,000 hectare manual eradication goal. The Colombian government reported manual eradication of 95,731 hectares of coca, a new record, but short of the 2008 goal. Aerial eradication of coca was 133,496 hectares, exceeding the spray goal of 130,000 hectares. This eradication effort resulted in a 24 percent drop in the potential production of cocaine from the high in 2001. In addition, public security forces seized 245 metric tons of cocaine HCL, 258 metric tons of marijuana and 695 kilograms of heroin in 2008 and bested previous records for drug laboratory destructions with 3,667 HCL and coca base processing laboratories destroyed.

In 2008, for the first time, the Colombian judicial police deployed personnel to accompany manual eradication operations to develop asset forfeiture cases for land being used to grow coca. The initiative, using specially trained officers to collect evidence in the field and present cases to the Attorney General's Office, significantly reduces the amount of time an asset forfeiture case moves through the court system. In 2008, the police collected evidence for asset forfeiture cases leading to 203 seized properties equal to over 16,000 hectares of land used to grow illicit crops. Despite substantial bureaucratic, legal, and security obstacles, this asset seizure initiative is a crucial step towards real deterrence of cultivation and replanting after eradication. Security forces continue to identify and arrest narcotics traffickers, many of whom have been, or are waiting to be, extradited to the United States.

The Colombian government remains a key ally of the United States in the fight against narco-terrorism, and Colombian officials have repeatedly emphasized in public that the narcotics threat is the single biggest enemy of democracy in Colombia. The United States works closely with Colombian law enforcement and military authorities to eradicate coca and opium poppy, detect and seize illegal drug shipments, prosecute narco-traffickers and terrorists, and extradite those who have violated U.S. law, while providing alternative development options to deter replanting of coca and encourage legal livelihoods.

Colombia's increased law enforcement efforts and expansion of government control into previously hard-to-govern areas is a success story. Homicides in 2008 were the lowest in more than 20 years. Since 2002, kidnappings have decreased about 80 percent, homicides by 40 percent, and acts of terrorism by more than 60 percent. Nearly 3,500 guerrillas demobilized in 2008, including more than 3,000 from the Revolutionary Armed Forces of Colombia (FARC).

The Government of Colombia maintained its focus on defeating and demobilizing Colombia's terrorist groups through its Democratic Security policy, which combines military, intelligence and police operations, efforts to demobilize combatants, and the provision of public services in rural areas previously dominated by armed groups. On July 2, 2008, an audacious Colombian military operation rescued three U.S. Department of Defense contractors, former Colombian presidential candidate Ingrid Betancourt, and eleven Colombians being held by the FARC. The three Americans, captured in February 2003, were the longest-held U.S. hostages in the world at the time of their rescue.

The Colombian government inflicted several key losses on the FARC's Secretariat in 2008. A Colombian military strike on March 1 killed Secretariat member Raul Reyes at his camp just across the Ecuadorean border, followed less than a week later by the killing of Secretariat member Ivan Rios at the hands of one of his own security guards. Secretariat member and FARC founder Manuel Marulanda ("Tirofijo") died in late March 2008, reportedly of natural causes.

In addition to the high-profile hostage rescue and the severe blows to the FARC Secretariat, Colombian security forces captured or killed a number of mid-level FARC leaders, debriefed deserters for detailed information on their respective units, and reduced the amount of territory where guerrillas could freely operate. The Colombian military crippled the FARC's communications network, destroyed major caches of weapon and supplies, and reduced the group's financial resources through counternarcotics and other security operations.

**Government Procurement:** Colombia is an observer, but not a signatory to the WTO Agreement on Government Procurement.

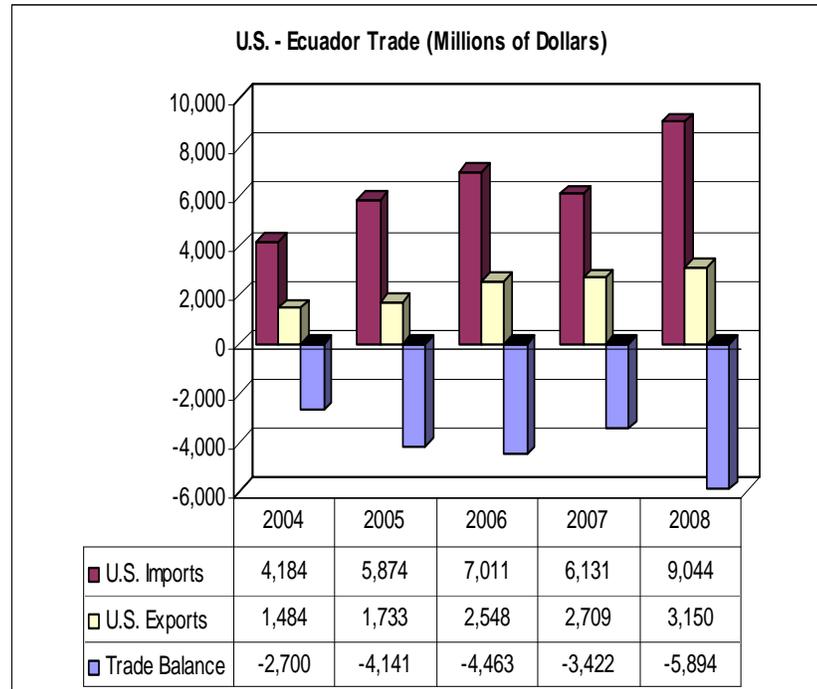
Law 816 of 2003 mandates that all public entities accord preferential treatment to bids that incorporate Colombian goods or services. Under Law 816, national companies are given a 10 to 20 percent "bonus" in their evaluation score, and companies using Colombian goods or services are given a 5 percent to 15 percent "bonus." Bids without any local content component are scored between 5 percent and 20 percent lower than bids with such a component. Additionally, Law 816 requires that foreign suppliers without local headquarters in Colombia obtain certification from a Colombian mission in the supplier's home country that government procurement laws in the supplier's home country meet reciprocity requirements. This Law has created a barrier to participation by U.S. suppliers in Colombian government procurement. Colombia will have to remove these barriers when the CTPA enters into force.

## ECUADOR

Population: 13,927,650  
(July 2008 est.)

GDP per capita (PPP):  
\$7,700 (2008 est.)

Source: 2009 World  
Fact Book



**Effect of ATPA/ATPDEA:** U.S. goods imports from Ecuador rose 47 percent, from \$6.1 billion in 2007 to \$9.0 billion in 2008. Similarly, U.S. imports under the ATPA/ATPDEA from Ecuador increased 43 percent, from \$4.6 billion in 2007 to \$6.6 billion in 2008. The increase resulted primarily from the 47 percent increase in petroleum-related imports to \$6.2 billion, which accounted for 94 percent of ATPA/ATPDEA entries from Ecuador in 2008. Non-petroleum-related imports under the ATPA/ATPDEA from Ecuador fell 1 percent, from \$378 million in 2007 to \$373 million in 2008, including imports of cut flowers, the second largest import under the ATPA/ATPDEA from Ecuador, which fell 7 percent in 2008 to \$133 million. Other important imports under the ATPA/ATPDEA from Ecuador in 2008 were tuna (\$83 million), up 8 percent since 2007; vegetables, including frozen broccoli (\$43 million), up 22 percent; vegetable and fruit preparations (\$28 million), up 22 percent; and fruits, primarily fresh pineapples, fresh mangoes, and frozen fruits (\$27 million), down 13 percent.

The ATPA/ATPDEA has played an important role in providing trade opportunities in agricultural industries in Ecuador. Such opportunities have provided its citizenry with jobs, thus deterring them from becoming involved in growing narcotics crops and, consequently, mitigating 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 has helped to create the conditions for such opportunities.

**Expropriations:** While cases of land expropriation have been infrequent, a number of U.S. investors have outstanding claims based on land and squatter disputes. Under Ecuadorian law, individuals have the right to petition a judge to establish the appropriate price for expropriated holdings. The Agrarian Development Law restricts the grounds for expropriation of agricultural land and provides for adjudication of disputes in the courts. Though foreign and domestic investors are treated equally under Ecuadorian law, the extent to which investors and lenders receive prompt, adequate and effective compensation may vary from case to case. Under the BIT, expropriation of U.S. investments can only be carried out for a public purpose, in a nondiscriminatory manner, in accordance with due process of law, and upon payment of prompt, adequate and effective compensation.

**Arbitral Awards:** The United States-Ecuador Bilateral Investment Treaty (BIT) provides for international arbitration of disputes at the investor's initiative. Ecuador is a member of ICSID and is a party to the New York Convention. In November 2007 the Government of Ecuador informed ICSID that it would no longer submit to ICSID jurisdiction future disputes relating to mining and petroleum matters. The Government of Ecuador is participating in its current arbitration cases under ICSID. A new Ecuadorian constitution, enacted in 2008, appears to limit the scope for international arbitration in new bilateral investment treaties. These provisions do not appear to apply to existing treaties.

In 2008, Ecuador resolved three investment disputes with U.S. companies that had been in international arbitration. A case involving a U.S. company's claim over eligibility for value-added tax refunds, brought in 2004, was upheld in favor of the company in November 2007. The Ecuadorian government paid the award in March 2008. In August 2008, another U.S. company received payment from the Government of Ecuador, under mutually agreed terms, to compensate it for its unrealized investment, and the company withdrew its arbitration case. Also in August 2008, another U.S. company received a favorable arbitral award in its claim against the Government of Ecuador; the government paid the arbitral award in December 2008.

In 2006, Ecuador's Solicitor General initiated an investigation of a U.S. company that had brought the arbitration case over VAT refunds, for allegedly transferring assets to another foreign company without obtaining the required government authorization. In May 2006, the Government of Ecuador nullified the company's contract and seized the company's considerable assets in Ecuador. The U.S. company initiated arbitration proceedings under the BIT; the Government of Ecuador is participating in the proceedings. In September 2008, the arbitral panel ruled that it had jurisdiction over the case, and the case remains pending.

Other U.S. and foreign companies have filed for international arbitration against Ecuador. The issues under dispute vary, but several of the cases in the petroleum sector challenge a 2006 law that increases the government's share of extraordinary petroleum income.

**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) and Decision 486 (the Common Regime on Industrial Property).

The Ecuadorian government is a member of several international conventions that concern intellectual property, including the following:

- Convention Establishing the World Intellectual Property Organization (WIPO);
- Berne Convention for the Protection of Literary and Artistic Works;
- Patent Cooperation Treaty;
- WIPO Copyright Treaty
- WIPO Performances and Phonograms Treaty; 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 rights (IPR) regime. However, weakened enforcement efforts led to Ecuador's re-listing in 2003, and it has remained on the Watch List since that time.

Intellectual property rights protection and enforcement remains a problem in Ecuador. The Ecuadorian Intellectual Property Institute (IEPI) was established in January 1999 to handle patent, trademark and copyright registrations on the Ecuadorian government's behalf. The national police and the Customs Corporation of Ecuador (CAE) are responsible for carrying out IPR enforcement orders. In 2007, IEPI's enforcement office was reorganized and additional training funds were designated in an effort to strengthen enforcement. IEPI and Ecuadorian Customs have increased enforcement actions in their areas of competence where they can act without a formal complaint by the right-holder, through administrative sanctions imposed by IEPI or the interception of counterfeit goods by Customs. In 2008, the Prosecutor General's office and Ecuadorian Customs created special IPR units focused on investigations, fines and seizures.

IEPI has also embarked on an initiative to enhance intellectual property awareness in children and young adults by providing educational materials on IPR protection to several hundred schools. IEPI also provides advertisements about the importance of IPR protection on the radio and in movie theaters.

There is widespread local trade in pirated audio and video recordings, computer software and counterfeit activity regarding brand name apparel. On the other hand, 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. In a landmark 2006 decision, a Superior Court upheld the right of patent holders to have infringing copies of their patented products removed from the market. IEPI has a backlog in processing patent applications. It began reducing the backlog in 2007 and 2008.

Works are protected under copyright law for the life of the author plus 70 years. A 2006

decision by Ecuador's Supreme Court upheld the right of music composers to be compensated by television and radio stations who broadcast their compositions. However, pirated CDs and DVDs are often found on many street corners and in shops. Sellers of pirated goods sell their illegal wares with little fear of prosecution. The Government of Ecuador has not taken action to clarify that Article 78 of the 1999 Law on Higher Education does not permit software copyright infringement by educational institutions.

Trademark registration is permitted for renewable 10-year periods. The IPR law provides protections for well-known trademarks. However, the import and sale of products that infringe registered trademarks is common.

The IPR law provides protection for industrial designs and extends protection to industrial secrets and geographical indications. Semiconductor chip layouts are protected. Plant varieties and other biotechnology products are also protected.

**Extradition:** An extradition treaty was signed on June 28, 1872, and entered into force on November 12, 1873. A supplementary extradition treaty was signed on September 22, 1939, and entered into force on May 29, 1941. The treaty includes a short list of specific offenses for which extradition can be granted and does not provide for the provisional detention of fugitives while formal extradition documents are prepared. Both of the treaties permit the extradition of U.S. citizens. However, neither the 1998 nor the 2008 Ecuadorian constitutions allow for the extradition of Ecuadorian nationals.

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

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 at least 30 employees. Private employers are required to engage in collective bargaining with recognized unions. The Labor Code prohibits discrimination against unions and requires that employers provide space for union activities. It also provides for resolution of conflicts through a tripartite arbitration and conciliation board process, although the tripartite boards were no longer meeting as of February 2009.

Except for public servants and workers in some parastatals, workers by law have the right to strike. Under the constitution, interrupting public services such as health, education, public transportation, or utilities is prohibited. 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. The law does not require reinstatement of workers fired for union activity, but does require compensation and fines. Most public sector employees are technically prevented from joining unions, but many are members of labor organizations that are not allowed to strike or bargain collectively. Although trade union political influence has declined in recent years, labor groups occasionally attempt to stage national strikes to protest economic reform measures.

Ecuador's 2008 constitution provides additional language regarding worker rights. Revisions to the Labor Code to reflect this are expected in 2009. The constitution includes new language promoting the democratic, participatory and transparent functioning of labor unions. It prohibits

any type of outsourcing or partial contracting for activities that are part of a company's core business. Outsourcing had been used in the past by some companies to have a more flexible workforce, prevent union formation and to avoid some labor obligations. Most companies have re-hired workers on a permanent basis. In the past, most workers in export processing zones were hired on temporary contracts, and did not appear to be protected by some elements of the labor code. The status of these types of contracts under the 2008 constitution is unclear.

The Constitution and the labor code prohibit forced labor. The law also prohibits the employment of persons under the age of fifteen, except in special circumstances such as an apprenticeship. Enforcement of this provision is uneven, especially in rural communities. Ecuador's National Institute of Statistics and Census' National Child Labor Survey found that the number of children between the ages of five and fourteen working illegally fell from 550,000 in 2001 to 367,000 in 2006. The children were working primarily in rural areas in the informal sector. The Ecuadorian government utilizes 28 child labor inspectors; these inspectors have the authority to cite violations and sanction companies and employers found to have illegally hired child labor. From January to September 2008, the inspectors conducted approximately 2,400 workplace inspections and found approximately 1,300 minors working in violation of labor laws.

Ecuador's labor code provides for a 40-hour work week, 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. Ecuador's legislative commission passed a 15-day paternity leave law on February 9, 2009. By law, companies must distribute at least 15 percent of pre-tax profits to their employees.

Workers have the constitutional right to a healthy and safe work environment. A worker may request that an inspector from the Ministry of Labor and Employment investigate a workplace hazard; if confirmed, the inspector may close down the workplace. Response time for inspectors ranges from three days in major cities to much longer in the countryside.

The minimum wage was increased 18 percent in 2008 and another 9 percent in 2009, but there are concerns that a family earning only one minimum wage would not have sufficient income to provide a decent standard of living for the family. Most organized workers in state industries and in the formal sector (private enterprises) earn more than the minimum wage and are provided other significant benefits through collective bargaining. However, the majority of workers is in the large informal sector, and these workers do not have recourse to the minimum wage, social security or legally mandated benefits.

***Economic Conditions:*** In March 2000, Ecuador adopted the U.S. dollar as its national currency in response to a serious economic crisis. Dollarization, combined with responsible fiscal policies, helped tame inflation and bring the country back to positive growth and economic stability. The economy grew 3.9 percent in 2006 but slowed to 2.5 percent in 2007, constrained by declining petroleum production and reduced private sector investment. The economy appeared to have grown at a somewhat faster rate in 2008 due to high oil prices and increased government spending. However, by the end of 2008 the Ecuadorian economy began to experience some consequences of the global economic crisis, as oil prices dropped sharply, remittances from Ecuadorians abroad fell, and Ecuador realized a trade deficit for the last four

months of the year (although it had a surplus for the year as a whole). Inflation was 3.3 percent in 2007 and 8.8 percent in 2008.

In April 2006, Ecuador revised its hydrocarbons law requiring companies to share at least 50 percent of extraordinary revenues with the government, mandating revisions in contracts with many private petroleum companies. In 2007, this share was increased to 99 percent. In 2006 and 2007 the Government of Ecuador sought to renegotiate petroleum production contracts with foreign oil companies, but did not reach agreement. In 2008, the government signed new short-term agreements with a number of foreign oil companies but stated that it intended to negotiate long-term agreements based on a new contract model. A number of the foreign oil companies initiated arbitration proceedings over the changes and curtailed investment.

In December 2008, the Government of Ecuador defaulted on a commercial bond issuance, and in March 2009 defaulted on another commercial bond issuance. It has stated that it will continue to pay a third commercial bond issuance and will pay its obligations to the InterAmerican Development Bank and some other multilateral lenders. The government stated that it would seek to renegotiate its debt with commercial bond holders, and presented a repurchasing proposal in April 2009.

In 2008, the Government of Ecuador lowered the maximum interest rate ceilings for the banking sector on a monthly basis. It announced that it would freeze downward adjustments for the first six months of 2009.

In April 2008, the Government of Ecuador froze or cancelled most mining contracts, although it stressed it intended to negotiate new contracts with firms that had made large finds. Ecuador passed a new mining law in January 2009, and plans to negotiate new mining contracts in 2009.

Outside of regulated sectors such as petroleum, mining, and banking, a number of companies reported that they enjoyed growing business for much of 2007 and 2008. A number of companies report that they have good access and a constructive relationship with the Correa Administration.

Ecuador's Central Bank has changed the methodology it uses to calculate FDI, and now only publishes net flows. According to the Central Bank, net FDI flows have fallen over the last few years. In 2007, the net flow of FDI into Ecuador was \$193 million (inflows minus outflows), down from \$271 million in 2006. Most of the decrease appears to be associated with the transportation and communication sectors. The net flow of U.S. FDI into Ecuador was \$109 million in 2007, in contrast to a net outflow of \$160 million in 2006. In 2007, stock of U.S. FDI in Ecuador was \$673 million, according to the U.S. Bureau of Economic Analysis, up from \$554 million in 2006. For Ecuador to take full advantage of the potential investment benefits associated with the ATPA/ATPDEA, it would need to improve its investment climate by providing greater transparency and certainty for foreign investors.

**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 some improvements, completion of complicated procedures is required to obtain clearance for

imports from the Government's standards-setting body. Also, lack of transparency and inefficiency in the sanitary registration process have delayed and even blocked the entry of some agricultural imports from the United States. Ecuador's 2008 constitution establishes broad new guidelines for trade that in some instances might give priority to local production. These provisions require additional legislation to define how they would be implemented.

Since 2007, Ecuador has taken a number of steps to reduce import tariffs on raw materials, inputs, and capital goods, while increasing tariffs on consumer goods. In August 2008, Ecuador also eliminated tariffs on airplanes and airplane parts. However, in January 2009, Ecuador imposed higher tariffs and quotas on a large number of imports, including those from the United States, at levels which exceed their WTO bound rates. On February 18, 2009, Ecuador notified the WTO that it was invoking the WTO's balance of payments safeguard provisions as a justification for these measures. The International Monetary Fund will issue a report assessing Ecuador's balance of payments situation and the WTO is scheduled to hold consultations to review these import measures.

Although Ecuador phased-out prior authorization requirements for most imports, Ecuador still requires prior authorization for importing approximately 80 agricultural products. For certain sensitive products such as corn, soybean meal, dairy and poultry, the Minister of Agriculture or a designee must sign the import authorization. The Ministry of Health is required to provide prior authorization for imports of processed, canned, and packaged products in the form of a Sanitary Registration. The ability to import some products, such as rice, corn, soybeans, and soybean meal, depends on the Ministry of Agriculture's use of "consultative committees," which authorize imports of bulk commodities based on a complex supply and demand assessment. These committees, mainly composed of local producers, sometimes advise the Ministry of Agriculture against granting import authorizations for these products; however, from 2006-2008 the committees have not refused to authorize imports.

To overhaul and improve Ecuador's sanitary and phytosanitary (SPS) regime, Ecuador replaced its Animal and Plant Health Inspection Service (SESA) with the new Agriculture Quality Assurance Agency (AGROCALIDAD) in December 2008. The agency is responsible for administering Ecuador's SPS controls. As a member of the WTO, Ecuador must comply with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. In most cases, an SPS certificate may be obtained quickly and access is granted without difficulties so long as the proper documentation is submitted. However, denials of SPS certification have been at times used in a discriminatory fashion to block the import of U.S. products that could compete with Ecuadorian production (*i.e.*, beef, poultry and dairy products). AGROCALIDAD follows the "Andean Sanitary Standards" established under the Andean Community (CAN). Some standards applied to third countries are different from those applied to CAN members. The CAN is working to harmonize its regulations with those of the WTO.

As a member of the CAN, Ecuador grants and receives exemptions on tariffs for trade with its CAN partners. A common external tariff (CET) on some products for third party imports into the Andean Community was implemented on January 31, 2006.

In December 2008, the Ecuadorian Quality Council (CONCAL) issued new conformity

assessment procedures for several products including lubricants, some automotive parts, tires, apparel, footwear, and appliances, among others. These measures did not provide a transition period for exporters and importers to adjust to the new measures; the immediate implementation disrupted some exports. In January 2009 CONCAL issued a new conformity assessment that relaxed conformity assessment procedures pending the issuance of new procedures that are due in July 2009.

Ecuador previously had a preshipment inspection (PSI) regime, which added six to eight weeks to shipping times. In October 2007, the PSI regime was replaced with a risk analysis system run by the Ecuadorian Customs Agency. Under the system, low-risk importers benefit from fewer physical inspections and expedited release of their cargo. The law also included changes to customs processes and requirements in an effort to reduce costs and minimize delays for importers.

Ecuador's foreign investment policy is governed largely by the national implementing legislation for Andean Community Decisions 291 and 292 of 1991 and 1993. Foreign investors are accorded the same rights of entry as Ecuadorian private investors, may own up to 100 percent of enterprises in most sectors without prior government approval, and face the same tax regime. In December 2007, the Government of Ecuador established a 0.5 percent tax on capital outflows. Transfers for imports, dividends on foreign investment, interest and principal payments on external debt registered with the Central Bank, and insurance premiums were exempt. In December 2008, the tax on capital outflows was increased to 1 percent and the exemptions were eliminated. There are no performance requirements associated with foreign investment in Ecuador other than local content requirements in the automotive sector.

Certain sectors of the economy are reserved to the state. All foreign investment in petroleum exploration and development in Ecuador must be carried out under a contract with the state oil company. Foreign investment in domestic fishing operations is subject to approval by the National Fishery Development Council based on a favorable report from the National Fishing Institute. Commercial fishing by foreign companies is permitted provided that the catch is processed in Ecuador.

***Participation in Free Trade Negotiations:*** In May 2004, the United States initiated negotiations on an FTA with Colombia, Ecuador, and Peru. Bolivia participated as an observer. To date, the United States has concluded FTAs with Peru and Colombia. Negotiations with Ecuador were suspended and were not concluded. Ecuador is in the process of negotiating an association agreement with the European Community.

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

Ecuador maintains a local crop absorption program based on Ministerial Agreement 067 of February 20, 1978. This measure prohibits imports of soybean meal and corn during the local harvest season. Ecuador committed to eliminate this ruling during its WTO accession. Nevertheless, it is still being implemented and enforced through Ministerial Agreement 347 of December 14, 2004. Through this program, the industry is obliged to purchase 100 percent of

the local production of the aforementioned commodities, usually at high prices set by Consultative Committees that are often dominated by local producers, before imports of these commodities are allowed.

Ecuador's 2008 constitution declares Ecuador free of biotechnology crops and seeds. However, the constitution grants the President the authority to allow for imports of agricultural crops and seeds that may have been produced using biotechnology under exceptional circumstance in the national interest. These provisions require further implementing legislation and regulations. A new Food Sovereignty Law, which was expected to further define the framework for biotechnology products in Ecuador, is in the final stages of the approval process. The law is very general and requires implementing regulations for clarification. The law would provide a broad legislative framework for the use of biotechnology. In the interim, biotechnology cultivation and imports have continued normally. Interested private sector industries are working with Ecuadorian authorities to develop implementing regulations that will not impede trade in products derived from biotechnology.

***Trade Policies that Revitalize the Region:*** Ecuador is a member of the Andean Community. According to the Ecuadorian government, the Andean Community absorbed 17 percent of Ecuador's exports and provided 27 percent of its imports in the first 11 months of 2008. Ecuador has signed a number of cooperation agreements with countries in the region, including Venezuela and Peru, on topics including energy and social development. Ecuador is also a member of ALADI. Ecuador has broad agreements for the liberalization of trade in goods with Chile and MERCOSUR. In 2008, Ecuador signed an association agreement with Chile, which included extending and broadening the existing economic complementation agreement. Ecuador also has agreements with Cuba and Mexico that establish tariff preferences for a limited number of products.

***Narcotics and Counter-Terrorism Cooperation:*** Ecuador has received full certification for its cooperation through 2007 with the United States on counter-narcotics issues under the Foreign Assistance Act, as described in the *International Narcotics Control Strategy Report* of March 2008. Ecuador is not a significant coca-producing country, but is exploited significantly as a transit zone and, to a lesser extent, for processing. With the support of the U.S. Government, Ecuador maintains an active drug detection and interdiction program. Its programs focus on interdiction, police training, drug detection, information sharing, demand reduction and control of money laundering. The U.S. Government has also supported the implementation of a new criminal procedures code, adopted in 2001, with police and judicial training. In October 2005, Ecuador adopted a new money laundering law, and the U.S. Government has been supporting its implementation. Notably, the Ecuadorian government is making progress in creating a Financial Intelligence Unit to better monitor financial transactions and identify illegal activities.

The reorganization and re-staffing of Ecuador's National Drug Council (CONSEP) continued in 2006. Efforts also continued to revise the basic anti-drug law, Law 108, to harmonize it with the 2005 money laundering law. CONSEP activity against trafficking in controlled precursor chemicals continued at a high level. However, CONSEP is still not funded at a level consistent with its broad responsibilities. The Ecuadorian government has continued to reinforce its

security presence in the northern border area with an increased number of military operations in 2008 over previous years.

The Counternarcotics Directorate (DNA) of the National Police was increased from 1,385 to 1,500 members in 2006, and remains at that level. New DNA bases and stations were opened with U.S. Government assistance in 2007 in Carchi Province at Tulcan and the Port of Esmeraldas in Esmeraldas Province, both near the Colombian border.

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

Ecuadorian law enforcement agencies cooperated well with U.S. and certain other foreign law enforcement agencies in 2008. Ecuadorian government actions in early 2009 to end U.S. cooperation with specialized police units and expel key members of the U.S. Mission have negatively affected some of our traditionally close cooperation to stop narcotrafficking and other transnational crimes. Nonetheless, the government indicated that its concerns relate only to sovereignty questions and that it wishes to continue other counternarcotics cooperation. Maritime cooperation increased in response to a surge in maritime smuggling out of Ecuador. Ecuadorian forces, in cooperation with the United States, have adapted to a shift in trafficking patterns on the high seas from large multi-ton loads in fishing vessels to smaller loads on go-fast vessels that stay closer to shore. There has also been an increase in the use of self-propelled semi-submersible vessels, which are capable of carrying multi-ton loads for long distances.

In July 2008, the Ecuadorian government notified the United States that it would not renew the agreement signed in 1999 that permits the U.S. government to operate a forward operating location (FOL) at the Ecuadorian Air Force base in Manta. It is unclear if the Ecuadorian government will permit follow-on activities to replace surveillance coverage of the Eastern Pacific.

Ecuador is a party to the UN Convention for the Suppression of the Financing of Terrorism, and in 2006, the Ecuadorian government ratified the Inter-American Convention against Terrorism. Ecuador is making efforts to improve control of its borders. Other issues of concern include Ecuador's weak financial controls, widespread document fraud and reputation as a strategic corridor for arms, ammunition and explosives destined for Colombian terrorist groups.

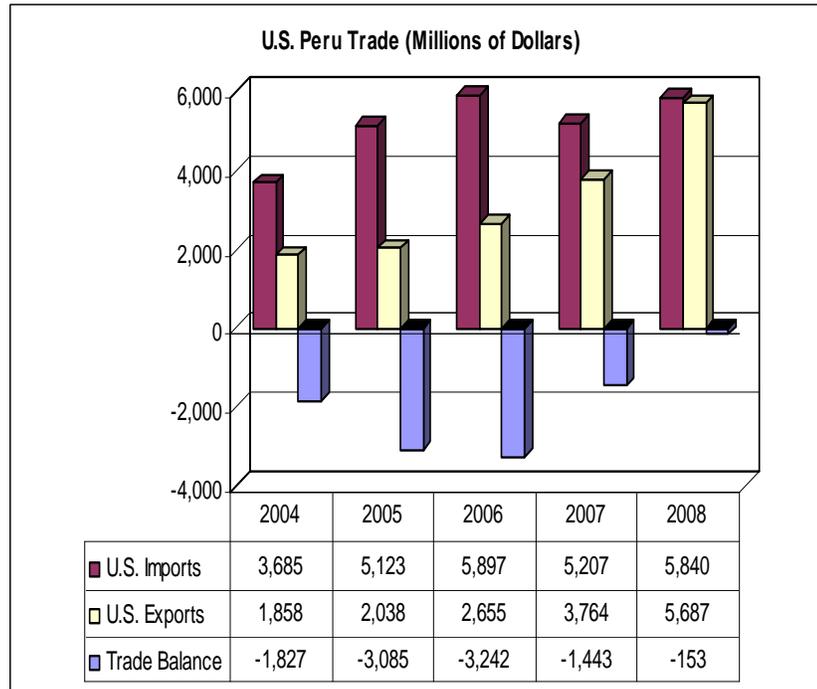
In international rankings, Ecuador has been reported to suffer from high levels of corruption. Weak judicial institutions, sometimes susceptible to political influence and lack of transparency in regulatory bodies, are frequently cited as root causes of corruption in Ecuador. There are few non-governmental institutions that fight corruption. President Correa has cited fighting corruption as an important administration goal. Ecuador's 2008 constitution creates a Transparency and Social Control branch of government tasked with preventing and combating

corruption, among other issues.

***Government Procurement:*** In August 2008, Ecuador's Constituent Assembly passed a new public contracting law, which calls for priority for locally produced products and services in public purchases, although foreign suppliers can compete for the contracts. The law eliminates the former requirement to obtain approval from the Attorney General and the Controller prior to being awarded a government contract, and creates a National Institute of Public Contracting to oversee transparency and timeliness of the contracting process. Foreign bidders must be registered in Ecuador and have a local legal representative in order to participate in government procurement. Ecuador is not a signatory or an observer to the WTO Agreement on Government Procurement.

## PERU

Population: 29,180,900  
 (July 2008 est.)  
 GDP per capita (PPP):  
 \$8,500 (2008 est.)  
 Source: 2009 World  
 Fact Book



**Effect of ATPA/ATPDEA:** U.S. goods imports from Peru increased 11 percent to \$5.8 billion in 2008, from \$5.3 billion in 2007. U.S. imports under the ATPA/ATPDEA from Peru increased 5 percent to \$3.2 billion, from \$3.0 billion in 2007. Copper-related articles, primarily refined copper cathodes, remained the leading U.S. import under the ATPA/ATPDEA program, despite a 12 percent decline of these imports to \$903 million in 2008. This decline was more than offset by a 32 percent increase in imports under the ATPA/ATPDEA of petroleum products to \$871 million, replacing apparel as the second largest ATPA/ATPDEA import. U.S. imports of apparel declined 2 percent to \$774 million in 2008. Other leading ATPA/ATPDEA imports from Peru in 2008 were fresh asparagus (\$153 million); vegetable and fruit preparations (\$129 million); and fruits, primarily grapes and mangoes (\$66 million). U.S. imports under the ATPA/ATPDEA of fresh asparagus declined 5 percent in 2008, but imports of vegetable and fruit preparations and fruits rose substantially, up 59 percent and 33 percent, respectively in 2008. Also increasing importantly from Peru were U.S. imports under the ATPA/ATPDEA of paprika (\$41 million), which have climbed 55 percent since 2007, and 132 percent since 2006; and molybdenum ores, which have increased gradually over the past 5 years, from \$3 million in 2004 to \$54 million in 2008.

Peruvian exports to the United States under the ATPA/ATPDEA have stimulated diversification in the economy and job expansion within the export sector. According to the Ministry of Trade, exports to the United States provided 1,165,782 direct and indirect jobs to Peruvians in 2008, compared with 562,000 jobs in 2002 and 250,000 jobs in 1994. Additionally, the ATPA has improved the ability of Peruvian industries to export to more markets around the world. The

value of the goods Peru exported worldwide in 2008 reached a record \$31.2 billion, 8.7 percent higher than in 2007, and represented almost a quarter of Peru's total GDP.

**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 Peruvian government has expressed its intention to comply with international standards concerning expropriations, and it has agreed to adhere to such standards in the PTPA. Adequate payment to owners of agricultural lands expropriated by the Peruvian Government in the late 1960s and early 1970s is still under discussion with some foreign investors. In 2006, the Peruvian government resolved one such claim involving an American company.

**Arbitral Awards:** Peru has consented to binding international arbitration of investment disputes between foreign investors and the Peruvian government, in accordance with national legislation or international treaties in force. A December 1992 decree and the 1993 Constitution provide for international arbitration of disputes between foreign investors and the Government or state-controlled firms. Peru is a party to the New York Convention.

Peru's decision to become a contracting party to the ICSID Convention in 1993 has improved its ability to conclude bilateral investment agreements. Disputes between foreign investors and the state regarding contracts predating Peru's accession to the ICSID Convention must still be submitted to national courts. "Juridical stability agreements" between an investor and the government freeze tax and regulatory treatment of investments for extended periods, typically ten or more years, in exchange for a commitment to make an investment above a certain monetary threshold. The typical stability agreement permits investors to submit contract disputes with the Government to national or international arbitration.

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. In at least one instance, a U.S. firm continues to experience difficulty in compelling a Peruvian Government entity to honor an arbitration panel's ruling.

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

**Intellectual Property:** The Peruvian government is a member of several international conventions that concern intellectual property, including the following:

- Convention Establishing the World Intellectual Property Organization (WIPO);
- WIPO Copyright Treaty;
- WIPO Performances and Phonograms Treaty;
- Berne Convention for the Protection of Literary and Artistic Works;
- Patent Cooperation Treaty; and
- Paris Convention for the Protection of Industrial Property.

As a result of the PTPA, Peru made changes to its legal regime to raise its standard for intellectual property protection and enforcement. Some of these improvements include: protecting trademarks used in Internet domain names; strengthening measures to prevent the circumvention of technological devices for preventing Internet-based copyright piracy; removing burdens for patent registration; protecting against unfair commercial use of test data and other undisclosed information submitted in connection with regulatory approval for pharmaceutical and agricultural chemical products; and providing deterrent-level penalties for piracy and counterfeiting. The U.S. Government will monitor Peru's implementation of these obligations. Peru is listed on the 2008 Special 301 Watch List.

Despite some Peruvian government efforts to improve enforcement, including increased raids on large-scale distributors and users of pirated material, piracy remains widespread, due notably to a failure to apply deterrent penalties. 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. However, lack of adequate prosecution and sentencing has allowed many IPR infringers to resume their operations after these raids.

**Extradition:** A new extradition treaty entered into force on August 25, 2003. It specifies a list of extraditable offenses and permits the extradition of nationals.

**Workers' Rights:** Peru has ratified all eight core conventions of the International Labor Organization (ILO).

Since the election of then-President Toledo in 2001, Peru has made significant labor reforms, and President Garcia's administration continued on this path by taking several steps to modernize Peru's labor code and ensure that Peru's labor laws are consistent with internationally recognized labor rights. In 2003, Peru passed a major law reform strengthening labor rights and addressing many of the observations raised by the ILO. The law included reforms such as reducing the number of workers needed to form a union, limiting the power of the labor authority to cancel a union's registration, and lessening the requirement to show "dual majority" support in order to conclude a collective bargaining agreement covering workers in a "branch of activity" or occupation. In 2007, Peru passed a series of reforms to regulate the use of subcontracting and temporary work contracts, in order to provide strict government oversight of these mechanisms and protect workers' rights to organize and bargain collectively. The 2007 reforms also addressed issues regarding strikes and anti-union discrimination. Nonetheless, labor advocates expressed concerns as to whether the reforms are sufficient to fully protect temporary or subcontracted workers.

Peru's Constitution and the Law of Collective Labor Relations provide for freedom of association for all citizens. 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.

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 Trade Union Confederation (ITUC), the international trade secretariats and regional bodies.

Peru's Constitution recognizes the right to strike, but there are limitations and exceptions based on public interest considerations. Peru's Law on Collective Labor Relations defines a strike as a collective suspension of work conducted in a peaceful and voluntary manner by workers who leave the work site. Supreme Decree 024-2007 established new procedures for calling strikes, including a revised requirement that allows labor unions to declare a strike with a simple majority of voting members, as opposed to the previous rule which required a two-thirds majority vote.

Peru's Constitution provides for collective bargaining and ensures that the collective bargaining agreements are binding. Supreme Decree 013-2006-TR clarified that employers cannot unilaterally change previously agreed-upon collective bargaining agreements, and reduced arbitration costs for collective bargaining agreements. Peru's four Export Processing Zones (EPZs) are not exempt from national labor laws.

The Peruvian Congress unanimously passed a new General Labor Inspection Act on July 4, 2006, which went into effect on October 18, 2006. The law helps strengthen and professionalize labor inspections by establishing guidelines for labor inspections, setting up separate offices for investigations and for fines, and establishing a National Bureau of Labor Inspections to oversee the inspections process. Currently, there are over 400 labor inspectors working throughout the country. Additionally, the new law redefines acts of union interference as administrative violations, allowing acts of union interference by employers to be punishable with fines.

Peru's Constitution prohibits forced or bonded labor. Despite recent government efforts to combat forced labor, in May 2006 the ILO estimated that nearly 30,000 persons are involved in forced labor in Peru, particularly in the logging industry located in the Amazon River provinces. In January 2007, the Ministry of Labor created an interagency committee to combat forced labor. Also, in 2008 the Ministry of Labor trained its first group of labor inspectors specialized in forced labor. The law specifically prohibits forced or bonded labor by children. It is estimated that approximately 2 million children work in Peru, including instances of child labor in the informal economy sectors of domestic services and street vendors, and in work related to trafficking in persons. In January 2006, the Ministry of Labor created a special Office of Labor Protection for Minors, responsible for conducting on-site inspections to ensure that legal codes regarding child labor are enforced. The Office of the Ombudsman for Children and Adolescents works with the Ministry of Labor and Employment Protection to document complaints regarding violations of child labor laws. More than one thousand offices are located in communities throughout the country.

The Constitution provides that the State is responsible for promoting social and economic progress and occupational education. It states that workers should receive a "just and sufficient" wage to be determined by the Government in consultation with labor and business representatives, as well as "adequate protection against arbitrary dismissal." In January 2008, the minimum wage was raised from \$153 per month to \$168 per month.

The Constitution also provides for a 48-hour workweek, a weekly day of rest, and an annual vacation. The 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. In May 2006, the Ministry of Labor and Employment Protection issued a decree requiring businesses to maintain a register of hours that employees work in order to ensure that workers receive due compensation for working more than eight hours per day. The law also requires employers to document the 45-minute lunch break and to make these records available to workers and unions.

Occupational health and safety standards exist, but labor advocates argue that the government lacks the resources necessary to enforce compliance. The Ministry of Labor and Employment Protection conducts random inspections, and receives and responds to workers' complaints regarding occupation safety and health. If a company is found to be in violation of the law, it is subject to fines and/or closure.

In cases of industrial accidents, compensation is usually determined by an agreement between the employer and worker. 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 has posted stellar macroeconomic figures for the past five years, setting several records in 2008. Real GDP growth rate in 2008 was estimated at 9 percent, driven by exports, investment and domestic demand. GDP per capita reached an estimated \$4,765 in 2008, up significantly from \$2,100 in 2001. Mining, banking and retail services, manufacturing, agriculture, and fishing are key economic sectors.

Peruvian exports reached a record \$31.2 billion in 2008, with imports of \$26.9 billion, producing a trade surplus of \$4.3 billion. Peru's major trading partners in 2008 included the United States, China, Switzerland, Canada, Japan, Chile, Venezuela, the European Union (led by Germany, Spain and Italy), and Brazil. The United States receives approximately 18 percent of Peruvian exports and 19 percent of Peruvian imports originate from the United States. Exported goods include copper, gold, zinc, textiles, petroleum derivatives, coffee, potatoes, and asparagus. Imports include petroleum and petroleum products, plastics, machinery, vehicles, iron and steel, wheat, and paper. According to UNCTAD, Peru's stock of FDI was over \$16.1 billion in 2007. The United States and Spain are the leading investors. Stock of U.S. FDI in Peru was \$6.8 billion in 2007, a 41 percent increase from 2006. 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. The Peruvian government still faces strong social pressures to reduce its poverty and underemployment rates. Maintaining long-term growth will require improving the investment climate, reducing corruption and completing other reforms.

***Market Access:*** The most recent extension of the ATPA/ATPDEA by the U.S. Congress provided benefits for Peru through 2009. The PTPA will eliminate the tariff disparity that

currently exists between the United States and Peru. Upon entry into force of the agreement on February 1, 2009 almost 90 percent of current U.S. agricultural trade enters the Peruvian market duty-free. These products include high quality beef, whey, cotton, wheat, soybean and soybean meal, vegetables and fruits such as apples, pears, peaches, and cherries, and processed food products. In addition, Peru immediately eliminated its price band system on trade with the United States. Tariffs on other agricultural products will be eliminated gradually, most within five to fifteen years. Within 17 years, all U.S. agricultural exports entering the Peruvian market will be duty-free.

Eighty percent of U.S. consumer and industrial exports to Peru were also duty-free upon entry into force of the PTPA. Within five years, an additional six percent of U.S. industrial products will become duty-free, and another four percent within seven years. Duties on remaining 10 percent will be phased-out over ten years. The PTPA will provide significant new opportunities for U.S. manufacturers of information technology products, industrial machinery, chemicals, remanufactured equipment, medical equipment, and electrical power generation and distribution equipment. Peru has also joined the Information Technology Agreement.

Additionally, the PTPA will enable U.S. exports to compete more favorably with those from countries which already have preferential access to the Peruvian market through other trade agreements.

***Participation in Free Trade Negotiations:*** On April 12, 2006, U.S. Trade Representative Rob Portman and Alfredo Ferrero Diez Canseco, Peru's Minister of Foreign Trade and Tourism signed the United States-Peru Trade Promotion Agreement in Washington, D.C. On June 28, 2006, the Peruvian Congress approved the PTPA by a vote of 79 to 14. The United States and Peru amended the PTPA in June 2007, to include provisions reflecting the May 10, bipartisan agreement with the U.S. Congress. Congress enacted legislation approving and implementing the PTPA in December 2007. The PTPA entered into force on February 1, 2009.

***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.

***Trade Policies that Revitalize the Region:*** Peru is a member of the Andean Community. According to the Peruvian government, Peruvian exports to Andean Community (CAN) countries reached \$1.6 billion in 2008 representing 5 percent of Peru's total exports. Imports from these three countries were \$3.3 billion in 2008, about 11 percent of total imports. Exports to Brazil totaled \$895 million (2.9 percent) and imports from Brazil totaled \$2.4 billion (8.1 percent).

Peru is also a member of ALADI. Within the framework of ALADI, Peru has extended limited concessions to Argentina, Brazil, Chile, Cuba, Mexico, Paraguay, and Uruguay. Peru is in the final stages of negotiating a free trade agreement with Mexico. Exports to Mexico were \$299 million (1 percent) while imports were \$1.2 billion (3.9 percent). An FTA between Peru and Chile will likely enter into force in 2009. In 2008, Peru signed an FTA with Canada. When negotiations between the Andean Community and the European Union stalled in 2008, Peru and the European Union began bilateral negotiations on an FTA which are anticipated to conclude in mid-2009. As a member of the Asia-Pacific Economic Cooperation Forum (APEC), Peru hosted the 2008 APEC meetings. This direct exposure to the Asian economies resulted in Peru actively pursuing trade deals with several Asian partners including Japan and South Korea. Peru has signed free trade agreements with China, Thailand and Singapore.

***Narcotics and Counter-terrorism Cooperation:*** In 2008, 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 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. Coca cultivation is expanding to new areas while densities are increasing in the traditional source zones. With U.S. Government support, Peru eradicated over 10, 143 hectares of coca in 2008, keeping at least 77 metric tons of cocaine from being produced. Alternative development programs supported legal productive activities on almost 49,200 hectares since 2002. The U.S. Government is supporting an effort to develop a methodology to accurately measure the extent of opium poppy cultivation, although terrain, planting techniques and weather in the growing zones present substantial obstacles to this effort. Peruvian national police seized over 750,000 opium poppy plants in 2008 (22 hectares).

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 and Colombian 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 2008 focused on maritime and port investigations and interdictions that produced record-breaking cocaine seizures. In 2008 approximately 27 metric tons of cocaine base and 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 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 its 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 went into effect in early 2005.

The ATPA/ATPDEA has played a major role in creating jobs and promoting higher-value non-traditional exports that present an alternative to illicit coca growing. According to the Ministry of Trade, exports to the United States provided 1,165,782 direct and indirect jobs to Peruvians in 2008, compared with 562,000 jobs in 2002 and 250,000 jobs in 1994. More than 300,000 of the jobs created under the ATPDEA were in the labor-intensive textile/apparel and agricultural sectors. These new jobs, which are generally in the formal sector, are likely to be better paying and provide better working conditions. 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, textile and apparel exports to the United States from Peru more than doubled from \$404 million in 2002 to \$816 million in 2007. Export job creation is vital to reducing Peru's poverty rate, which is now below 50 percent and to moving workers from the large informal labor sector into the formal sector where they receive better benefits.

Peru is taking action against both international and domestic terrorism, and the government is seeking an integrated approach to eradicating the terrorism threat in the country. There continue to be indications that Sendero Luminoso (Shining Path) 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 Peruvian Congress 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 Shining Path camps and capture leaders. Peru aggressively prosecutes terrorist suspects. After the Constitutional Tribunal overturned numerous provisions in Fujimori-era terrorism laws in 2003, then President Toledo issued new decree legislation and established the procedures for reviewing and retrying terrorism cases. Around 750 cases were retried in 2005. Peru is a party to all 12 of the international conventions and protocols relating to terrorism. Peru, Colombia and Brazil signed a border cooperation agreement that addresses terrorism and arms trafficking, along with other issues.

A June 2002 law passed by Peru's 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) required 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 has access to these reports upon request.

**Government Procurement:** Under the PTPA, Peru has agreed to provide U.S. goods, services, and suppliers with national treatment in the procurements covered by the Agreement. Peru is not a signatory or an observer to the WTO Agreement on Government Procurement.

## Chapter 4

### SUMMARY OF FEDERAL REGISTER SUBMISSIONS

Pursuant to section 203(f) of the ATPA as amended, USTR requested the views of interested parties (74 Fed. Reg. 6440, February 9, 2009) on whether the countries designated as ATPDEA beneficiary countries in Presidential Proclamation 7616 of October 31, 2002, are meeting the eligibility criteria under the ATPA as amended.

USTR received eighteen comments in response to its request. The full texts of the submissions are available at <http://www.regulations.gov>, docket USTR-2009-0006. A summary of each submission follows.

**U.S. Chamber of Commerce** expresses its strong support for the extension of the ATPA for Colombia until the United States-Colombia Trade Promotion Agreement enters into force. The Chamber believes that the ATPA has played an important role in promoting sustainable economic growth, job growth and investment in Colombia. However, the Chamber recommends that a review process be undertaken to determine whether Bolivia and Ecuador are in compliance with the ATPA's eligibility criteria. The Chamber raised concerns with Bolivia's expropriation of international companies in the oil, gas, and telecommunication sectors. The Chamber also raised concerns with Ecuador's treatment of U.S. companies and its counternarcotics efforts. In addition, the Chamber recommends that the Administration and Congress condition an ATPA extension for Bolivia and Ecuador on those governments' demonstrated respect for property rights and the rule of law, in accordance with the ATPA's statutory requirements.

**International Intellectual Property Alliance (IIPA)** continues to express concerns over the challenges facing all four ATPA beneficiaries (Bolivia, Colombia, Ecuador, and Peru) in satisfying the statutory criteria regarding the protection and enforcement of intellectual property rights. The IIPA points out that it is not sufficient to have copyright law reform without adequate and effective enforcement of the existing copyright laws. According to the IIPA, U.S. copyright-based companies are suffering significant losses due to copyright piracy in the Andean region, although it was not able to provide a comprehensive estimate.

**VF Corporation**, a major U.S. importer of apparel products manufactured in the Andean region, states that a lapse or elimination of ATPA benefits would have a severe and immediate impact on the price competitiveness and overall viability of Andean products in the U.S. market. VF Corporation views the ATPA as an important incentive to keep U.S. investment in the region.

**U.S. Labor Education in the Americas Project (USLEAP)** opposes suspending ATPA benefits for Ecuador while acknowledging that the government of Ecuador has done little to address issues that have been raised with respect to basic worker rights. These issues include: protecting the right to organize, protecting the right to collective bargaining, and protecting the basic worker rights of public sector workers. USLEAP also requested the restoration of ATPA benefits for Bolivia.

**The Republic of Bolivia** believes that Bolivia has demonstrated “sufficient and significant” efforts to combat coca cultivation in order to be a beneficiary country of the ATPA program. The Bolivian government states that the suspension of ATPA represents a major social impact on thousands of workers, as the United States is the second largest market for Bolivian exports. The Bolivian government estimates that 354 companies in 2008 were dedicated to the production of goods destined to the U.S. market, with half of the companies benefiting from the ATPA program belonging to the textile, apparel, wood and wood products industries. The Bolivian government hopes that the new Administration will restore Bolivia’s ATPA benefits.

**The Chamber of Exporters of La Paz, the State of La Paz, the Bolivian Federation of Manufacturing Workmen, AMETEX S.A., the Economic Organization of Artisan Producers with Cultural Identity: Bolivian Artisan Association “Lord of May,” the Bolivian Association of Producers and Exporters of Alpaca Products, the Democracy Center, The American Federation of Labor & Congress of Industrial Organizations (AFL-CIO) and the Quixote Center** call for the revocation of Bolivia’s suspension from the ATPA program in order to preserve the Bolivian economic development, job creation, and export diversification that has taken place since the entry into force of ATPA. These parties believe that U.S.-Bolivian relations will be further set back if Bolivia’s trade preferences are not reinstated at this time. The AFL-CIO and the Quixote Center argue that Bolivia has made progress in fulfilling its commitments with respect to coca eradication and drug interdiction efforts.

**The Republic of Ecuador** believes that the ATPA will continue to play an important role in Ecuador’s overall economy and its capacity to dedicate resources to counternarcotics efforts. It believes that Ecuador has a strong record of combating narcotics trafficking. The government also states that at a time of fiscal strain the ATPA is more important than ever to the Ecuadorian economy.

**Ecuadorian-American Chamber of Commerce** supports continuing the designation of Ecuador as beneficiary country under the ATPA. The Ecuadorian-American Chamber of Commerce argues that in the face of the current global economic crisis, maintaining trade between Ecuador and the United States under ATPA is of mutual interest to both countries. It states that ATPA has promoted investment and created jobs, helping to combat poverty and drug cultivation in Ecuador, particularly in the Northern provinces near the border with Colombia.

**Chevron** states that it does not support the recertification of Ecuador as an ATPA beneficiary country due to measures the government of Ecuador has taken to repudiate and nullify existing contracts with one of Chevron’s subsidiaries: Texaco Petroleum Company. Chevron remains concerned about its ability to secure fair treatment regarding its subsidiary’s contracts in Ecuador and notes that, despite its best efforts to engage, no progress has been made in resolving these outstanding contract disputes.

## Chapter 5

### OPERATION OF THE PETITION PROCESS

Pursuant to the procedures outlined in Chapter 1 – Description of the ATPA, USTR has administered a petition process under the program. A description of the initial periods of operation of the petition process can be found in the earlier USTR reports to Congress on the ATPA as amended. Those reports can be found at <http://www.ustr.gov>.

Since the last report, in January 2008, USTR published a list of petitions filed pursuant to the 2007 annual review of the program. One petition was filed, by Bumble Bee Foods, but the Trade policy Staff Committee (TPSC) determined that it did not require further action. The TPSC also announced that it was terminating its review of a petition filed by Engelhard Corporation in 2003 regarding its tax dispute with the Peruvian government because the petitioning company was no longer majority U.S.-owned. The TPSC also terminated its review of a petition filed by Parsons Corporation in 2004 regarding a payment dispute with the Peruvian government, since that matter had since been resolved through arbitration. In November 2008, USTR published the results of the 2008 annual review of the program. The notice indicated that no new petitions had been filed. The AFL-CIO filed a submission which indicated that it was no longer seeking a removal of ATPA benefits from Ecuador over worker rights issues. The TPSC therefore terminated its review of the AFL-CIO petition filed in 2003.

Following is the list of all petitions from prior years that remain under review: two petitions relating to worker rights in Ecuador (filed by Human Rights Watch and U.S./LEAP), a petition involving gold trading company Princeton Dover in a dispute with Peru, one matter currently in international arbitration (Duke Energy versus Peru) and one involving Chevron Texaco and Ecuador.

Notices in the *Federal Register* relating to the ATPA reviews can be found at <http://www.ustr.gov>.