

# The Office of the United States Trade Representative

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## Andean Free Trade Agreement

11/18/2003

The Honorable Ted Stevens  
President Pro Tempore  
United States Senate  
Washington, D.C. 20510

Dear Senator Stevens:

In accordance with section 2104(a)(1) of the Trade Act of 2002 (the Trade Act), and pursuant to authority delegated to me by the President, I am pleased to notify the Congress that the President intends to initiate negotiations on a free trade agreement (FTA) with Colombia, Peru, Ecuador, and Bolivia, the four Andean Trade Preference Act (ATPA) beneficiary countries. Given Congress' legislative expression of interest -- in 1991 and again in 2002 -- for trade and economic opportunities with these four Andean countries as a group, the President directed me to initiate free trade possibilities with the region through a similar approach. In view of the ATPA program's expiration in December of 2006, we propose to initiate negotiations in the second quarter of 2004 with the countries that have demonstrated their readiness to begin. We will incorporate the countries that need more time to prepare at a later stage. We will be consulting closely with the Congress throughout the process.

The Administration is committed to bringing back trade agreements that open markets to benefit our farmers, workers, businesses, and families. With the Congress' continued help, we can move promptly to advance America's trade and economic interests.

An FTA with Colombia, Peru, Ecuador, and Bolivia ("the Andean countries") will help foster economic growth and create higher paying jobs in the United States by reducing and eliminating barriers to trade and investment between the Andean countries and the United States. The FTA will also enable us to address impediments to trade and investment in the Andean countries, including inadequate protection of intellectual property rights, high tariffs on agricultural goods, unjustified use of sanitary and phytosanitary measures, restrictive licensing practices, discriminatory treatment related to investment, and limitations on access by service providers.

An FTA with the Andean countries will also enhance our efforts to strengthen democracy and support for fundamental values in the region, such as respect for internationally recognized worker rights and the elimination of the worst forms of child labor, greater respect for the rule of law, sustainable development, and accountable institutions of governance. Strong anti-corruption and transparency requirements will help combat corruption. In addition, an FTA negotiation with the Andean countries would also lend momentum to concluding the Free Trade Area of the Americas negotiations by January 2005.

Negotiating an FTA with the Andean countries is a logical step under the Administration's promotion of competitive liberalization in the Hemisphere. The Andean countries' combined gross domestic product (on a purchasing power parity basis) is \$463 billion and their combined population numbers about 93 million people. As a destination for U.S. exports, the Andeans collectively represented a market of about \$7 billion in 2002. Excluding NAFTA, Colombia alone is the largest purchaser of U.S. agricultural exports in the Western Hemisphere. The stock of U.S. foreign direct investment (FDI) in the Andean countries was \$4.5 billion in 2002.

The combination of the size of the market and the current barriers to market access point to significant unrealized potential for U.S. exporters and investors. Market access gains are expected in a broad range of agricultural and industrial sectors. Opening of the services sector would have the greatest impact for telecommunications, banking and insurance businesses. An equally important aspect of an FTA would be its provision of enhanced business certainty and security.

There are important trade policy and foreign policy reasons for seeking to include all four Andean countries in an FTA. For over a decade, under different Administrations and Congresses, U.S. policy has recognized that a regional strategy will successfully advance our goals of helping the Andean countries to combat narcotrafficking, build democratic institutions, and promote socio-economic development. Narcotrafficking is a regional scourge that respects no borders. Experience has shown that to combat it effectively requires coordination and effective strategies among all four Andean countries.

The U.S. trade relationship with the Andean countries is currently conducted in the framework of the unilateral trade preferences of the ATPA. Congress enacted the ATPA in 1991 in recognition of the fact that regional economic development is necessary in order for each Andean country to provide economic alternatives for the illegal drug trade, promote domestic development, and thereby solidify democratic institutions. In renewing and expanding the ATPA in 2002, Congress stressed that "enhancement of legitimate trade with the United States provides an alternative means for reviving and stabilizing the economies in the Andean region." An FTA with the Andean countries would help promote economic integration among the four Andean countries. At the same time, it would provide export opportunities for U.S. agriculture, industry and service providers. It would serve as a natural complement to Plan Colombia, which Congress has backed significantly over the years.

Over the last year, the Andean countries have made progress in resolving outstanding bilateral investment issues. They have also worked with us closely to advance our common values and objectives in the World Trade Organization (WTO) and Free Trade Area of the Americas (FTAA) negotiations. In the course of negotiating an FTA, we intend to work closely with the Andean countries to support the U.S. goals of achieving hemispheric economic integration and dismantling trade barriers around the world.

At the same time, we recognize that it is essential to make progress with individual Andean countries on a number of other issues of concern to the United States. For instance, Ecuador needs to take significant further steps to address concerns we have raised regarding inadequate protection of worker rights, and Peru must demonstrate that it is making every effort to ensure the fair and expeditious resolution of a number of disputes involving U.S. investors. Likewise, Colombia must continue to make progress in addressing violence against trade unionists and must work to ensure the resolution of certain outstanding disputes with U.S. investors. We need to work with Bolivia, as well as Ecuador and the others, on capacity building related to their ability to participate in, implement, and take advantage of such an agreement.

Initial consultations with the Congressional Oversight Group (COG) and other Members of Congress regarding the prospects of moving toward a free trade agreement with the Andean countries have been positive, and we have received bipartisan letters of support that encouraged us to pursue such an agreement. The Administration will continue to consult closely with the Congress, including the COG, throughout the negotiation process.

Our specific objectives for negotiations with the Andean countries are as follows:

**Trade in Goods:**

- Seek to eliminate tariffs and other duties and charges on trade between each of the Andean countries and the United States on the broadest possible basis, subject to reasonable adjustment periods for import-sensitive products.
- Seek to eliminate non-tariff barriers in the Andean countries to U.S. exports, including

licensing barriers on agricultural products, restrictive administration of tariff-rate quotas, unjustified trade restrictions that affect new U.S. technologies, and other trade restrictive measures that U.S. exporters identify.

- Seek to eliminate government practices that adversely affect U.S. exports of perishable or cyclical agricultural products, while improving U.S. import relief mechanisms as appropriate.

- Pursue a mechanism with the Andean countries that will support achieving the U.S. objective in the WTO negotiations of eliminating all export subsidies on agricultural products, while maintaining the right to provide bona fide food aid and preserving U.S. agricultural market development and export credit programs.

- Pursue fully reciprocal access to the Andean countries' market for U.S. textile and apparel products.

#### **Customs Matters, Rules of Origin, and Enforcement Cooperation:**

- Seek rules to require that each country's customs operations are conducted with transparency, efficiency, and predictability, and that customs laws, regulations, decisions, and rulings are not applied in a manner that would create unwarranted procedural obstacles to international trade.

- Seek rules of origin, procedures for applying these rules, and provisions to address circumvention matters that will ensure that preferential duty rates under an FTA with the Andean countries apply only to goods eligible to receive such treatment, without creating unnecessary obstacles to trade.

- Seek terms for cooperative efforts with the Andean countries regarding enforcement of customs and related issues, including trade in textiles and apparel.

#### **Sanitary and Phytosanitary (SPS) Measures:**

- Seek to have the Andean countries reaffirm their WTO commitments on SPS measures and eliminate any unjustified SPS restrictions.

- Seek to strengthen collaboration with the Andean countries in implementing the WTO SPS Agreement and to enhance cooperation with the Andean countries in relevant international bodies on developing international SPS standards, guidelines, and recommendations.

#### **Technical Barriers to Trade (TBT):**

- Seek to have the Andean countries reaffirm their WTO TBT commitments and eliminate any unjustified TBT measures.

- Seek to strengthen collaboration with the Andean countries in implementing the WTO TBT Agreement and create a procedure for exchanging information with the Andean countries on TBT-related issues.

#### **Intellectual Property Rights:**

- Seek to establish standards to be applied in the Andean countries that build on the foundations established in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and other international intellectual property agreements, such as the World Intellectual Property Organization (WIPO) Copyright Treaty, the WIPO Performances and Phonograms Treaty, and the Patent Cooperation Treaty.

- In areas such as patent protection and protection of undisclosed information, seek to have the Andean countries apply levels of protection and practices more in line with U.S. law and practices, including appropriate flexibility.

- Seek to strengthen the Andean countries' procedures to enforce intellectual property rights, such as by ensuring that the Andean countries' authorities seize suspected pirated and counterfeit goods, equipment used to make such goods or to transmit pirated goods, and documentary evidence.

- Seek to strengthen measures in the Andean countries that provide for compensation of right holders for infringements of intellectual property rights and to provide for criminal penalties under the Andean countries' laws that are sufficient to have a deterrent effect on piracy and counterfeiting.

#### **Trade in Services:**

- Pursue disciplines to address discriminatory and other barriers to trade in the Andean countries' services markets. Pursue a comprehensive approach to market access, including any necessary improvements in access to the telecommunications, financial services, energy, express delivery, and other sectors.

- Seek improved transparency and predictability of the Andean countries' regulatory procedures, specialized disciplines for financial services, and additional disciplines for telecommunication services and other sectors as necessary.

#### **Investment:**

- Seek to establish rules that reduce or eliminate artificial or trade-distorting barriers to U.S. investment in the Andean countries, while ensuring that Andean investors in the United States are not accorded greater substantive rights with respect to investment protections than U.S. investors in the United States, and to secure for U.S. investors in the Andean countries important rights comparable to those that would be available under U.S. legal principles and practice.

- Seek to ensure that U.S. investors receive treatment as favorable as that accorded to domestic or other foreign investors in the Andean countries and to address unjustified barriers to the establishment and operation of U.S. investments in the Andean countries.

- Provide procedures to resolve disputes between U.S. investors and the governments of the Andean countries that are in keeping with the trade promotion authority goals of being expeditious, fair, and transparent.

#### **Electronic Commerce:**

- Seek to affirm that the Andean countries will allow U.S. goods and services to be delivered electronically to its market and to ensure that the Andean countries do not apply customs duties to digital products or unjustifiably discriminate among products delivered electronically.

#### **Government Procurement:**

- Seek to establish rules requiring government procurement procedures and practices in the Andean countries to be fair, transparent, and predictable for suppliers of U.S. goods and services that seek to do business with the Andean countries.

- Seek to expand access for U.S. goods and services to the Andean countries' government

procurement market.

**Transparency/Anti-Corruption/Regulatory Reform:**

- Seek to make the Andean countries' administration of their trade regimes more transparent, and pursue rules that will permit timely and meaningful public comment before the Andean countries adopt trade-related measures.

- Seek to ensure that the Andean countries apply high standards prohibiting corrupt practices affecting international trade and enforce such prohibitions.

**Trade Remedies:**

- Provide a safeguard mechanism during the transition period to allow a temporary revocation of tariff preferences if increased imports from an Andean country is a substantial cause of serious injury, or threat of serious injury, to the domestic industry.

- Make no changes to U.S. antidumping and countervailing duty laws.

**Environment:**

- Seek to promote trade and environment policies that are mutually supportive.

- Seek an appropriate commitment by the Andean countries to effectively enforce their environmental laws.

- Establish that each country will strive to ensure that it will not, as an encouragement for trade or investment, weaken or reduce the protections provided for in their environmental laws.

- Help the Andean countries strengthen their capacity to protect the environment through the promotion of sustainable development, such as by establishing consultative mechanisms.

**Labor, including Child Labor:**

- Seek an appropriate commitment by the Andean countries to effectively enforce their labor laws.

- Establish that the Andean countries will strive to ensure that they will not, as an encouragement for trade or investment, weaken or reduce the protections provided for in their labor laws.

- Based upon review and analysis of the Andean countries' labor laws and practices, establish procedures for consultations and cooperative activities with the Andean countries to strengthen each country's capacity to promote respect for core labor standards, including compliance with ILO Convention 182 on the worst forms of child labor, building on technical assistance programs administered by the U.S. Department of Labor.

**State-to-State Dispute Settlement:**

- Encourage the early identification and settlement of disputes through consultation.

- Seek to establish fair, transparent, timely, and effective procedures to settle disputes arising under the agreement.

In addition, the FTA with the Andean countries will take into account other legitimate U.S. objectives including, but not limited to, the protection of health, safety, environment, essential security, and consumer interests.

We are committed to concluding these negotiations with timely and substantive results for U.S. workers, consumers, businesses, and farmers, and will pursue these specific objectives, keeping in mind the overall and principal U.S. negotiating objectives and priorities that the Congress has identified. We look forward to continuing to work with the Congress as negotiations with the Andean countries begin, and we commit to work with you as we bring them to a successful conclusion.

Sincerely,

Robert B. Zoellick

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