

**Seventh Report to the Congress  
On the  
Operation of the  
Andean Trade Preference Act as Amended**

**June 20, 2013**

**Prepared by the Office of the United States Trade Representative**

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

**June 30, 2013**

**Table of Contents**

<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>Chapter 1 - DESCRIPTION OF THE ATPA/ATPDEA.....</b>	<b>3</b>
Key Provisions.....	3
Country Eligibility .....	3
Product Eligibility.....	4
Petition Process.....	4
Safeguard Provisions .....	5
Reports on the Impact of the ATPA .....	5
<b>Chapter 2 - U.S. TRADE WITH ATPA/ATPDEA COUNTRIES .....</b>	<b>7</b>
U.S. Imports from ATPA/ATPDEA Beneficiaries.....	8
U.S. Imports under the ATPA/ATPDEA by Country.....	10
U.S. Exports to ATPA/ATPDEA Beneficiaries .....	11
<b>Chapter 3 - COUNTRY ELIGIBILITY REPORTS .....</b>	<b>12</b>
Summary of Eligibility Criteria .....	12
Ecuador .....	16
<b>Chapter 4 - SUMMARY OF SUBMISSIONS IN RESPONSE TO A NOTICE IN THE FEDERAL REGISTER.....</b>	<b>31</b>
<b>Chapter 5 - OPERATION OF THE PETITION PROCESS.....</b>	<b>33</b>

**Tables**

Table 2-1. - U.S. Trade with ATPA/ATPDEA Countries, 1991 - 2012 .....	7
Table 2-2. - U.S. Imports from ATPA/ATPDEA Countries, Total and Under Import Programs, 2010 - 2012 .....	9
Table 2-3. - U.S. Imports for Consumption under the ATPA, by Country, 2010-2012 .....	10

## EXECUTIVE SUMMARY

The Andean Trade Preference Act (ATPA), as amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA) (jointly referred to as the ATPA/ATPDEA), requires the U.S. Trade Representative (USTR) to submit a report to Congress on the operation of the program no later than June 30<sup>th</sup> every year during the period that the program is in effect. Congress directed that these reports include a review of the ATPA/ATPDEA beneficiary countries based on the eligibility criteria and considerations described in the statute. This is the seventh USTR report to Congress on the ATPA/ATPDEA, and covers the year 2012, 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 originally set to expire on December 31, 2006, but Congress has enacted several extensions. On February 12, 2011, the privileges under the ATPA/ATPDEA lapsed but were reauthorized, retroactively, on October 21, 2011 for eligible countries pursuant to section 501 of the United States-Colombia Trade Promotion Agreement Implementation Act (the Implementation Act) (P.L. 112-42).

In its previous extension of the program, Congress stipulated that Bolivia would not receive ATPA/ATPDEA benefits after June 30, 2009, unless by that date the President determined that Bolivia was satisfying the program's eligibility criteria. In a June 30, 2009 report to Congress, the President did not determine that Bolivia satisfied the program's eligibility requirements. As a result, no ATPA/ATPDEA benefits remained in effect for Bolivia after that date.<sup>1</sup>

Further, Section 201 of the Omnibus Trade Act of 2010 (P.L. 111-344), which re-authorized the ATPA/ATPDEA, terminated any preferential treatment available under ATPA/ATPDEA to Peru, after December 31, 2010. Peru has a free trade agreement with the United States.

At the time of the 2011 re-authorization, only Colombia and Ecuador were eligible beneficiary countries. Colombia is no longer an eligible beneficiary country under the ATPA as of May 15, 2012, when the United States-Colombia Trade Promotion Agreement (CTPA) entered into force (19 U.S.C. 3805 Note). Unless renewed by Congress, the ATPA/ATPDEA will expire on July 31, 2013.

The objectives of the ATPA/ATPDEA are to promote broad-based economic development, and diversification of exports, and to help defeat the scourge of drug trafficking by providing sustainable economic alternatives to drug-crop production in beneficiary countries. This report

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<sup>1</sup> President Bush suspended Bolivia's designation as a beneficiary country under the ATPA/ATPDEA, effective December 15, 2008, citing Bolivia's failure to meet the program's eligibility criteria related to counternarcotics cooperation.

examines Ecuador's progress toward achieving these goals and its performance with respect to the program's eligibility criteria.

Total U.S. imports from ATPA/ATPDEA countries (*i.e.*, Colombia and Ecuador), whether or not under the program, rose from \$31.9 billion in 2011 to \$34.0 billion in 2012, or 6.5 percent. Measured U.S. imports specifically under the ATPA/ATPDEA program rose from \$4.4 billion in 2011 to \$11.4 billion in 2012. However, the 2011 figure does not represent normal operation of the program due to the 2011 nine-month lapse in the program and issues associated with retroactive applications for preferences (see footnote 3).

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 CTPA on February 27, 2006, and signed the agreement on November 22, 2006. The Implementation Act was enacted on October 21, 2011, and included the re-authorization of the ATPA/ATPDEA. Negotiations on an FTA with Ecuador took place through March 2006, but did not conclude. The United States did not initiate negotiations on an FTA with Bolivia.

This report is organized as follows. Chapter 1 briefly describes the key sections of the ATPA/ATPDEA, including the requirements and the designation of ATPA/ATPDEA beneficiary countries. Chapter 2 highlights trade between the United States and the ATPA/ATPDEA beneficiary countries. Chapter 3 evaluates Ecuador's compliance with the eligibility criteria of the statute and discusses the ATPA/ATPDEA's effect on trade with Ecuador. Chapter 4 summarizes responses by interested parties to the Administration's notice in the *Federal Register* inviting 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 provided for the possibility of enhanced trade benefits for 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 accordance with 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 is found no longer to be satisfactory.

The ATPA/ATPDEA was initially set to expire on December 31, 2006. Congress has enacted legislation extending the program six times. Currently, the ATPA/ATPDEA is scheduled to expire on July 31, 2013.

Countries that participated in the ATPA/ATPDEA were also beneficiaries of the U.S. Generalized System of Preferences (GSP) program. The ATPA/ATPDEA has offered broader product coverage than the GSP, thus augmenting the benefits of the GSP for those countries. U.S. imports under the ATPA/ATPDEA are not subject to the GSP's competitive need limitations or its country graduation requirements.

#### Country Eligibility

The ATPA/ATPDEA listed Bolivia, Colombia, Ecuador, and Peru as the only countries eligible to be designated by the President as ATPA/ATPDEA beneficiary countries, and in 2002 the President designated all four countries as ATPA/ATPDEA beneficiary countries. Each ATPA/ATPDEA beneficiary country was eligible for the enhanced trade benefits of the ATPDEA if the President designated 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 Ecuador's

compliance with the criteria during the reporting period. Section 204(b)(5)(A)(ii)(I) of the ATPA/ATPDEA also includes criteria related to customs cooperation.

Bolivia's eligibility for benefits was suspended effective December 2008. In accordance with the statute, since the President did not determine that Bolivia satisfied the program's eligibility requirements in his June 30, 2009, report to Congress, no benefits remain in effect under the program for Bolivia. In addition, in 2010 Congress made Peru ineligible for benefits under ATPA/ATPDEA after December 31, 2010, in light of its FTA with the United States.

Colombia is no longer an eligible beneficiary country under the ATPA/ATPDEA as of May 15, 2012, when the CTPA entered into force (19 U.S.C. 3805 Note). This leaves Ecuador as the only eligible beneficiary country under the ATPA/ATPDEA.

### **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 of October 31, 2002. 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 Trade Act of 2002, 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 regulations, 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 (fifteenth) report covering 2011 to Congress in September 2012.

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 2011, has been negligible. The fifteenth report estimated that U.S. imports of ATPA/ATPDEA-preference products could be having a limited effect on domestic industries producing fresh-cut roses and 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 (nineteenth) report covering 2011 was submitted to Congress in 2012. 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 Nineteenth 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 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.

## Chapter 2

### U.S. TRADE WITH ATPA/ATPDEA COUNTRIES

Over the last several years, U.S. trade with the ATPA/ATPDEA countries has been characterized by expanding trade with a shrinking group of countries. Colombia exited the program on May 15, 2012 as the result of the entry into force of the CTPA, leaving Ecuador as the sole remaining beneficiary.<sup>2</sup> In 2012, the total value of U.S. trade with the ATPA/ATPDEA countries increased by 8 percent. U.S. imports from ATPA countries rose 7 percent to \$34.0 billion in 2012. U.S. exports increased by 11 percent to \$20.3 billion, and the trade deficit with these countries remained stable at \$13.7 billion. Over the past five years, U.S. imports from the ATPA/ATPDEA countries increased 62 percent and U.S. exports to these countries grew 39 percent despite the exit of Bolivia and Peru from the program.

Table 2-1.--U.S. Trade with ATPA/ATPDEA Countries, 1991-2012 <sup>1</sup>					
Year	U.S. Exports <sup>2</sup>	ATPA/ATPDEA Countries' Share of U.S. Exports to the World	U.S. Imports <sup>3</sup>	ATPA/ATPDEA Countries' Share of U.S. Imports from the World	U.S. Trade Balance
	Million \$	Percent	Million \$	Percent	Million \$
1991	3,798.2	0.9	4,969.5	1.0	-1,171.3
1992	5,319.7	1.3	5,058.7	1.0	261.0
1993	5,359.1	1.2	5,282.3	0.9	76.8
1994	6,445.0	1.3	5,879.5	0.9	565.5
1995	7,820.2	1.4	6,968.7	0.9	851.5
1996	7,718.7	1.3	7,867.6	1.0	-148.9
1997	8,681.8	1.3	8,673.6	1.0	8.2
1998	8,670.1	1.4	8,361.0	0.9	309.0
1999	6,263.2	1.0	9,830.2	1.0	-3,567.0
2000	6,295.1	0.9	11,117.2	0.9	-4,822.1
2001	6,363.3	1.0	9,568.7	0.8	-3,205.3
2002	6,463.8	1.0	9,611.5	0.8	-3,147.7
2003	6,525.7	1.0	11,639.5	0.9	-5,113.8
2004	7,663.6	1.1	15,489.8	1.1	-7,826.2
2005	8,919.1	1.1	20,060.1	1.2	-11,141.0
2006	11,636.5	1.3	22,510.6	1.2	-10,874.1
2007	14,620.5	1.4	20,922.9	1.1	-6,302.4
2008	19,762.7	1.7	28,483.0	1.4	-8,720.3
2009	16,697.3	1.8	20,689.9	1.3	-3,992.5
2010	22,078.1	2.0	28,178.9	1.5	-6,100.8
2011	18,346.8	1.4	31,891.3	1.5	-13,544.4
2012	20,311.2	1.5	33,988.4	1.5	-13,677.1
<sup>1</sup> Includes trade with Bolivia through 2008 and with Peru through 2010.					
<sup>2</sup> Domestic exports, F.A.S. basis.					
<sup>3</sup> Imports for consumption, customs value.					
<i>Source: Compiled from official statistics of the U.S. Department of Commerce.</i>					

<sup>2</sup> However, Colombia was the source of nearly half of U.S. imports under the ATPA/ATPDEA program in 2012, and therefore is counted as an ATPA/ATPDEA country in 2012 for the purposes of the retrospective analysis in this chapter.

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

U.S. imports from ATPA/ATPDEA countries rose to \$34.0 billion in 2012 from \$31.9 billion in 2011. In 2012, the share of U.S. imports from ATPA/ATPDEA countries among all U.S. imports remained steady at 1.5 percent (see Table 2-1).

U.S. imports from ATPA/ATPDEA countries consist primarily of derivatives of raw materials and agricultural products. Mineral fuels, mainly crude petroleum, accounted for 72 percent of imports in 2012, up from 70 percent in 2011. In 2012, higher petroleum prices were primarily responsible for the increased share, but the quantity of petroleum imports also increased. Other leading imports from ATPA/ATPDEA countries in 2012 were precious metals, gemstones and jewelry, nonmonetary gold, coffee, cut flowers, fish and crustaceans, primarily shrimp; and fruits and nuts, primarily bananas.

The share of U.S. imports from ATPA/ATPDEA countries that entered the U.S. market duty-free under ATPA/ATPDEA, GSP, the CTPA, or free under Most Favored Nation (MFN) tariff rates increased from 49 percent in 2011 to 82 percent in 2012. With the exception of 2011, when the ATPA/ATPDEA lapsed for part of the year, the duty-free share of U.S. imports from ATPA/ATPDEA countries has been above 80 percent since 2004.<sup>3</sup> In 2012, the increased duty-free share of U.S. imports from ATPA/ATPDEA countries reflects the uninterrupted operation of ATPA/ATPDEA as well as the entry into force of the United States-Colombia TPA on May 15, 2012 (see Table 2-2). Twenty-five percent of U.S. imports from the region entered duty free under MFN tariff rates in 2012 including products such as gold, coffee, bananas, coal, and shrimp. Less than one percent of U.S. imports entered under the GSP. Thirty-four percent of U.S. imports from the two beneficiary countries entered under ATPA/ATPDEA in 2012, up from 14 percent in 2011, but down from 51 percent in 2010. Twenty-two percent of U.S. imports from the region entered under the CTPA in 2012.

U.S. imports under ATPA/ATPDEA, which had fallen from \$14.4 billion in 2010 to \$4.4 billion in 2011, increased by 160 percent to \$11.4 billion in 2012. Mineral fuels, oils and gases accounted for 92 percent of U.S. imports under ATPA/ATPDEA in 2012. Cut flowers constituted the next largest category of imports under ATPA/ATPDEA, accounting for four percent of the total. The third largest category, accounting for just over one percent, was fresh, frozen, and prepared fruits and vegetables. Imports of other products, including prepared and preserved tuna and apparel products, made up small shares of the total. Due to the comparatively low imports under ATPA/ATPDEA in 2011 due to the lapse of the program in that year, all of the major import categories increased in 2012 by substantial amounts.

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<sup>3</sup> When Congress renewed the ATPA/ATPDEA in October 2011 it retroactively restored the program's benefits to cover the period of the lapse, entitling importers to file claims for reimbursement of duties paid. However, any such retroactive claims are not reflected in the program utilization statistics in this report.

Table 2-2--U.S. Imports from ATPA/ATPDEA Countries<sup>1</sup>, Total and Under Import Programs, 2010-2012, (thousands of dollars)

Country	Import Program	2010	Percent of total	2011	Percent of total	2012	Percent of total
Colombia <sup>2</sup>	Total	15,672,605	100.0	22,390,928	100.0	24,652,178	100.0
	Colombia-U.S.	0	0.0	0	0.0	7,638,496	31.0
	GSP	158,516	1.0	383,634	1.7	76,518	0.3
	Total ATPA/ATPDEA	9,472,561	60.4	2,674,630	11.9	5,535,958	22.5
	ATPA <sup>3</sup>	933,706	6.0	306,245	1.4	442,390	1.8
	ATPDEA	8,538,855	54.5	2,368,385	10.6	5,093,567	20.7
	MFN free	4,882,298	31.2	9,139,684	40.8	6,737,551	27.3
Ecuador	Total	7,333,774	100.0	9,500,327	100.0	9,336,185	100.0
	GSP	54,273	0.7	147,406	1.6	106,823	1.1
	Total ATPA/ATPDEA	4,179,067	57.0	1,705,504	18.0	5,869,521	62.9
	ATPA <sup>3</sup>	292,456	4.0	110,862	1.2	358,174	3.8
	ATPDEA	3,886,611	53.0	1,594,642	16.8	5,511,346	59.0
	MFN free	1,273,686	17.4	1,691,915	17.8	1,794,124	19.2
Peru	Total	5,172,521	100.0	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )
	Peru-U.S.	2,224,014	43.0	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )
	Total ATPA/ATPDEA	759,278	14.7	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )
	ATPA <sup>3</sup>	225,217	4.4	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )
	ATPDEA	534,061	10.3	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )
	MFN free	1,713,833	33.1	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )
All ATPA countries	Total	28,178,899	100.0	31,891,255	100.0	33,988,363	100.0
	Colombia-U.S.	0	0.0	0	0.0	7,638,496	22.5
	Peru-U.S.	2,224,014	7.9	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )
	GSP	212,789	0.8	531,039	1.7	183,341	0.5
	Total ATPA/ATPDEA	14,410,906	51.1	4,380,134	13.7	11,405,478	33.6
	ATPA <sup>3</sup>	1,451,379	5.2	417,107	1.3	800,565	2.4
	ATPDEA	12,959,528	46.0	3,963,027	12.4	10,604,913	31.2
	MFN free	7,869,817	27.9	10,831,599	34.0	8,531,675	25.1

<sup>1</sup> Excludes trade with Peru in 2011 and 2012. Imports from Peru under ATPA/ATPDEA of \$4.8 million in 2011 were reported after it was no longer a designated ATPA beneficiary country, but not included in this table.

<sup>2</sup> For the purposes of measuring full-year trade with ATPA countries, Colombia is counted as an ATPA country through the end of 2012 even though Colombia was no longer a designated ATPA beneficiary country after May 15, 2012.

<sup>3</sup> ATPA in this column refers to the original ATPA (ATPA excluding ATPDEA).

<sup>4</sup> Not included. Peru was not an ATPA/ATPDEA beneficiary country in 2011 and 2012.

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

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

Ecuador was the leading source of U.S. imports under ATPA/ATPDEA in 2012, surpassing Colombia due to Colombia's exit from the program in May 2012. Ecuador supplied 51 percent of U.S. imports under ATPA/ATPDEA in 2012 and Colombia supplied 49 percent (see table 2.3). U.S. imports under the ATPA/ATPDEA from each of the countries increased by over 100 percent between 2011 and 2012 given the small amounts of imports under the program in 2011, although the increase was larger for Ecuador given its sustained presence within the program for all of 2012.

ATPA/ATPDEA entries from Ecuador increased 244 percent to \$5.9 billion in 2012, from \$1.7 billion in 2011. Mineral fuels (\$5.4 billion) dominated such imports from Ecuador, accounting for 93 percent of ATPA/ATPDEA entries from Ecuador in 2011 and 2012. Other important imports under ATPA/ATPDEA from Ecuador in 2012 were cut flowers (\$166 million), up 176 percent in 2012; and fresh and prepared fruits and vegetables (\$122 million), up 200 percent. In 2012, cut flowers and fresh, frozen, and prepared fruits and vegetables accounted for 2.8 percent and 2.1 percent of ATPA/ATPDEA entries from Ecuador, respectively. Prepared and preserved tuna was another major import sector under ATPA/ATPDEA from Ecuador in 2012, totaling \$80 million.

U.S. imports under ATPA/ATPDEA from Colombia increased 107 percent to \$5.5 billion in 2012 despite Colombia's exit from the program on May 15, 2012. Mineral fuels were primarily responsible for the increase, accounting for 91 percent (\$5.0 billion) of ATPA/ATPDEA entries from Colombia in 2012, up from an 86 percent share (\$2.3 billion) in 2011. Other major U.S. imports under ATPA/ATPDEA from Colombia in 2012 included cut flowers, the second largest import (\$308 million), which increased by 49 percent in 2012, and apparel, the third largest import (\$74 million), which increased by 47 percent. Cut flowers and apparel accounted for 5.6 percent and 1.3 percent of ATPA/ATPDEA entries from Colombia, respectively, in 2012. Plastics was another major import sector under ATPA/ATPDEA from Colombia in 2012, totaling \$28 million.

Country	2010	2011	2012	2012 share of total
	<i>1,000 dollars</i>	<i>1,000 dollars</i>	<i>1,000 dollars</i>	Percent
Ecuador	4,179,067	1,705,504	5,869,521	51.5
Colombia	9,472,561	2,674,630	5,535,958	48.5
Peru	759,278	( <sup>1</sup> )	( <sup>1</sup> )	
Total	14,410,906	4,380,134	11,405,478	100.0

<sup>1</sup> Not included. Peru was not an ATPA/ATPDEA beneficiary country in 2011 and 2012. Imports from Peru under ATPA/ATPDEA of \$4.8 million in 2011 were reported after it was no longer a designated ATPA beneficiary country, but not included in this table.

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

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

U.S. exports to ATPA/ATPDEA countries increased 11 percent to \$20.3 billion in 2012. The ATPA/ATPDEA countries' share of U.S. exports to the world was 1.5 percent in 2012, identical to their share of U.S. imports from the world.

The leading category of U.S. exports to ATPA/ATPDEA countries in 2012 was mineral fuels, primarily refined petroleum products, which increased by 21 percent to \$6.1 billion in 2012. The second leading category was nonelectrical machinery, which included a variety of products and was led by machinery designed principally for oil and gas extraction and other mining. In 2012, U.S. exports of nonelectrical machinery and parts were \$3.2 billion, increasing slightly by 3 percent over 2011. Other major U.S. export sectors to the region included electrical machinery (\$1.2 billion), plastics (\$958 million), organic chemicals (\$953 million), and motor vehicles (\$785 million).

Colombia was the larger market for U.S. exports at \$14.3 billion, representing 71 percent of U.S. exports to ATPA/ATPDEA countries in 2012. Ecuador accounted for the remaining 29 percent of U.S. exports to the ATPA/ATPDEA countries in 2012, totaling \$6.0 billion. U.S. exports to Colombia and Ecuador rose 12 percent and 8 percent, respectively, in 2012.

## Chapter 3

### COUNTRY ELIGIBILITY

This chapter first outlines the detailed country eligibility criteria in the ATPA/ATPDEA and then discusses Ecuador's performance under the criteria. The country report on Ecuador also examines the effects of the ATPA/ATPDEA on trade, investment and economic development in Ecuador and on creating sustainable economic alternatives to coca production. This country report is based on information provided by the U.S. embassy in Quito. It is an update to USTR's June 30, 2012, Sixth 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 discretionary criteria as a beneficiary.<sup>4</sup>

#### 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:

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<sup>4</sup> As noted above, the President submitted a report to Congress on June 30, 2009, regarding Ecuador's and Bolivia's compliance with ATPA/ATPDEA criteria.

- 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*):

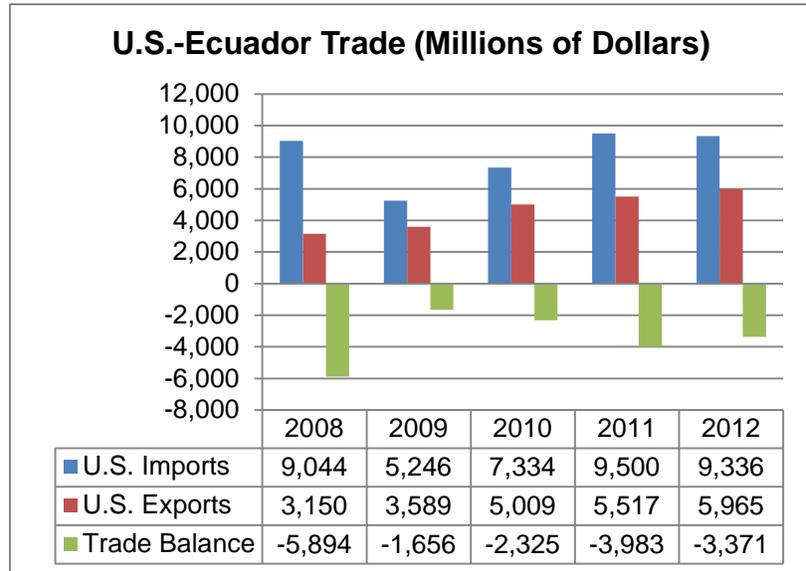
- (1) “Whether the beneficiary country has demonstrated a commitment to undertake its obligations under the WTO, including those agreements listed in section 101(d) of the Uruguay Round Agreements Act, on or ahead of schedule, and participate in negotiations toward the completion of the FTAA or another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

## ECUADOR

**Population: 15,439,429**  
(July 2013 est.)

**GDP per capita (PPP):**  
**\$8,800 (2012 est.)**

*Source: 2013 CIA World  
Fact Book*



**Expropriations:** Ecuador’s 2008 Constitution establishes that the Government manages land use and access to lands, while recognizing and guaranteeing the right to private property, “which should fulfill social and environmental functions.” The Constitution provides for the redistribution of land if the land is not in productive use for more than two years. The definition of “productive use” is unclear, particularly for pastures and unexploited land. Access to land for the landless is a major theme of the current administration’s agricultural policy, but to date, there have not been any public seizures of private assets. The 2010 Organic Code for Commercial Production and Investment (“Production Code”) permits expropriation to improve “access to production factors and enhance opportunities for the rural population.”

Under Ecuadorian law, individuals have the right to petition a judge to establish the appropriate price for expropriated property. The Agrarian Development Law restricts the grounds for expropriation of agricultural land and provides for adjudication of disputes in the courts.

Under the United States-Ecuador Bilateral Investment Treaty (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 with payment of prompt, adequate, and effective compensation. There are a number of disputes alleging unlawful expropriation related to the oil sector that are pending against Ecuador in international arbitration proceedings.

**Arbitral Awards:** The United States-Ecuador BIT provides for international arbitration of disputes at the investor's initiative. However, developments in the past few years have given rise to concerns about the government’s long-term commitment to international arbitration for the settlement of investor disputes. In September 2009, President Correa requested that the Ecuadorian National Assembly approve his request to terminate BITs with thirteen countries:

Argentina, Canada, Chile, China, Finland, France, Germany, the Netherlands, Sweden, Switzerland, the United Kingdom, the United States, and Venezuela. President Correa asserted that the BITs' provisions on international arbitration and national treatment conflict with the country's 2008 Constitution. The National Assembly requested Constitutional Court rulings before voting on the matter. The Court has since found all thirteen BITs to be unconstitutional, ruling on the U.S. BIT on November 25, 2010. The government subsequently requested that the National Assembly ratify the termination of each BIT, waiting until March 2013 to make such a request regarding the U.S. BIT. The National Assembly has voted in favor of terminating six of the BITs, but voted against terminating four others. It has not voted yet on the BIT with the United States. As of the date of this report, only Ecuador's BIT with Finland has been officially terminated. The United States-Ecuador BIT remains in force. Separately, Ecuador withdrew from the World Bank's International Center for the Settlement of Investment Disputes (ICSID) on January 7, 2010, although the government continues to participate in pending international arbitration cases.

In August 2011, a U.S. company obtained an arbitral award finding that Ecuador had breached its obligations under the United States-Ecuador BIT by failing to provide effective means of resolving commercial disputes in Ecuadorian courts. The case relates to claims filed in Ecuador by the company in the early 1990s, and the arbitral tribunal held that the resolution of these claims has been unduly delayed. The government's petition to have the award set aside was denied in May 2012. In September 2009, the company filed another arbitration claim against Ecuador under the BIT, claiming, among other things, government misconduct in connection with a then-pending lawsuit in the Ecuadorian courts, a lawsuit decided against the company in February 2011. In January and February 2012, respectively, the arbitral tribunal issued two interim awards directing the Ecuadorian government to first "take all measures at its disposal" and, subsequently, "take all measures necessary" to suspend or cause to be suspended enforcement and recognition of the judgment against the company in the lawsuit. In February 2013, the tribunal issued a further interim award declaring the Ecuadorian government in violation of the first and second interim awards, specifically for what it found was a failure to suspend or cause to be suspended enforcement actions, including those aimed at seizing the assets of the U.S. company abroad. The Administration is monitoring developments in connection with these matters under the relevant ATPA eligibility criteria.

On October 5, 2012, ICSID ordered Ecuador to pay \$1.77 billion plus interest to a different U.S. company. The arbitration was initially filed in May 2006 under the U.S.-Ecuador BIT, after Ecuador seized the company's assets, claiming the company had transferred 40 percent of certain rights to another entity without government approval. On January 18, 2013, an ICSID *ad hoc* Committee was constituted to consider Ecuador's application for annulment of the award.

***Reverse Preferences:*** There is no indication that Ecuador has granted preferential treatment to goods of other developed countries that is likely to have a significant adverse effect on U.S. trade.

***Intellectual Property:*** Ecuador's intellectual property regime is governed by the "Law on Intellectual Property" adopted in 1998 and by various Andean Community decisions. The law provides criminal and administrative relief to right holders. Patents, trademarks and industrial

designs are protected by Andean Community Decision 344 (the Common Industrial Property Regime) and Decision 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 Intellectual Property Institute (IEPI) was established in January 1999 to handle patent, trademark and copyright registrations on the Ecuadorian government's behalf. A 2012 government decree converted IEPI from an autonomous agency to one subsumed within the National Secretariat for Higher Education, Science, Technology, and Innovation (SENECYT).

Ecuador is a party to several international conventions that concern intellectual property, including the following:

- Convention Establishing the World Intellectual Property Organization (WIPO);
- Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS);
- Berne Convention for the Protection of Literary and Artistic Works;
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;
- Patent Cooperation Treaty;
- WIPO Copyright Treaty;
- WIPO Performances and Phonograms Treaty;
- Paris Convention for the Protection of Industrial Property; and
- International Union for the Protection of New Varieties of Plants.

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 broadcasting their compositions. Article 32 of the Law on Higher Education, published in October 2010, states that software companies must provide a discount on licenses to entities that provide higher education and use the software for academic purposes. The same article also requires higher education institutions to use open source software.

Trademark registration is permitted for renewable 10 year periods. Ecuador's IPR law provides protections for well-known trademarks and in the past few years processing time has been greatly reduced. In 2012, Ecuador received 18,208 trademark applications.

The IPR law also 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.

Despite the laws on the books, intellectual property rights protection and enforcement remain major problems in Ecuador. Piracy in products with copyright and trademark protection is pervasive in Ecuador. Pirated CDs and DVDs are found on many street corners and in shops, and the import and sale of products that infringe registered trademarks are common. The national police and the Customs Corporation of Ecuador are responsible for carrying out IPR enforcement orders, but it is sometimes difficult to have court orders enforced. IEPI and Ecuadorian Customs have enforcement authority in their areas of competence under which they can act with or without a formal complaint by the right holder, through administrative sanctions

imposed by IEPI or the interception of counterfeit goods by Customs. In early 2011, IEPI undertook a series of significant enforcement actions against the sale of pirated DVDs. These actions were subsequently challenged in court, however, and IEPI temporarily suspended large-scale enforcement. Although the cases still remain pending, IEPI resumed limited enforcement efforts in 2012. The Ecuadorian government has not yet established specialized IPR courts as required under its current IPR law.

The IPR law extends patent protection for 20 years from the date of filing. A 2006 Superior Court decision upheld the right of patent holders to have infringing copies of their patented products removed from the market. However, in September 2009 a petition was filed with the Ministry of Industry alleging that a U.S. pharmaceutical company's successful defense of its patent in 2007 constituted an abuse of market position. Despite the 2006 Superior Court decision, the Ministry of Industry ultimately ruled against the pharmaceutical company in mid-2011, levying a fine of \$500,000. The pharmaceutical company has since filed an appeal with the courts.

On October 23, 2012, IEPI issued a resolution which significantly increased the application (procedural) and maintenance fees for patents and plant variety protection. Over 20 years, the maintenance fees alone would amount to approximately \$140,000 for patents and \$170,000 for plant variety protection. Prior to the resolution, patent maintenance fees were less than \$6,000.

The Ecuadorian government has implemented a policy concerning compulsory licensing of certain patented inventions. In late 2009, Presidential decrees were issued establishing policy frameworks for issuing compulsory licenses for patented pharmaceutical products and agrochemicals, and in 2010 the government established application procedures for compulsory licensing. On April 14, 2010, the Ecuadorian government issued its first compulsory license. The license stated that it was for public non-commercial use of an HIV/AIDS treatment drug patented by a U.S. company. In November 2012, Ecuador issued its second compulsory license, for another HIV anti-retroviral, to a local generic drug manufacturer and importer.

In April 2001, USTR removed Ecuador from the Special 301 Watch List to reflect improvements in Ecuador's IPR regime. However, Ecuador's weakened enforcement efforts led to its being relisted in 2003, and it has remained on the Watch List since that time.

**Extradition:** An extradition treaty with the United States permits the extradition of U.S. citizens. However, Ecuador's 2008 Constitution prohibits the extradition of Ecuadorian citizens under any circumstance.

**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 in most sectors. Under the law, public employees that do not fall into the technical, administrative, or professional categories may join a union and bargain collectively. Public sector employees in strategic sectors, as designated in the Constitution, may not take any action that paralyzes those sectors, including striking. The Constitution lists health, environmental sanitation, education, justice, firefighting, social security, electrical energy, drinking water and sewerage, hydrocarbon production, the processing, transport and distribution of fuel, public transport, and post and telecommunications as strategic sectors. Some of the sectors defined as strategic exceeded the ILO standard for essential services. Most public employees maintain membership in a labor sector association. Such associations are not allowed to strike or bargain collectively.

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. Although trade union political influence has declined in recent years, in prior years, labor groups would occasionally attempt to stage national strikes to protest economic reform measures.

The Constitution includes 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. Nevertheless, outsourcing has been common, with union leaders and government employees stating that the government is the most frequent user. Outsourcing has allegedly been used by the government and private companies to avoid hiring workers who would have the right to organize or bargain collectively.

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' 2012 National Child Labor Survey found that the number of children between the ages of five and fourteen working illegally fell from 499,206 in 2003 to 269,881 in 2010. The children were working primarily in rural areas in the informal sector. There are about 280 government labor inspectors nationwide, up from 150 in 2011, who are in charge of all forms of labor code violations. These inspectors have the authority to cite violations and sanction companies and employers found to have illegally hired child labor. The government claimed that 40,000 children were removed from child labor as part of their comprehensive efforts on child labor eradication. In 2012, 223 children were removed due to inspections.

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, 90 days of maternity leave, and employer-provided benefits. Ecuador's legislative commission passed a 15 day paternity leave law in February 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 a hazard is 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 has increased substantially, from \$170/month in 2007 to \$318/month in 2012. The Ecuadorian government indicates this level is now sufficient for a family to afford the basic consumption basket. The majority of workers are employed in the large informal sector, and these workers often do not receive the minimum wage, social security, or other legally mandated benefits. A May 2011 national referendum made it mandatory for employers to register their employees with the Social Security Institute. The government has increased enforcement of the requirement that employees, including domestic workers, must have contracts and receive minimum wage and other 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, economic stability and poverty reduction.

As the global economy began to recover in 2010, Ecuador's economy grew by 3.3 percent. Limited access to international financing, following a \$3.2 billion sovereign bond default in late 2008/early 2009, resulted in a reduction of private investment and led the government to cover a budgetary financing gap with loans from Ecuador's Social Security Institute and resources from China. High export oil prices stemming from unrest in the Middle East provided Ecuador with substantial extra-budgetary revenue in 2011 and an annual growth rate of 8.0 percent. The Ecuadorian government posted a 5.01 percent GDP growth in 2012 benefitting from historically high average oil prices of \$98.50 per barrel, while the \$26 billion government budget was premised on an \$80 per barrel price. Additional loans from China helped the government maintain high levels of government expenditures in 2012.

To exert greater control over the petroleum sector, in 2010 the Ecuadorian government forced foreign oil companies to renegotiate their concession contracts, moving from production-sharing to service contracts, which pay a flat fee per barrel. An uncertain policy environment had deterred investment between 2007 and 2010. Renegotiations of large concessions were completed in November 2010, and of marginal fields in January 2011. Three companies declined to renegotiate and departed. In a move to increase production in two of its mature oil fields (Shushufindi and Libertador), the Ecuadorian government signed long-term contracts on January 31, 2012 with two consortia of private oil services companies. The contracts are hybrid service agreements, whereby oil services companies take on a more traditional oil production company role of financing investments and taking on the risks.

To expand long-term oil production, in November 2012 the Ecuadorian government announced the tender for 13 concessions in the southeast of the country, reserving three additional fields for the state company Petroamazonas. Ecuador signed its first large-scale mining contract in March 2012 with a Chinese company to exploit an open-pit copper mine. The company has not yet initiated operations. Negotiations with several other foreign mining companies for production of

gold and silver are pending. In April 2013, a gold and silver exploration concession was awarded to a Chinese company following the sale of the stake in the project by the U.S. contractor in 2012 due to uncertainty over future project yield.

Starting in 2007, the Ecuadorian government began lowering caps for interest rates in the banking sector, including mortgage, corporate, consumer, and micro-credit lending. Although the caps were initially being reduced each month, they have remained relatively stable since October 2008 and unchanged since May 2010.

Constitutional changes following a May 2010 referendum required banks to divest from their brokerages, mutual funds, and insurance companies. These requirements were also incorporated in the Anti-Monopoly Law passed in September 2011. By July 2012, most banks had divested themselves of these assets. In June 2012, the National Assembly approved a law allowing homeowners to default on their first home and car loan without penalty if they forfeit the asset. In addition, the law allows the regulatory agency to set specific annual targets for mortgage activity for each financial institution based on its portfolio. In November 2012, the National Assembly passed a law that severely restricts the operations of private credit risk rating agencies, and grants exclusive rights to credit information to a new government entity that stores all public databases. Private credit bureaus, while not prohibited from operating, are obligated to furnish their databases to the government and can no longer receive data directly from the financial sector. In November 2012, the National Assembly passed a law increasing taxes on banks to partially finance a government welfare program. In addition, the law lifts banking secrecy and exempts tax authorities from having to obtain permission from the Superintendence of Banks before accessing credit information directly. A Central Bank regulation that took effect in January 2013 requires all financial transfers (inflows and outflows) to be channeled through the Central Bank's accounts.

A new food price control system was established on February 22, 2013; however, the methodologies to set prices and establish control mechanisms are still under development. The government published 16 reference prices on April 2013. The food control price system allows for the police to arrest or fine vendors selling in wholesale markets above those reference prices.

Ecuador's Central Bank only publishes FDI figures as net flows. According to the Central Bank, the net flow of FDI into Ecuador dropped from \$1 billion in 2008 to \$306 million in 2009, before declining to \$163 million in 2010. In 2011, Ecuador received \$641 million in FDI, mostly in the mining sector, followed by manufacturing. Central Bank statistics indicate there were net outflows from Ecuador of U.S. foreign direct investment in 2005, 2006, 2008, 2009 and 2010. In 2011 the net inflow of U.S. FDI was \$11.6 million mostly in retail and business services. Ecuador receives one of the lowest shares of FDI as a percentage of GDP in Latin America. According to the U.S. Bureau of Economic Analysis, the stock of U.S. FDI in Ecuador in 2011 (the last year available) was approximately \$1.2 billion.

Ecuador's investment climate is difficult and suffers from uncertainty generated by constant changes in the country's commercial and investment policies. Prominent among concerns are frequent changes in tax and labor laws and a lack of confidence in the country's judicial system. The Ecuadorian government has also sought to prohibit or limit private investment in strategic

sectors, including petroleum and electricity generation, driving some U.S. firms out of the country and sparking a number of investment disputes. Further eroding investor confidence is the government's request to terminate a number of bilateral investment treaties (BITs), including the one with the United States, and its withdrawal from ICSID. The 2010 Production Code includes some tax incentives to encourage investment in key sectors and areas, but it has not generated substantial results.

**Market Access:** Since January 26, 2011, Ecuador has pursued an import substitution strategy based on mechanisms provided for in the Production Code. The products subject to selective import substitution measures include: fertilizers, agrichemicals, pesticides and fungicides, soaps, detergents and cosmetics, other chemicals, ceramic tiles and floors, textiles, clothing, footwear, leather, radios, television, telephones, electronics, and electrical appliances. Ecuador applies a combination of tariff and nontariff measures, such as non-automatic import licensing, to most of the sectors listed above. The country introduced numerous trade restrictions in 2012 (described below). The Production Code also includes a provision for cutting the corporate tax rate by 1 percentage point per year until it reaches 22 percent in 2013, as well as three types of tax incentives to promote investment in domestic production activities.

Ecuador's import policies are increasingly restrictive and create an uncertain environment for traders in many sectors. Ecuador is a member of the Andean Community (AC) customs union, which also includes Bolivia, Colombia, and Peru. When Ecuador joined the WTO in January 1996, it bound most of its tariff rates at 30 percent *ad valorem* or less, except for agricultural products covered by the Andean Price Band System (APBS). Ecuador's second Trade Policy Review (TPR) by the WTO was concluded in November 2011. According to the WTO Secretariat's TPR report, Ecuador's tariff structure has become more complex. Ecuador also imposes a number of fees and charges on imports.

According to the information available to the WTO, Ecuador's applied average MFN tariff rate was 10.1 percent in 2011. While its average applied MFN tariff rate for industrial products declined from 10.6 percent in 2005 to 8.8 percent in 2011, for agricultural products it increased from 16.7 percent to 18.3 percent. However, as Ecuador did not supply to the WTO the *ad valorem* equivalents for its mixed tariffs and has implemented new trade restrictions since then, the actual average applied MFN tariff rates might be higher than those noted above and, in some cases, might exceed Ecuador's bound tariff rates. The WTO Secretariat identified 19 tariffs at the 10-digit level that exceeded Ecuador's bound tariff rates by 5 to 15 percentage points in 2011.

In June and July of 2012, Ecuador enacted a number of trade-restrictive measures, which included an increase in tariffs on a number of products, as well as import quotas that will expire at the end of 2014. A deteriorating non-oil trade deficit of \$2.9 billion during the first four months of 2012 appears to have prompted these measures. Some government officials publicly stated that they hoped these measures would reduce imports by \$300 million.

The Committee on Foreign Trade (COMEX) made a series of changes regarding tariff rates. COMEX Resolution 63, issued on June 15, 2012, increased tariffs on products covered by 102 tariff lines, including alcoholic beverages, washing machines, televisions, video and

photographic equipment, art utensils, paper and cardboard, hair styling equipment, and work safety equipment. In Resolution 63, Ecuador also increased tariffs on tobacco and tobacco seeds, malt, and other cereals. Mixed tariffs (1 percent *ad valorem* plus a specific tariff of \$0.25 per grade of alcohol/liter) were established for 20 alcoholic products, including malt beer, sparkling wine, “pisco” (grape brandy), vodka, and tequila. According to U.S. distilled spirit industry sources, given the prevailing price of the majority of imported spirits, applying this tariff structure to distilled spirits means that in many instances Ecuador’s assessed tariff rates exceed the WTO bound rates. Televisions are also now subject to mixed tariffs, which increase in proportion to the size of the television. Ecuador raised tariffs on an additional 81 tariff lines, with all but four lines increased to Ecuador’s WTO bound tariff rate.

COMEX Resolution 65, also issued on June 15, 2012, established value ceilings and unit quotas for imports of automobile complete knock-downs (CKDs). In addition, Resolution 65 established a sliding tariff scale ranging between 4 percent and 40 percent, decreasing as more locally produced content is incorporated in the vehicle. Resolution 65 also created a monitoring mechanism to verify increases in the incorporation of local content. However, Ecuador has not yet published a methodology for measuring local content levels. This resolution will remain in effect through December 2014.

COMEX Resolution 66, issued on June 11, 2012, established a \$538 million limit for the importation of motor vehicles classified under 16 tariff lines, including passenger cars and cargo trucks. The \$538 million quota would limit imports of vehicles under the 16 tariff lines affected, to 68 percent by value of the total imported in 2010. The 38 importers among which the quota has been divided must comply with established unit and dollar value limitations. Tariffs on vehicles, which are as high as 40 percent, also remain in effect. On July 30, 2012, COMEX approved Resolution 77, which slightly eased the unit and value restrictions on vehicle imports imposed by Resolution 66. Resolution 77 allowed importers to use existing import licenses to continue to import vehicles through December 28, 2012, even if it resulted in imports exceeding the importers’ quotas. Without that flexibility, importers who were already approaching their annual import quotas when the quotas were announced would have been required to re-export those vehicles ordered before Resolution 66 was announced.

Resolution 67, adopted on June 15, 2012, limited imports for certain cell phones to \$142.6 million, which represents 68 percent of Ecuador’s total value of these cell phones imports in 2011. Unit and dollar value limits were established for each of the 33 importers. Imports of cell phones entering Ecuador before June 11, 2012 were counted toward the annual limits, as well as shipments already in transit. In addition, cell phones will still be subject to a 15 percent *ad valorem* tariff.

On July 17, 2012, COMEX issued Resolution 69, which tightened import restrictions established in Resolutions 63 and 67. Resolution 69 reduced by 28 percent the total value of permissible imports by CONECEL, Ecuador’s largest private mobile phone operator. Meanwhile, the public telecommunications company, CNT, received a 145 percent increase in its import value entitlement, which grew from \$4.9 million to \$12 million. Unit quotas for CONECEL and CNT remained unchanged, suggesting that Ecuador has structured the restrictions to permit CNT to import more expensive phone models and improve its market share, which is only 1.6

percent. In addition, COMEX Resolution 70, also issued on July 17, 2012, introduced a specific tariff of \$39.97 for all televisions up to 20 inches, while retaining the existing 5 percent *ad valorem* duty; it also increased to \$73.11 the specific tariff for televisions between 20 and 32 inches.

On August 30, 2012, COMEX issued Resolution 82 to reduce tariffs on imported capital goods used for government contracts. Resolution 82 aims to promote investments and support investors that have signed contracts with the government. To qualify for the benefits, goods must be validated individually by COMEX for end-use purposes and meet origin and technical requirements. If any similar locally produced goods exist, the benefits do not apply. According to local newspapers, private sector representatives criticized the resolution for only favoring public-private initiatives.

Ecuador applies variable import duties set pursuant to the APBS with respect to more than 150 agricultural products when they are imported from outside the AC. These products include wheat, rice, sugar, barley, white and yellow corn, soybeans, soybean meal, African palm oil, soy oil, chicken meat, pork meat, and powdered milk, as well as certain products derived from them. The APBS protects domestic producers of covered products by providing for tariff increases when world prices fall and tariff decreases when world prices rise.

When Ecuador became a WTO Member, it agreed to phase out its participation in the APBS. To date, no steps have been taken to phase out use of the APBS. The extent to which the APBS restricts trade varies by product. For some U.S. exports, such as wheat, barley, malt barley, and their byproducts, the price band total duty (*ad valorem* tariff plus variable levy) is often zero. However, price band total duties as high as 85.5 percent and 45 percent have been applied to chicken parts and pork, respectively, restricting those imports.

When Ecuador became a WTO Member it established tariff-rate quotas (TRQs) for a number of agricultural imports. Products subject to TRQs include wheat, corn, sorghum, barley, barley malt, soybean meal, powdered milk, and frozen turkeys. The Ecuadorian government's process for TRQ administration lacks transparency, and for some products, such as frozen chicken parts, a TRQ has not yet been established.

Importers must register with Ecuador's National Customs Service (formerly the Ecuadorian Customs Corporation) to obtain a registration number for all products. In August 2011, Ecuador instituted a non-automatic import licensing program covering 42 tariff subheadings. The products affected are tires, vehicles, mobile telephones, televisions/monitors, refrigerators/freezers, and semi-finished iron and steel products. According to the Ecuadorian government, the licensing regime was put into place to monitor compliance with so-called voluntary import agreements within these sectors.

Ecuador requires prior authorization from the Ministry of Agriculture, Livestock, Aquaculture, and Fisheries (MAGAP) for imports of 37 agricultural products originating in countries outside the AC (COMEXI Resolution 585 of 2010). Many of these products are also protected under the APBS (*e.g.*, poultry, dairy, rice, palm oil). MAGAP officials argue that the authorization ensures

that sanitary standards and tax rules are followed, but entry has been denied in situations where these concerns do not appear to apply.

Another administrative hurdle for importers of agricultural products is the MAGAP's use of "Consultative Committees" for import authorizations. These Committees, composed primarily of local producers, often advise the MAGAP against granting import authorizations for products such as corn, soybean meal, dairy products, and meats. Additionally, import authorizations usually are subject to crop absorption programs, pursuant to which MAGAP requires that all local production be purchased at high prices before authorizing imports.

In January 2008, Ecuador increased its special consumption tax (ICE) on a number of products, largely luxury items. The ICE was increased mostly for imported products rather than those produced domestically, such as perfumes, vehicles (tiered increases by vehicle price starting at \$20,000), video games, firearms, airplanes, helicopters, boats, and cable television service. In December 2011, a new tax package increased the ICE *ad valorem* rate on spirits from 40 percent to 75 percent, and added a specific tax, phased in over three years, of \$6.20 for every liter-equivalent of alcohol. However, the legislation is supposed to make assessment of the ICE for domestically produced and imported spirits more equitable by establishing factory and pre-import duty prices as the new taxable bases, respectively. A special consumption tax on cigarettes was implemented on November 24, 2011 at \$0.08 per cigarette and is adjusted biannually, depending on the consumer price index.

The December 2011 tax package also included an increase, effective immediately, of Ecuador's capital exit tax from 2 percent to 5 percent. Importers claim this indirect tax on imports substantially increases the cost of purchasing abroad. Imports of raw materials, basic inputs, and capital goods are eligible for offsetting tax credits, but the process has been criticized as convoluted.

***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. The United States ultimately concluded FTAs with Peru and Colombia. Negotiations with Ecuador were suspended indefinitely. Ecuador has indicated an interest in signing a trade agreement with the European Union. It is unclear whether Ecuador's intention is to accede to the multiparty trade agreement negotiated between the European Union and Andean Community countries of Colombia and Peru or to attempt to negotiate some other agreement. Ecuador is exploring the possibility of negotiating trade agreements with Canada, Switzerland, South Korea, and China.

***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 program 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 that Ecuador should be free of biotechnology crops and seeds. However, the Constitution grants the President the authority under exceptional circumstances to allow for imports of agricultural crops and seeds that may have been produced using biotechnology. President Correa has expressed support for agricultural biotechnology and, following the February 2013 elections, said he will make the necessary constitutional amendments to allow these products. Ecuador's Food Sovereignty Law and Biodiversity Law provide for a very general framework with respect to biotechnology products in Ecuador. The government has not yet issued implementing regulations. Interested private sector industries are working with Ecuadorian authorities to develop implementing regulations that will not impede trade in products derived from biotechnology.

***Regional Trade Policies:*** As noted above, Ecuador is a member of the AC. According to the Ecuadorian government, the AC absorbed 13 percent of Ecuador's exports and provided 14 percent of its imports in 2011. 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 the Association for Latin American Integration (ALADI). ALADI countries purchased 26 percent of Ecuador's exports and supplied 30 percent of its imports in 2011. 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.

Venezuela, a former Andean Community country, has negotiated bilateral agreements with Ecuador. The commercial transactions with Venezuela are carried out in Unitary Systems of Regional Compensation, or "SUCREs," a virtual means of exchange. Venezuela received 4 percent of Ecuador's total exports and supplied 1 percent of total imports in 2012.

***Narcotics and Counter-Terrorism Cooperation:*** A Presidential determination issued in September 2012 under the Foreign Relations Authorization Act found that Ecuador had not "failed demonstrably" in its counternarcotics cooperation with the United States. Ecuador is not a significant coca-producing country, but is exploited significantly as a transit zone and, to a lesser but growing 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, although changes to the law in 2011 made it more difficult for Ecuadorian authorities to seize bulk cash by putting the burden of proof on the government to show that the bulk cash was obtained through illegal acts.

Ecuador's National Drug Council (CONSEP) activity against trafficking in controlled precursor chemicals continued during 2012. However, CONSEP is still not resourced 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 since 2007. Ecuador's National Police has a chemical unit within its counternarcotics directorate. The unit conducts chemical diversion investigations and participates in DEA's *Sin Fronteras* program, which pursues regional enforcement activities.

The Counternarcotics Directorate (DNA) of the National Police increased from 1,700 officers in 2009 to its currently level of 1,845 in 2012. The DNA plans to add 100-150 new officers in 2013. The Government of Ecuador has publicly announced plans to spend \$250 million on port security through 2015. These ambitious plans include hiring more police officers and purchasing targeting software, container scanners, and other inspection equipment. Since 2000, U.S. Government assistance has helped construct 77 facilities for police and military throughout Ecuador at an investment of approximately \$23 million. Ecuador participates in DEA's successful Sensitive Investigative Unit program. This fully vetted unit routinely seizes about half of all the cocaine seized in Ecuador.

The Ecuadorian government continues to work with the U.S. Government to reduce drug 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 air, maritime and land routes to Europe and the United States (via Central America and Mexico) continues at a high level, even with the decreased overall production of cocaine from Colombia over the last two years. Since 2006, the Ecuadorian Coast Guard and the U.S. Coast Guard have been implementing an operational procedures agreement to board Ecuadorian flagged vessels on the high seas. This agreement is generally effective for vessels located outside of Ecuador's disputed 200 nautical mile territorial claim, though Ecuador has also granted boarding permission for vessels located within 200 nautical miles of Ecuadorian coastlines. Ecuador's constitution, however, does not allow for the extradition of Ecuadorian nationals to any country, and the United States Coast Guard and United States Navy are routinely required to repatriate Ecuadorian nationals caught at sea attempting to transport narcotics.

The expulsion of the U.S. Ambassador in April 2011 had a negative, short-term effect on the traditionally close counternarcotics cooperation between the two governments. In general, however, Ecuadorian law enforcement agencies cooperated well with U.S. and certain other foreign law enforcement agencies in 2012, and Ecuador's cocaine seizures in 2012 were higher than in 2011.

There are serious concerns that flaws in Ecuador's Law of Migration, and its implementation, may allow criminals to avoid justice by filing refugee or asylum petitions in Ecuador, turning the country into a haven for drug traffickers. The request by Colombian drug trafficker Danilo Nieves for refugee/asylum status was followed by similar requests in May 2010 from two Mexicans and a Colombian who were facing deportation after completing sentences in Ecuador for drug trafficking. This provided them with temporary protection from deportation following their release from prison and their current whereabouts are unknown. Ecuadorian law accords any applicant for refugee status a lengthy review process during which time he or she cannot be

deported.

In September 2009, operations ceased at the Forward Operating Location (FOL) on the Ecuadorian Air Force base in Manta, as Ecuador's government did not renew the program's lease. Maritime seizures have suffered following the 2009 closure of the Manta FOL. The Ecuadorian navy and coast guard lack resources and continue to be ineffective at interdiction efforts with limited maritime seizures in 2012. Additionally, the Navy and Coast Guard's primary mission is to disrupt the trafficking of cheap, subsidized gas from Ecuador to Colombia and Peru and combating the theft of boat engines. This focus means the majority of their personnel are operating in Esmeraldas and El Oro province, and the majority of departures of fishing boats with narcotics depart from the long, under-populated coast off Manabi province.

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, but in 2008, it established an "open visa policy" allowing tourists from all countries to enter for up to 90 days without first obtaining a visa. Ecuador saw a marked increase of entries by travelers from countries with high emigration rates and by "Special Interest Aliens" traveling from countries of concern, exacerbating its problems with alien smuggling. Therefore, the government has now implemented visa requirements for nine countries. Other issues of concern include Ecuador's weak financial controls, widespread document fraud, and its reputation as a strategic corridor for arms, ammunition, and explosives destined for Colombian illegally armed groups.

Ecuador is working with the Financial Action Task Force (FATF) and Financial Action Task Force of South America to address strategic deficiencies in its Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) regime. FATF has identified Ecuador as a jurisdiction with key deficiencies in AML/CFT since February 2010, and recently downgraded Ecuador for not making sufficient progress, despite having passed a new anti-money laundering law at the end of 2010. FATF's public statement in February 2013 noted that, despite Ecuador's high level political commitment and improved legislation, FATF would identify Ecuador on its list of countries out of compliance with their agreed action plan if Ecuador did not take sufficient action towards addressing key deficiencies. Ecuador's new draft penal code is currently in debate in the National Assembly and will likely pass in 2013.

In international rankings, Ecuador has been reported to suffer from high levels of corruption. Weak judicial institutions, susceptibility 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:*** Foreign bidders must register and have a local legal representative in order to participate in government procurement in Ecuador. Bidders are required to register and submit bids for government procurement through an online system (<http://www.compraspublicas.gob.ec>). Bidding on government procurement can be cumbersome

and relatively nontransparent. The lack of transparency creates opportunities for manipulation by procuring entities. Since 2008, Ecuador's public contracting law requires that priority be given to locally produced and supplied products and services, although foreign suppliers can compete for the procurements. Based on Article 25 of the public contracting law, INCOP (Public Contracting Institute) established that at least 40 percent of the value of a product must be locally produced to qualify for this preference.

As a general rule, all public institutions are subject to the public contracting law. However, the same law establishes exceptions, including special regimes established pursuant to norms set by the Ecuadorian President (Article 2), international agreements for the purchase of goods and services (Article 43), exploration and exploitation of hydrocarbons, emergency situations (Article 57), and national security contracts. Ecuador is not a signatory to the WTO Agreement on Government Procurement.

## Chapter 4

### SUMMARY OF SUBMISSIONS IN RESPONSE TO A NOTICE IN THE FEDERAL REGISTER

Pursuant to section 203(f) of the ATPA as amended, USTR requested the views of interested parties (78 Fed. Reg. 21002, April 8, 2013) on whether the remaining countries designated as ATPA/ATPDEA beneficiary countries are meeting the eligibility criteria under the ATPA as amended.

USTR received 116 comments in response to its request. The full texts of the submissions are available at <http://www.regulations.gov>, docket USTR-2013-0018. A summary of each submission follows.

**Advocating for ATPA renewal:** A total of 109 companies filed submissions supporting the extension of the ATPA for Ecuador. These companies stated their view that Ecuador fulfills the ATPA mandatory and discretionary eligibility criteria and that a renewal of the ATPA would benefit both the United States and Ecuador. Indeed, according to these companies, Ecuadorian exporters and American consumers would be adversely affected were the ATPA program not to be extended for Ecuador. Eighteen of the 109 companies strongly urge the renewal of the ATPA benefits for Ecuador, and 71 of the companies suggest that the ATPA benefits be renewed until an alternative trade program is implemented between the United States and Ecuador. Six of these 71 companies also support the renewal of the GSP for all eligible countries, including Ecuador. Twenty of the 109 companies call upon Congress to approve ATPA benefits once more in order to have time to implement an alternative trade program between the United States and Ecuador.

**Chevron** questions Ecuador's eligibility for ATPA benefits in light of a court case in Ecuador and arbitration under the United States-Ecuador BIT. Chevron indicates that the concerns it has previously expressed in response to USTR requests for comments have only been heightened due to recent developments. Chevron believes that the Administration and Congress should allow the ATPA to expire because Ecuador has failed to enforce or recognize arbitral awards under the BIT.

**Distilled Spirits Council of the United States** believes that Ecuador's application of tariff rates is inconsistent with its WTO obligations. Ecuador places a higher tariff rate than the WTO allows and favors domestic industry over foreign producers. The Distilled Spirits Council hopes that the U.S. Government will take into account whether Ecuador remedies these WTO violations before deciding to renew ATPA.

**Emergency Committee for American Trade (ECAT)** does not support a renewal of the ATPA program for Ecuador because Ecuador has failed to adhere to the ATPA eligibility criteria. ECAT believes both that Ecuador fails to honor the rights of foreign investors and that the rule of law appears to be deteriorating.

**International Intellectual Property Alliance (IIPA)**, a private sector coalition of trade associations representing U.S. copyright-based industries notes that Ecuador was placed on the Special 301 Watch List in 2013 because of high levels of piracy and counterfeiting. Protecting intellectual property rights is a requirement under ATPA, and Ecuador should be evaluated on whether it will adequately protect intellectual property.

**National Association of Manufactures (NAM)** questions Ecuador's eligibility for ATPA benefits due to its failure to recognize binding arbitral awards. NAM adds that U.S. preference programs are trade benefits and not entitlements. Ecuador's failure to meet ATPA requirements makes Ecuador ineligible for ATPA benefits.

**United States Council for International Business (USCIB)** asserts that the entire ATPA program should be terminated immediately due to Ecuador's failures to comply with ATPA country eligibility criteria by failing both to respect arbitral awards and protect IPR. USCIB has been a strong supporter of the ATPA program, but only for countries that meet the eligibility criteria.

**U.S. Chamber of Commerce** reiterates its consistent and outspoken support for the ATPA program, but it asserts that Ecuador continues to fail to meet ATPA's eligibility criteria. Ecuador fails to respect the rule of law, private property, and the sanctity of contracts. The Chamber suggests that Ecuador's benefits should be withdrawn until Ecuador once again becomes eligible.

## Chapter 5

### OPERATION OF THE PETITION PROCESS

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

Since the last report, in August 2012, USTR published a notice in the *Federal Register* announcing the 2012 Annual Review of the ATPA. Nineteen parties filed submissions, but none of the submissions constituted petitions that were accepted for review. The full texts of the submissions are available at <http://www.regulations.gov>, docket USTR-2012-0019.

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 USLEAP) and one involving Chevron-Texaco and Ecuador.

The most recent notices in the *Federal Register* relating to the ATPA reviews can be found at <http://www.regulations.gov>.