

**Fifth Report to the Congress  
on the  
Operation of the  
Andean Trade Preference Act as Amended**

**June 30, 2010**



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

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United States Trade Representative**

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## EXECUTIVE SUMMARY

The Andean Trade Preference Act (ATPA), as amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA) (jointly referred to as ATPA/ATPDEA), requires the U.S. Trade Representative (USTR) to submit a report to Congress on the operation of the program no later than June 30, 2010,<sup>1</sup> and every two years thereafter during the period that the program is in effect. Congress directed that these reports include a general review of the ATPA/ATPDEA beneficiary countries based on the eligibility criteria and considerations described in the statute. This is the fifth USTR report to Congress on the ATPA/ATPDEA, and covers the year 2009, 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.<sup>2</sup> Originally, the ATPA, as amended, was set to expire on December 31, 2006, but Congress has enacted several extensions. In 2009, Congress extended the program through December 31, 2010.

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, President Obama 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.

The objectives of the ATPA/ATPDEA are to promote broad-based economic development, diversification of exports, consolidation of democracy, and to help defeat the scourge of drug trafficking by providing sustainable economic alternatives to drug-crop production in beneficiary countries. This report shows that the ATPA/ATPDEA continues to make progress in achieving these goals.

The United States is the leading source of imports and the leading export market for the ATPA/ATPDEA beneficiary countries. The three current beneficiary countries collectively represented a market of about \$16.7 billion for U.S. exports in 2009, and were home to about \$16.1 billion in U.S. foreign direct investment in 2008. Thus, the ATPA/ATPDEA has benefited the trade of both the Andean region and the United States.

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<sup>1</sup> Previously, USTR's reports on ATPA were submitted on April 30, however, the extension of ATPA enacted in 2009, changed the date for the report to June 30.

<sup>2</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.

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

The report is organized as follows. Chapter 1 briefly describes the key sections of the ATPA/ATPDEA, including the ATPDEA requirements and the designation of ATPDEA beneficiary countries. Chapter 2 highlights trade between the United States and the ATPA/ATPDEA beneficiary countries. Chapter 3 evaluates the beneficiary countries' compliance with the eligibility criteria of the statute and discusses the ATPA/ATPDEA's effect on trade with the beneficiary countries. 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.

Ambassador Ron Kirk  
United States Trade Representative

## **Chapter 1**

### **DESCRIPTION OF THE ATPA/ATPDEA**

#### **Key Provisions**

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

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

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

The ATPA/ATPDEA was initially set to expire on December 31, 2006. Congress has enacted legislation extending the program five times. Currently, the ATPA/ATPDEA is scheduled to expire on December 31, 2010.

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

#### **Country Eligibility**

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 is eligible for the enhanced trade benefits of the ATPDEA if the President designates it as an ATPDEA beneficiary country, taking into account: (1) the criteria contained in sections 203(c) and 203(d) of the ATPA/ATPDEA; and (2) additional

eligibility criteria provided for in section 204(b)(6)(B) of the ATPA/ATPDEA. These criteria are discussed in detail in Chapter 3, which also contains a discussion of each country's compliance with the criteria since being designated. Section 204(b)(5)(A)(ii)(I) of the ATPA/ATPDEA also includes criteria related to customs cooperation.

Bolivia's eligibility for benefits was suspended effective December 2008. Further, 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. This report covers all four countries listed in the statute as potentially eligible for designation as an ATPA/ATPDEA beneficiary country, although an act of Congress would be required to restore the President's authority to extend benefits to Bolivia.

### **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 ATPDEA, in July 2003, USTR promulgated regulations (15 CFR Part 2016) (68 Fed. Reg. 43922) regarding reviews of the eligibility of countries and articles under the ATPA as amended. Under these 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 (thirteenth) report covering 2007 to Congress in September 2008.

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

Section 207 of the ATPA/ATPDEA directs the Secretary of Labor, in consultation with other appropriate Federal agencies, to undertake a continuing review and analysis of the impact of the ATPA/ATPDEA on U.S. employment. The Secretary of Labor is required to report to Congress annually on the results of such review and analysis. The Department of Labor's most recent (sixteenth) report covering 2008 was submitted to Congress in 2009. 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 Sixteenth Report found that, at the industry level, trends in U.S. domestic production and U.S. imports from the beneficiary countries since implementation of the ATPA/ATPDEA suggest that increased imports of certain fresh cut flowers and asparagus due to the ATPA/ATPDEA trade preferences may have displaced some growers and workers in the United States; however, given

the complexities involved, it is difficult to isolate conclusively the factors responsible for these trends.

## Chapter 2

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

U.S. trade with the ATPA/ATPDEA countries fell substantially in 2009, following rapid growth in 2008. Two-way trade decreased 21 percent in 2009, following a 37 percent increase in 2008. U.S. imports from ATPA countries fell 26 percent to \$21.2 billion in 2009 compared with 2008, and U.S. exports fell 14 percent to \$17.1 billion, resulting in a trade deficit of \$4.0 billion. Over the past five years, U.S. imports from the region increased 37 percent and U.S. exports grew 123 percent.

Table 2-1.--U.S. Trade with ATPA/ATPDEA Countries, 1991-2009*					
Year	U.S. Exports**	ATPA/ATPDEA Countries' Share of U.S. Exports to the World	U.S. Imports***	ATPA/ATPDEA Countries' Share of U.S. Imports from the World	U.S. Trade Balance
	Million \$\$	Percent	Million \$\$	Percent	Million \$\$
1991	3,798.2	0.9	4,969.5	1.0	-1,171.3
1992	5,319.7	1.3	5,058.7	1.0	261.0
1993	5,359.1	1.2	5,282.3	0.9	76.7
1994	6,445.0	1.3	5,879.5	0.9	565.5
1995	7,820.2	1.4	6,968.7	0.9	851.4
1996	7,718.7	1.3	7,867.6	1.0	-148.9
1997	8,681.8	1.3	8,673.6	1.0	8.2
1998	8,670.1	1.4	8,361.0	0.9	309.1
1999	6,263.2	1.0	9,830.2	1.0	-3,567.0
2000	6,295.1	0.9	11,117.2	0.9	-4,822.1
2001	6,363.3	1.0	9,568.7	0.8	-3,205.3
2002	6,463.8	1.0	9,611.5	0.8	-3,147.7
2003	6,525.7	1.0	11,639.5	0.9	-5,113.8
2004	7,663.6	1.1	15,489.8	1.1	-7,826.2
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	17,074.9	1.8	21,193.9	1.4	-4,119.0
*Includes trade with Bolivia					
**Domestic exports, F.A.S. basis					
***Imports for consumption, customs value					
<i>Source: Compiled from official statistics of the U.S. Department of Commerce</i>					

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

U.S. imports from ATPA/ATPDEA countries fell to \$21.2 billion in 2009 after reaching a record level of \$28.5 billion in 2008. The share of U.S. imports from ATPA/ATPDEA countries among all U.S. imports fell in 2009 to 1.4 percent. (See Table 2-1.)

U.S. imports from ATPA/ATPDEA countries consist primarily of derivatives of raw materials, agricultural products, and apparel. Mineral fuels, mainly petroleum, accounted for 50 percent of imports in 2009, down from 59 percent in 2008, but similar in magnitude to the shares in previous years. In 2009, lower oil prices were primarily responsible for the decreased share, although the quantity of crude oil imports increased. Other leading imports from ATPA/ATPDEA countries in 2009 were precious metals, gemstones and jewelry, primarily nonmonetary gold; coffee; fruits and nuts, primarily bananas; apparel; cut flowers; fish and crustaceans; copper articles, mainly cathodes; unwrought tin; and edible vegetables, primarily asparagus.

About 88 percent of U.S. imports from ATPA/ATPDEA countries enter the U.S. market duty-free under ATPA/ATPDEA, GSP, the United States-Peru FTA, or Normal Trade Relations (NTR) tariff rates (formerly known as Most Favored Nation (MFN) tariff rates). (See Table 2-2.) All 20 leading imports from the region were eligible for duty-free treatment in 2009. With the implementation of ATPDEA in late 2002, the duty-free portion of U.S. imports jumped from approximately 53 percent in 2002, to 85 percent in 2003, and 88 percent in 2009. Thirty-five percent of U.S. imports from the region entered duty free under NTR tariff rates in 2009. Such traditional U.S. imports from ATPA/ATPDEA countries as coffee, bananas, shrimp, and bituminous coal enter the U.S. market NTR duty-free. Another two percent of U.S. imports entered under the GSP. Forty six percent of U.S. imports from the region entered under ATPA/ATPDEA in 2009, falling from 61 percent in 2008, and compared to an average of 18 percent in the three years prior to the implementation of ATPDEA. In 2009, there was a substantial shift in imports from Peru from ATPA/ATPDEA to the United States-Peru FTA.

U.S. imports under ATPA/ATPDEA fell 44 percent to \$9.7 billion in 2009, following a 40 percent increase in 2008 to \$17.2 billion from \$12.3 billion in 2007. The share of U.S. imports from the region that entered under ATPA/ATPDEA was stable around 60 percent for several years before falling to 47 percent in 2009.

Petroleum-based imports accounted for over three-fourths (76 percent) of U.S. imports under ATPA/ATPDEA in 2009, and were largely responsible for the 44 percent decrease in U.S. imports under ATPA/ATPDEA in 2009 due to the decline in the price of these imports. Apparel was the next largest category of imports under ATPA/ATPDEA, accounting for 6 percent of the total. The third largest category was cut flowers, and copper cathodes ranked fourth. Other important imports were fresh asparagus and vegetable and fruit preparations, including preparations of artichokes, asparagus, certain other fruit juices, bananas, and pimientos. U.S. imports under ATPA/ATPDEA of all of these products declined between 2008 and 2009, although imports of cut flowers declined only a small amount. Imports of gold jewelry, previously a leading import under ATPA/ATPDEA, have plummeted over the past several years, declining by around 90 percent since 2006.

Table 2-2--U.S. Imports from ATPA/ATPDEA Countries, Total and Under Import Programs, 2007-2009, (thousands of dollars)

Country	Import Program	2007	Percent of total	2008	Percent of total	2009	Percent of total
Bolivia	Total	333,611	100.0	540,435	100.0	504,002	100.0
.	GSP	40,727	12.2	47,632	8.8	123,889	24.6
.	ATPA <sup>1</sup>	91,282	27.4	56,958	10.5	0	0.0
.	ATPDEA	56,865	17.0	83,009	15.4	0	0.0
	MFN free	138,665	41.6	248,325	45.9	282,424	56.0
Colombia	Total	9,251,233	100.0	13,058,845	100.0	11,209,359	100.0
.	GSP	236,416	2.6	235,815	1.8	188,730	1.7
.	ATPA <sup>1</sup>	864,673	9.3	811,454	6.2	796,854	7.1
.	ATPDEA	3,662,986	39.6	6,527,779	50.0	4,792,631	42.8
	MFN free	3,492,051	37.7	4,314,317	33.0	4,175,188	37.2
Ecuador	Total	6,131,024	100.0	9,043,832	100.0	5,245,899	100.0
.	GSP	76,599	1.2	57,137	0.6	52,263	1.0
.	ATPA <sup>1</sup>	289,145	4.7	283,655	3.1	271,525	5.2
.	ATPDEA	4,324,647	70.5	6,311,119	69.8	2,476,921	47.2
	MFN free	1,104,012	18.0	1,261,953	14.0	1,444,768	27.5
Peru	Total	5,207,070	100.0	5,839,906	100.0	4,234,615	100.0
.	Peru-U.S.	0	0.0	0	0.0	980,516	23.2
.	GSP	245,529	4.7	271,000	4.6	30,696	0.7
.	ATPA <sup>1</sup>	1,565,012	30.1	1,520,109	26.0	583,305	13.8
.	ATPDEA	1,452,232	27.9	1,648,593	28.2	793,008	18.7
	MFN free	1,727,786	33.2	1,986,905	34.0	1,609,566	38.0
All ATPA countries	Total	20,922,938	100.0	28,483,018	100.0	20,689,873	100.0
	Peru-U.S.	0	0.0	0	0.0	980,516	4.7
	GSP	599,271	2.9	611,584	2.1	271,689	1.3
	ATPA <sup>1</sup>	2,810,112	13.4	2,672,176	9.4	1,651,684	8.0
	ATPDEA	9,496,730	45.4	14,570,500	51.2	8,062,560	39.0
	MFN free	6,462,514	30.9	7,811,500	27.4	7,229,522	34.9

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

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

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

Colombia was the leading source of U.S. imports under the ATPA/ATPDEA in 2009, having surpassed Ecuador in 2008. Colombia supplied 58 percent of U.S. imports under ATPA/ATPDEA in 2009; Ecuador, 28 percent; and Peru, 14 percent. (See Table 2.3.) Both Colombia and Ecuador supplied \$6.2 billion of U.S. petroleum imports under ATPA/ATPDEA in 2008, but such imports from Colombia fell 26 percent in 2009 on lower prices and higher volume, while imports from Ecuador fell 61 percent on both lower prices and lower volume. U.S. imports under the ATPA/ATPDEA from each of the countries declined between 2008 and 2009.

Country	2007	2008	2009	2009 share of total
	<i>1,000 dollars</i>	<i>1,000 dollars</i>	<i>1,000 dollars</i>	Percent
Colombia	4,527,659	7,339,233	5,589,485	57.5
Ecuador	4,613,792	6,594,774	2,748,446	28.3
Peru	3,017,244	3,168,702	1,376,312	14.2
Bolivia	148,148	139,966	0	0.0
Total	12,306,843	17,242,675	9,714,243	100.0
<i>Source: USITC Dataweb compiled from official statistics of the U.S. Department of Commerce.</i>				

U.S. imports under ATPA/ATPDEA from Colombia decreased 24 percent to \$5.6 billion in 2009, less than from any other ATPA/ATPDEA country. Petroleum-related products were primarily responsible for the decrease, accounting for 82 percent (\$4.6 billion) of ATPA/ATPDEA entries from Colombia in 2009, down from an 84 percent share (\$6.2 billion) in 2008. Other major U.S. imports under ATPA/ATPDEA from Colombia declined in 2009 compared with 2008, with the exception of cut flowers, the second largest import (\$506 million), which increased 1.4 percent. Imports of apparel, the third largest import (\$210 million) fell 33 percent. Cut flowers and apparel accounted for 9.1 percent and 3.8 percent of ATPA/ATPDEA entries from Colombia, respectively, in 2009. Other important imports under ATPA/ATPDEA from Colombia were plastics (\$53 million), sugar (\$34 million), aluminum products (\$30 million), ceramics (\$24 million), and vegetable and fruit preparations (\$20 million), all of which declined in 2009 compared with 2008, except sugar and vegetable and fruit preparations.

ATPA/ATPDEA entries from Ecuador decreased 58 percent to \$2.7 billion in 2009, from \$6.6 billion in 2008. Petroleum products (\$2.4 billion) overwhelmingly dominated such imports from Ecuador, accounting for 88 percent in 2009, lower than the shares of over 90 percent in each of the previous four years. Other important imports under ATPA/ATPDEA from Ecuador in 2009 were cut flowers (\$118 million), down 11 percent in 2009 compared with 2008; tuna (\$57 million), down 31 percent; vegetables (\$41 million), down 5 percent; vegetable and fruit preparations (\$36 million), up 28 percent; and fruits, primarily fresh pineapples, fresh mangoes, and frozen fruits (\$35 million), up 28 percent.

U.S. imports under ATPA/ATPDEA from Peru decreased 57 percent, from \$3.2 billion in 2008 to \$1.4 billion in 2009, reflecting sharply lower prices for resource-based products and a shift in entry of some imports from ATPA/APTDEA to the United States-Peru FTA. The leading ATPA/ATPDEA entry from Peru was apparel; although apparel imports declined 47 percent to \$408 million in 2009, they accounted for 30 percent of total ATPA/ATPDEA entries from Peru. The second largest U.S. import under ATPA/ATPDEA from Peru was petroleum products, which decreased 56 percent to \$384 million in 2009. The third largest import in 2009, and formerly the leading import from Peru under ATPA/ATPADEA, was copper articles, primarily copper cathodes at \$241 million, down 73 percent from 2008. Other leading ATPA/ATPDEA imports from Peru in 2009 were vegetable and fruit preparations (\$91 million); fruits, primarily grapes and mangoes (\$56 million); and fresh asparagus (\$45 million). Total U.S. imports of fresh asparagus actually increased 6 percent, but a large share of such imports shifted from ATPA/ATPDEA to the United States-Peru FTA.

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

U.S. exports to ATPA/ATPDEA countries, including Bolivia, fell 14 percent to \$17.1 billion in 2009, less than the 20 percent decrease recorded for all U.S. exports. The ATPA/ATPDEA countries' share of U.S. exports to the world was 1.8 percent in 2009.

The leading category of U.S. exports to ATPA/ATPDEA countries in 2009 was nonelectrical machinery, equipment, appliances, and parts, destined principally for oil and gas extraction, mining, and data processing. U.S. exports of nonelectrical machinery and parts decreased 12 percent to \$3.8 billion in 2009, and have consistently accounted for 21-22 percent of total U.S. exports to the region over the past five years. U.S. exports of mineral fuels, primarily refined petroleum products, which ranked second in 2009, decreased one percent to \$2.7 billion in 2009. All other categories of U.S. exports among the top ten to the region also decreased in 2009 compared with 2008, including electrical machinery (\$1.3 billion), plastics (\$1.1 billion), organic chemicals (\$823 million), and motor vehicles (\$762 million).

Colombia was the largest market for U.S. exports at \$8.8 billion, representing 51 percent of U.S. exports to ATPA/ATPDEA countries in 2009. Peru ranked second as a destination for U.S. exports, with \$4.4 billion in U.S. goods (26 percent); Ecuador was third, with \$3.6 billion (21 percent); and Bolivia was fourth, with \$378 million (2 percent). U.S. exports to Colombia and Peru fell 17 percent and 23 percent, respectively, in 2009, but exports to Ecuador and Bolivia rose 14 percent and 5 percent, respectively.

## Chapter 3

### COUNTRY ELIGIBILITY REPORTS

This chapter first outlines the detailed country eligibility criteria in the ATPA/ATPDEA and proceeds to discuss each of the four countries' performance under the criteria. Each country report also examines the effects of the ATPA/ATPDEA on trade, investment and economic development in the country and on creating sustainable economic alternatives to coca production. These country reports are based on information provided by U.S. embassies in the region. They are an update to USTR's April 30, 2009, Fourth Report to the Congress on the Operation of the Andean Trade Preference Act as Amended.

As summarized below, the ATPA/ATPDEA contains two types of criteria: mandatory and discretionary. The President may not designate an ATPA/ATPDEA country as a beneficiary if the country fails to meet the mandatory criteria, described in the statute as "limitations on designation," unless the President finds that designation would be in the national economic or security interest of the United States. The President must take the discretionary criteria, described in the statute as "factors affecting designation," into account in determining whether to designate any country as a beneficiary country, but he is not barred from designating a country that fails to meet those criteria as a beneficiary.<sup>3</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>3</sup> As noted above, the President submitted a report to Congress on June 30, 2009, regarding Ecuador and Bolivia's compliance or lack of 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*):

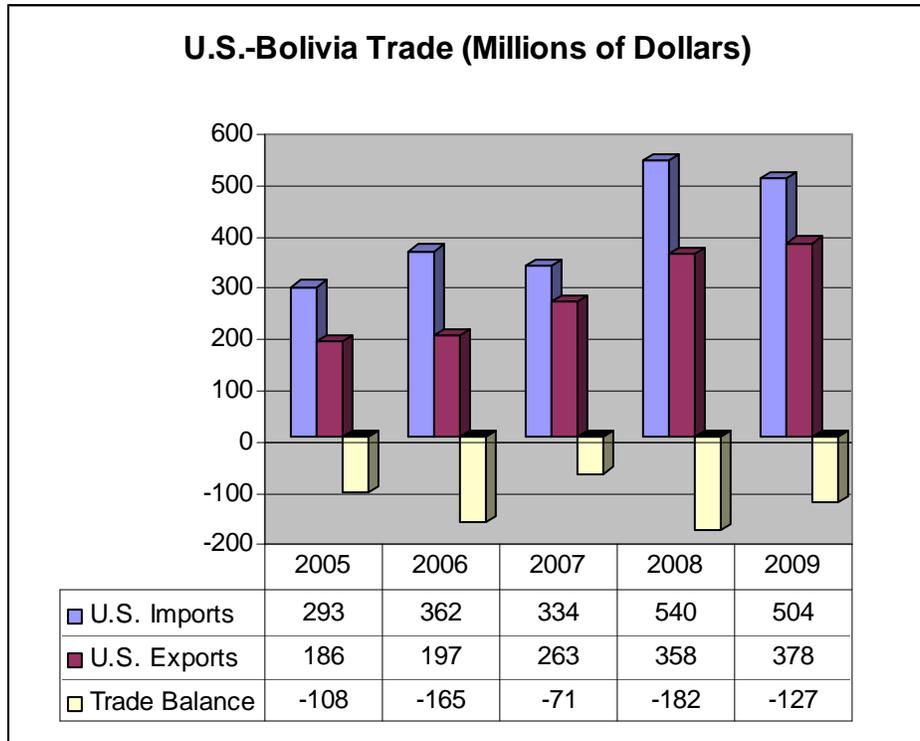
- (1) “an expression by such country of its desire to be so designated;
- (2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;
- (3) the extent to which such country has assured the United States it will provide 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.”

## BOLIVIA

**Population: 9,775,246**  
**(July 2009 est.)**  
**GDP per capita (PPP):**  
**\$4,600 (2009 est.)**  
*Source: 2010 World*  
*Fact Book*



**Preferential Tariff Treatment:** In 2009, U.S. goods imports from Bolivia totaled \$504 million, a 7 percent decrease from 2008.<sup>4</sup> Bolivia accounted for 2.4 percent of total U.S. imports from the four Andean countries in 2009. U.S. imports under preference programs (ATPA/ATPDEA and GSP) from Bolivia decreased 34 percent, from \$188 million in 2008 to \$124 million in 2009, a decrease of \$64 million, reflecting changes resulting from the denial of benefits under ATPA/ATPDEA to Bolivia. Imports of petroleum and petroleum products, which amounted to \$72 million under ATPDEA and 51 percent of imports under ATPA/ATPDEA in 2008, do not qualify for duty-free entry under GSP. (NTR duty rates on petroleum and petroleum products are extremely low—5.25¢ or 10.5¢ per barrel on products commonly imported from Bolivia—so preferences have only a very small impact on such imports.) Since most of Bolivia’s major exports that had qualified for ATPA (excluding ATPDEA) preferences are also eligible for GSP preferences, these products were able to be entered duty-free under GSP in 2009. Most notable of these products were various types of precious metal jewelry and articles of precious metals. Imports of these products under preference programs increased \$23 million from 2008 to 2009 to a total of \$83 million, an increase of 38 percent.

**Expropriations:** The new Bolivian Constitution provides that property may be expropriated for the public good or when the property does not fulfill a “social purpose.” It also stipulates that just compensation must be provided. Regulatory laws that grant concessions to exploit natural

<sup>4</sup> As noted above, in 2009 Bolivia did not receive benefits under ATPA/ATPDEA.

resources such as hydrocarbons and minerals also provide a means of expropriating land and guaranteeing rights of way needed to develop concessions. A United States-Bolivia bilateral investment treaty (BIT) entered into force in June 2001. The BIT provides that expropriation of U.S. investments can only be carried out for a public purpose, in a nondiscriminatory manner, in accordance with due process of law, and upon payment of prompt, adequate, and effective compensation.

In 2005, the Bolivian government enacted a law requiring that hydrocarbons companies negotiate new service contracts that grant control over the production chain to the state, and that provide *Yacimientos Petrolíferos Fiscales Bolivianos* (YPFB), the state-owned oil company, a share of the companies' equity. All production companies signed new contracts in October 2006, and agreed to pay 50 percent in taxes and royalties, as well as provide YPFB with an equity stake ranging from zero to 32 percent. In May 2008, Bolivia moved to further consolidate state control over the hydrocarbon companies privatized in the 1990s, e.g. *Transredes*, the principal pipeline operator partially owned by Ashmore Energy International (AEI) of Houston, Texas, by mandating that the state have controlling ownership of 50 plus one percent. In 2009, the Bolivian government and *Transredes* reached an agreement whereby the government paid approximately \$230 million to acquire 97 percent of the company.

***Arbitral Awards:*** The United States-Bolivia BIT provides for recourse to international arbitration in the event of disputes between U.S. investors and the Bolivian government. Bolivia's Investment Law (Law 1182 of 1990) provides for arbitration in accordance with the Bolivian Constitution and international norms, and the Arbitration and Conciliation Law (Law 1770 of 1997) outlines arbitration procedures and enforcement mechanisms. These laws state that international agreements, such as the International Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) and the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), must be honored. However, the Constitution stipulates that hydrocarbon companies may not invoke international arbitration for any reason nor appeal to diplomatic claims, nor will the government recognize international or foreign rulings. The Constitution assigns to the Constitutional Court responsibility for addressing conflicts between the Constitution and Bolivia's international agreements. In November 2007, Bolivia became the first country to withdraw from ICSID.

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

***Intellectual Property:*** Patents, trademarks, and industrial designs are protected by Andean Community Decisions 486 (Common Industrial Property Regime) and 345 (Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties). Copyrights are protected by Andean Community Decision 351 (Common Regime on Copyright and Neighboring Rights). However, enforcement of existing laws to protect intellectual property rights is weak, and piracy in Bolivia continues largely unabated.

The copyright law (Law 1322, 1992) protects literary, artistic, and scientific works for the lifetime of the author plus 50 years. The law also provides protection for software and databases.

Bolivian copyright protection includes the exclusive right to copy or reproduce works; to revise, adapt, or prepare derivative works; to distribute copies of works; and to publicly communicate works. Although the exclusive right to translate works is not explicitly granted, the law does prevent unauthorized adaptation, transformation, modification, and editing.

The copyright law protects the rights of Bolivian authors, foreign authors domiciled in Bolivia, and foreign authors published for the first time in Bolivia. Foreigners not domiciled in Bolivia are protected to the extent provided in international conventions and treaties to which Bolivia is a party. Additional protection is provided by the film and video law (Law 1302, 1991) which established a National Movie Council (CONACINE) to oversee the domestic film industry and requires that all films and videos shown or distributed in Bolivia be registered with the organization.

The existing copyright law recognizes copyright infringement as a public offense and the 2001 Bolivian Criminal Procedures Code provides for the criminal prosecution of intellectual property rights (IPR) violations. However, the International Intellectual Property Alliance estimates that piracy levels have reached 100 percent for motion pictures and over 90 percent for recorded music. The U.S. Government is not aware of any allegations of unauthorized broadcast of U.S. copyrighted works by a government-owned entity.

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

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

Bolivia is also a signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The Bolivian congress has not yet ratified these treaties.

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

**Workers' Rights:** Bolivia has ratified all eight International Labor Organization core labor conventions. Bolivian labor laws provide for a range of benefits for full-time salaried employees. Bolivia's labor code assures workers the right to establish and join organizations of their choosing. Bolivian labor law does not restrict unions from affiliating with international labor confederations.

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

With the exception of health and gas industry workers and teachers, the labor code formally denies civil servants the right to organize and prohibits strikes in public services, including banks

and public markets. Still, the rate of unionization in the public sector (just over 50 percent of salaried workers) is twice that of the private sector, and strikes are common.

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

According to the International Labor Organization, 313,529 children between the ages of seven and seventeen work in Bolivia, and approximately 142,000 are girls. Although the law prohibits persons under 18 years of age from work in the sugarcane fields, approximately 10,000 rural migrant children (7,000 of whom are under the age of 14) reportedly engage in such work. Children also worked in mining gold, silver, and tin and in other dangerous occupations in the informal sector.

On November 28, 2002, the Bolivian government ratified ILO Convention 182 on the Worst Forms of Child Labor. Bolivia has taken steps to implement its commitments under this Convention by creating an inter-institutional commission and initiating the development of a national plan to eradicate the worst forms of child labor. The government continued to work with non-governmental organizations to discourage the use of child labor in the mining and sugar sectors by participating in internationally funded programs to provide educational alternatives to children who otherwise would work in mines or sugarcane fields. Nonetheless, according to the human rights ombudsman, as of 2008, 3,800 children still worked in mining.

***Economic Conditions:*** Bolivia has remained relatively immune from the worldwide economic crisis. In 2009, GDP continued strong growth at an estimated 3.7 percent, one of the highest rates in the region. Inflation fell significantly from 11.8 percent in 2008 to 0.3 percent. The financial sector is strong with more than \$3 billion in excess liquidity. International reserves rose from \$3.2 billion in 2006 to \$8.6 billion in 2009, covering 21 months of imports or all deposits in the financial system, in local and foreign currencies. According to the United Nations Conference on Trade and Development (UNCTAD), the stock of Foreign Domestic Investment (FDI) in Bolivia increased from \$1 billion in 1990 to \$6 billion in 2008. Also, the Central Bank of Bolivia reported that the International Investment Position registered a net credit of \$2.7 billion, or 16 percent of annual GDP in 2009. Total FDI from all countries in 2009 was \$748.5 million. Of this, \$172 million was from the United States, which was the country's top investor in 2009, contributing 23 percent of all FDI. Fiscal and external accounts registered surpluses the last two years.

With the election of President Morales in 2005, the government moved away from market-based policies and toward greater state involvement in the economy. In December 2009, President Morales was reelected and his party obtained a majority in both houses of the Bolivian legislature. The government has continued to stress the need for greater state control of the economy and has committed to nationalize additional enterprises.

***Market Access:*** Bolivia generally provides equitable and reasonable market access for U.S. exports. Bolivia's current tariff structure was approved in November 2007. Under this scheme,

capital goods designated for industrial development may enter duty-free, non-essential capital goods are subject to a five percent tariff, and most other goods are subject to tariffs of 10-20 percent. In May 2009, Bolivia established by Supreme Decree 125 a separate 35 percent tax for textile products and wooden furniture.

Bolivia also enacted a Ministerial Resolution in December 2008 that established the 2009 Bolivian Customs Import Tariff. This resolution brings Bolivia into accordance with Decision 653 of the Andean Community taken in November 2006, which approved the common description and coding nomenclature for the goods of the Andean Community member countries.

Bolivia's trade policy generally does not apply specific restrictions to trade in goods and services, such as permits or prior licenses, with the exception that all importers must register with the Bolivian National Customs Office. The Bolivian government imposes restrictions where there is a potential for danger to human, animal, or plant health; to protect the country's artistic or cultural heritage; and to ensure the security of the state.

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

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

Bolivia also limits some agricultural exports unless producers can show that internal demand has been met at "fair prices." Exporters must request a certificate of internal sufficiency of supply and "fair" price from the Ministry of Production and Microenterprises before selling products abroad. Products that have recently been subject to this provision include sugar, beef, poultry, and vegetable oils.

***Regional Trade Policies:*** Bolivia, along with Chile, Colombia, Ecuador, Peru, and Venezuela, is an associate member of the Common Market of the South (Mercado Común del Sur – MERCOSUR) group which includes Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR has virtually eliminated tariff and non-tariff barriers on most intra-regional trade between members with the implementation of a Common External Tariff (CET) system. Associate members enjoy tariff reductions, but are not subject to the CET system.

Bolivia is also a member of the Andean Community of Nations (Comunidad Andina de Naciones or CAN) with Colombia, Ecuador, and Peru. This agreement has significantly reduced most internal trade barriers.

***Narcotics and Counter-terrorism Cooperation:*** As described in the Executive Summary, Bolivia is not currently an ATPA/ADPDEA beneficiary country due to its failure to meet the program's eligibility criteria related to counternarcotics cooperation.

According to U.S. Government estimates, Bolivia's 2009 coca cultivation was approximately 35,000 hectares, a nine percent increase over the previous year. UN studies estimate that coca cultivation increased by six percent to 30,500 hectares in 2008. UN data for 2009 is not yet available. The United States believes that potential cocaine production increased from 130 metric tons in 2007 to 195 metric tons in 2008 due to the use of more efficient Colombian-style cocaine processing methods, and that potential production remained the same in 2009.

The Bolivian government continued to conduct interdiction and eradication operations. In the first quarter of 2010, the Bolivian government seized 9.45 metric tons of cocaine base, 0.95 metric tons of cocaine hydrochloride (HCl), and 240 metric tons of illegally grown coca leaf. In 2009, the Bolivian government eradicated 6,341 hectares of coca. The Bolivian government increased its stated eradication goal to 7,000 hectares for 2010, and in the first quarter has eradicated 675 hectares. Still, eradication efforts have not been sufficient to achieve a net reduction in hectares of coca cultivation, as eradication of coca seedbeds has dropped significantly (destruction of 10 square meters of coca seedbed prevents one hectare of coca cultivation). Bolivia also is working to improve counternarcotics cooperation with Brazil, Argentina, and other neighbors. The United States remains committed to working with Bolivia to achieve concrete counternarcotics results.

The Bolivian government continues to work closely with USAID and other donors on alternative development. USAID estimates that the cultivation of alternative crops and pastures in the *Cochabamba Tropics* and the *Yungas of La Paz* area increased steadily, from 40,613 hectares in 1986 to an estimated 150,000 hectares in 2006. Community development activities in the *Yungas* and agricultural extension services and improved road access in *Cochabamba* have proven effective ways of reaching increasing numbers of families in those regions. The cumulative number of farm families assisted through integrated alternative development projects in the *Chapare* and *Yungas* regions totaled 52,190 through 2006, or more than half of all farm families in those regions. In the last two years, 26,000 families were benefited, 8,716 new jobs were created, \$44.2 million of alternative development products' sales were generated, and 24,276 hectares of new or improved crops and areas under forest management plans were directly supported with U.S. assistance. High-value licit crop exports such as bananas, pineapple, canned palm hearts, coffee, and cacao increased from \$7.5 million in 2001 to \$37.8 million in 2008.

***Government Procurement:*** Government expenditures account for a significant portion of Bolivia's Gross Domestic Product (approximately 33 percent according to the IMF). The central government, state, and local governments, and other public entities are important buyers of machinery, equipment, materials, and other goods and services.

Suppliers must comply with prerequisites established in bidding documents exclusive to each purchase. Bid specifications containing technical and commercial requirements are available through the relevant government entity and local newspapers. The entity's chief official

determines qualifying procedures and makes award decisions. Officials consider both price and quality when awarding contracts.

Domestic bidders receive a 10 to 15 percent preference, depending on the bid, to encourage local industrial development. Government procurement under \$100,000 must also give priority to the small Bolivian business or small enterprise sector, micro producers associations, and peasant associations. Vendors that fall under these categories are required to provide fewer guarantees and prerequisites than the regular business sector. Bolivian companies are given priority for government procurement bids from \$142,000 to \$5.7 million. Importers of foreign goods can participate in these procurements only when locally manufactured products and service providers are unavailable or when the Bolivian government does not select a domestic supplier; in such cases, the government can call for international bids. International public bids are called for when purchases exceed \$5.7 million.

The Ministry of Defense and the Ministry of Government are allowed to make exceptional purchases of unlimited amounts. The government may issue tenders for national security purchases for the armed forces or for goods and services of national interest with no limit in value.

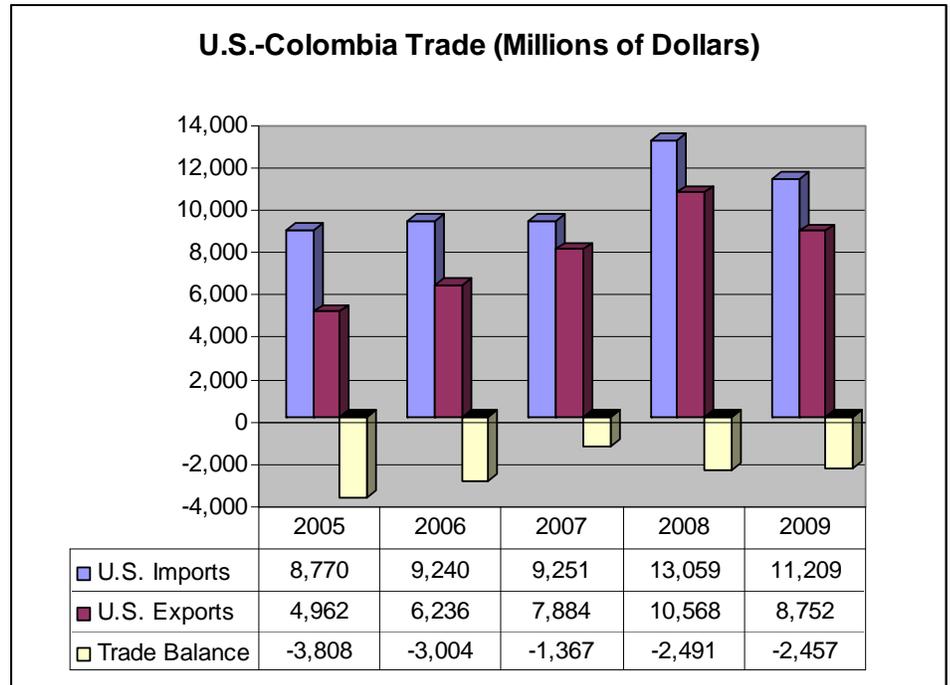
Bolivia is not a signatory to the WTO Agreement on Government Procurement.

## COLOMBIA

**Population: 43,677,372**  
(July 2009 est.)

**GDP per capita (PPP):**  
**\$9,200 (2009 est.)**

*Source: 2010 World  
Fact Book*



**Effect of ATPA/ATPDEA:** In 2009, U.S. goods imports from Colombia totaled \$11.2 billion, a 14 percent decrease from 2008. U.S. imports under the ATPA/ATPDEA from Colombia were \$5.6 billion in 2009, down 24 percent from \$7.3 billion in 2008. Petroleum-related products were primarily responsible for the decrease, accounting for 82 percent (\$4.6 billion) of ATPA/ATPDEA entries from Colombia in 2009, down from an 84 percent share (\$6.2 billion) in 2008. Other major U.S. imports under ATPA/ATPDEA from Colombia declined in 2009 compared with 2008, with the exception of cut flowers, the second largest import (\$506 million), which increased 1.4 percent. Imports of apparel, the third largest import (\$210 million) fell 33 percent. Cut flowers and apparel accounted for 9.1 percent and 3.8 percent of ATPA/ATPDEA entries from Colombia, respectively, in 2009. Other important imports under ATPA/ATPDEA from Colombia were plastics (\$53 million), sugar (\$34 million), aluminum products (\$30 million), ceramics (\$24 million), and vegetable and fruit preparations (\$20 million), all of which, except sugar and vegetable and fruit preparations, declined in 2009 compared with 2008.

**Expropriations:** The 1991 Constitution protects individual rights against the actions of the state and upholds the right to private property. The Constitution permits acquisition of private property in cases of public necessity (e.g., a public transit system) and social interest (e.g., agrarian reform). Colombian law guarantees indemnification in such cases. Confiscation of property used in, or that is the fruit of, criminal activities is allowed.

**Arbitral Awards:** Law 315 permits the inclusion of a binding arbitration clause in contracts between foreign investors and Colombian entities, private and public. The law allows parties to

set their own arbitration terms, including location, procedures, rules, and the nationality of arbitrators. In the absence of an arbitration clause, Colombian law mandates that disputes go before a Colombian judge for settlement. Colombia is a signatory to the New York Convention and the ICSID Convention, and a member of the Multilateral Investment Guarantee Agency (MIGA).

***Reverse Preferences:*** Colombia has signed free trade agreements with both Canada and the European Free Trade Association, though neither agreement has entered into force. However, Colombia has also signed a free trade agreement with the United States which is pending Congressional action.

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

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

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

In Colombia, the grant, registration and administration of intellectual property rights (industrial property and copyright) are carried out by four different government entities. The Office of the Superintendent of Industry and Commerce acts as the Colombian patent and trademark office. The Colombian Agricultural Institute is in charge of the issuance of plant variety protection and agro-chemical patents. The Ministry of Social Protection is in charge of the issuance of pharmaceutical patents, while the Ministry of Interior and Justice is in charge of the issuance of literary copyrights. Each of these entities experiences significant financial and technical resource constraints. Moreover, the lack of uniformity and consistency in IPR registration and oversight procedures limits the transparency and predictability of the IPR enforcement regime.

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

Colombia's Special Investigative IPR Unit, within the Prosecutor General's Office, has focused its efforts against violations of copyrights and theft of patent and trademark rights. In spite of increased actions to combat IPR violations, deterrent penalties and serious criminal sentences are still rare.

In an effort to improve Colombia's enforcement efforts, President Uribe signed a criminal reform law in 2006, establishing new offenses and increasing the penalties for violation of intellectual property rights, including the illegal broadcasting of copyrighted material.

The United States-Colombia Trade Promotion Agreement (CTPA) was signed in 2006 and, upon entry into force, would provide for improved standards for the protection and enforcement of a broad range of intellectual property rights.

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

**Workers' Rights:** Although the Colombian government has taken significant steps to improve enforcement of worker rights, concerns remain, in particular regarding violence against union members. In 2009, a government protection program provided protection measures to 1,550 trade unionists, accounting for 14 percent of persons under government protection. The Colombian government is also taking steps to combat actions taken with impunity and address a backlog of cases of crimes against trade unionists and other vulnerable groups. With U.S. Government assistance, in 2008 Colombia completed the transition to an accusatorial-style criminal justice system, replacing the inquisitorial system that had proven cumbersome and inefficient.

In addition, the Colombian Prosecutor General's Office expanded its Human Rights Office in 2006 to include a sub-unit focusing on the investigation and prosecution of murder cases in which the victims were labor union members. The sub-unit began with eight prosecutors and in 2008 expanded to 19 prosecutors, 19 assistant lawyers, and 78 investigators. It works closely with local prosecutors from around the country who are also handling murder cases in which the victims were labor union members. Since 2000, the Prosecutor General's Office has obtained 248 convictions involving 350 individuals in crimes with union member victims, with 199 of these convictions (80 percent of total convictions) coming since the initiation of the labor sub-unit. The sub-unit has three convictions thus far in 2010. In addition, since 2008 the Colombian judiciary has assigned three specialized judges to hear exclusively cases involving violence against unionists and in 2009, the Colombian Congress passed a law to increase prison sentences and extend the statute of limitations for homicides against union members.

The ILO sent a high-level mission to Colombia in October 2009 to review labor issues. The mission met with government officials, trade union leaders, and business representatives, and reported some progress on the violence issues as well as certain labor code reforms. In a 2010 report, the ILO Committee of Experts recognized Colombia's efforts to combat violence in general and noted a decrease in violent acts against trade unionists. The ILO also commended Colombia for strengthening criminal penalties and prison sentences for perpetrators of violence against union members. The ILO expressed hope in this report that Colombia's actions will lead to an effective way to address violence against union members and prosecute those responsible for these crimes.

Colombia has ratified all eight of the core International Labor Organization conventions. Colombian law recognizes the rights of workers to organize, bargain collectively, and strike.

Unions are free to affiliate with international labor confederations. The labor code provides for automatic recognition of unions that obtain 25 signatures from potential members and comply with a registration process. There are penalties for interfering with workers' freedom of association, and the labor code prohibits the dissolution or suspension of trade unions by administrative fiat. In 2008, Colombia's Constitutional Court issued a ruling concerning the process for registering new unions with the Ministry of Social Protection (MSP), and this action seems to have resolved longstanding concerns that the process was slow and used to block union formation.

The Constitution provides for the right to strike, and workers exercise this right in practice. However, members of the armed forces, police, and persons executing "essential public services," are not permitted to strike. Before staging a strike, public sector unions must negotiate directly with management. Confederations and federations are also prohibited from striking. The law prohibits the use of strikebreakers. Based on new labor legislation that went into effect in 2008, the MSP can no longer send strikes that are not resolved within 60 days to a tripartite arbitration tribunal, where a binding resolution was issued. As confirmed by the Government of Colombia to the ILO, both parties must now agree to arbitration. The new law, as amended by a subsequent Constitutional Court decision, also moved the power to declare strikes illegal from the executive branch to the judicial branch. Colombia's Free Trade Zones are covered under national labor laws.

Specific concerns remain about the consistency of Colombia's labor laws with core labor standards, especially allegations of widespread misuse of cooperatives to prevent workers from forming unions and bargaining collectively. In response to concerns identified by the ILO, Colombia has enacted new laws that require workers' cooperatives to pay into the social security system and benefits programs, and levy heftier fines on cooperatives that do not comply with current laws. Despite these efforts, labor groups claim that cooperatives remain largely unregulated and continue to be used by employers to deny basic worker rights. The ILO has also noted concerns with the Colombian law that allows employers and non-union workers to conclude a "collective pact" when a union represents less than one-third of the employees in a workplace. The ILO committee of experts has noted that bargaining with non-union workers should only be permitted in the absence of unions.

Forced or compulsory labor is prohibited by law. The minimum age of employment is fifteen, compatible with ILO Convention 138. Although the labor code mandates special authorization for minors between fifteen and seventeen years of age to work, child labor remains an issue. The Colombian government is making efforts to address the problem through several initiatives, including ILO child labor programs funded by the U.S. Department of Labor. Colombia has ratified ILO Convention 182 on the worst forms of child labor. The Colombian government has designated authority to implement and enforce child labor laws to the Family Ombudsman's offices, Human Rights Ombudsman's offices, Family Welfare Institute and community police officers.

The government establishes a uniform minimum wage every year through tripartite negotiations among representatives of business, organized labor, and the government. Colombia has extensive regulations providing for the occupational safety and health of workers, but regulations

are difficult to enforce due to an under-resourced labor inspectorate and the large percentage of workers in the informal sector who are not covered by the social insurance systems.

***Economic Conditions:*** The revival of Colombia's economy in recent years can be attributed to increased security, strong internal demand, a resilient global market for commodities, ATPA/ATPDEA-driven exports, and, increasingly, the numerous free trade agreements and bilateral investment treaties Colombia has negotiated. Real GDP growth in 2009 was 0.4 percent, relatively strong given the global downturn and negative growth in most of the region. Growth between 2003 and 2007 averaged 5.6 percent. According to UNCTAD and Central Bank figures, the stock of global FDI in Colombia increased from \$3.9 billion in 1992 to an estimated \$72 billion in 2009, with annual flows increasing from \$1.4 billion in 1994 to approximately \$9.5 billion in 2009. The stock of U.S. FDI in Colombia was \$9.9 billion in 2008, a 22 percent increase from 2007. Unemployment rose to 14 percent in January 2010. Poverty rates dropped from 54 percent in 2002 to 46 percent in 2008.

The Uribe Administration has pushed an aggressive trade agenda, which includes FTAs, BITs and Double Taxation Agreements (DTA). Besides the CTPA, Colombia signed FTAs with Chile in 2006; Central America's North Triangle (Guatemala, Honduras and El Salvador) in 2007; Canada and the European Free Trade Association, or EFTA (Switzerland, Norway, Iceland and Liechtenstein) in 2008; and concluded negotiations in 2010 with the European Union. Colombia is now negotiating FTAs with Panama and South Korea.

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

Some important exceptions include automobiles, which are subject to a 35 percent tariff, and many agricultural products, which fall under a variable "price band" import duty system. The price band system includes 14 product groups and covers more than 150 tariff lines. When international prices surpass the price band ceiling, tariffs are reduced; when prices drop below the price band floor, tariffs are raised. At times this results in duties approaching or exceeding 100 percent for important U.S. exports to Colombia, including corn, wheat, rice, soybeans, pork, poultry, cheeses, and powdered milk. These duties have negatively affected U.S. access. Moreover, as Colombia's free trade agreements with other countries enter into force and tariffs gradually phase out, the United States will continue to lose market share, particularly in agricultural commodities.

The United States and Colombia have resolved a number of sanitary and phytosanitary (SPS) barriers to agricultural trade. In 2006, Colombia formalized its recognition of the equivalence of the U.S. meat and poultry inspection systems. The two sides reached agreement on the specific contents of U.S. sanitary certificates accompanying U.S. poultry and poultry products to Colombia. However, the Ministry of Agriculture through its sanitary and phytosanitary regulatory agency, the Colombian Agricultural Institute (ICA), has imposed separate import requirements, which have negatively impacted U.S. exports of cooked poultry meat and egg

products. Since 2007, the National Institute for Surveillance of Food and Medicines (INVIMA) has been applying food safety measures which appear to be inconsistent with international standards, and U.S. officials are working with INVIMA to resolve these issues.

***Participation in Free Trade Negotiations:*** On February 27, 2006, the United States and Colombia announced the conclusion of negotiations on a comprehensive, state-of-the-art trade agreement. On November 22, 2006, the United States-Colombia Trade Promotion Agreement (CTPA) was signed in Washington, D.C. by Deputy U.S. Trade Representative John K. Veroneau and Colombian Trade Minister Jorge Humberto Botero. The United States and Colombia amended the CTPA in June 2007, to include provisions reflecting the May 10 bipartisan agreement with the U.S. Congress. The Colombian legislature ratified the CTPA in 2007. The U.S. Congress has not yet voted on legislation approving and implementing the agreement.

***Subsidies or Other Requirements that Distort International Trade:*** Colombia has notified the WTO that its free trade zone (FTZ) regime, the special import-export (Plan Vallejo) system, and the tax reimbursement certificate (CERT) program, contain export subsidies. The Colombian government issued Law 1004 in December 2005, which provides for a 15 percent profit tax on industrial and services companies operating within FTZs. The profit tax rate for companies outside of FTZs is 33 percent. The Plan Vallejo program allows for tariff exemptions on the import of capital goods and raw materials used to manufacture goods that are subsequently exported. The CERT program had been reactivated in 2008 to fight the effects of a strong peso, but no certificates have been issued since August of that year.

***Regional Trade Policies:*** Colombia is a member of the Andean Community of Nations (CAN). Colombian exports to CAN countries (including Venezuela, which is nominally bound by its CAN commitments for five years from its 2006 withdrawal) totaled \$6.1 billion in 2009, about 18 percent of Colombia's entire exports. Imports from these countries totaled \$2 billion in 2009, about 6.5 percent of total imports. Trade with Venezuela dropped by almost 70 percent after Venezuela imposed unilateral restrictions on Colombian exports in 2009. Colombian exports to MERCOSUR were \$694 million in 2009, while imports, primarily from Brazil, reached \$2 billion. Imports from Mexico were \$2.1 billion in 2009.

The Colombian government already has negotiated or is pursuing trade accords with many countries in the region. It has free trade on most goods with Bolivia, Ecuador, and Peru within the Andean Community arrangement. Colombia is a member of ALADI, which promotes economic integration and cooperation in the region. Colombia signed a trade agreement with the members of MERCOSUR in 2004. Colombia is in the process of implementing its FTA with Guatemala, Honduras, and El Salvador. In 2009, Colombia's FTA with Chile entered into force. Also in 2009, Colombia and Mexico concluded negotiations of an updated free trade agreement, which will replace the more limited G-2 agreement of 1995. The Colombian government is working actively to join APEC.

***Narcotics and Counter-terrorism Cooperation:*** The Colombian government continues to make significant progress in its vigorous fight against the production and trafficking of illicit drugs. In recent years Colombia has met or exceeded all of its identified narcotics cooperation certification

criteria under the U.S. Foreign Assistance Act of 1961. Colombia is actively investigating and prosecuting cases against drug traffickers and cooperating with U.S. judicial authorities to provide evidence and witnesses for prosecutions of extradited Colombian nationals facing trial in the United States. The Colombian government has also begun to address increasing domestic drug consumption and has raised the profile of drug prevention and treatment efforts. Colombia is a party to the 1988 UN Drug Convention.

Total eradication of coca in Colombia in 2009 was 165,272 hectares. The Colombian security forces' seizure of 288 MT of cocaine and cocaine base last year was a record, and significant quantities of heroin and precursor chemicals were also taken from the market. They also destroyed 3,080 hydrochloride (HCl) and coca base processing labs. According to the Drug Enforcement Agency, the price of cocaine increased by 72 percent and purity decreased by 45 percent from January 2007 to December 2009. Record seizures and sustained coca eradication played a role in producing an increase in the price and a reduction in purity of cocaine in the United States.

Citing record coca eradication in 2008, the U.S. Government and the United Nations reported separately significant declines in Colombian cocaine production potential and coca cultivation in Colombia in 2009. The U.S. Government reported that cultivation in 2008 was down 29 percent compared to 2007 – the largest ever decline in cultivation cited by the U.S. Government and the first reported drop since 2002. The U.S. Government, crediting sustained aerial eradication operations in 2008, also reported a decline in pure cocaine production potential to 295 MT, 39 percent less compared to 2007 and 58 percent less than the reported 2001 high of 700 MT.

The Colombian government remains a key ally of the United States in the fight against drug trafficking, and Colombian officials have repeatedly emphasized in public that the narcotics threat is a major challenge to solidifying stability and the rule of law in Colombia. The United States works closely with Colombian law enforcement and military authorities to eradicate coca and opium poppy, detect and seize illegal drug shipments, prosecute drug traffickers and terrorists, and extradite those who have violated U.S. law, while providing alternative development options to deter replanting of coca and encourage legal livelihoods. Colombia's commitment to addressing the drug trade is also exemplified by its willingness to work closely with the United States on the transfer of operational and financial responsibility for several counternarcotics programs.

Colombia's increased law enforcement efforts and expansion of government control into previously hard-to-govern areas is ongoing under President Uribe's National Consolidation Plan. Under this approach, security, counternarcotics, rule of law, and economic and alternative development opportunities are being closely coordinated in critical regions of the country to facilitate stability and democratic growth. Homicides, kidnappings, and acts of terrorism have dropped dramatically over the last decade, and the United States is supporting Colombian government efforts to expand government institutions and services into rural and former conflict regions.

Colombian security forces captured or killed a number of mid-level FARC leaders, promoted the reintegration into society of former combatants, and reduced the amount of territory in which

guerillas could freely operate. The Colombian military disrupted the FARC's communications network, destroyed major caches of weapon and supplies, and reduced the group's financial resources through counternarcotics and other security operations.

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

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

## ECUADOR

**Population: 14,573,101**  
**(July 2009 est.)**  
**GDP per capita (PPP):**  
**\$7,300 (2009 est.)**  
*Source: 2010 World*  
*Fact Book*



**Effect of ATPA/ATPDEA:** In 2009, U.S. goods imports from Ecuador totaled \$5.2 billion, a 42 percent decrease from 2008. ATPA/ATPDEA entries from Ecuador decreased 58 percent to \$2.7 billion in 2009, from \$6.6 billion in 2008. Petroleum products (\$2.4 billion) overwhelmingly dominated such imports from Ecuador, accounting for 88 percent in 2009, lower than the shares of over 90 percent in each of the previous four years. Other important imports under ATPA/ATPDEA from Ecuador in 2009 were cut flowers (\$118 million), down 11 percent in 2009 compared with 2008; tuna (\$57 million), down 31 percent; vegetables (\$41 million), down 5 percent; vegetable and fruit preparations (\$36 million), up 28 percent; and fruits, primarily fresh pineapples, fresh mangoes, and frozen fruits (\$35 million), up 28 percent.

**Expropriations:** 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. While cases of land expropriation have been infrequent, the Ecuadorian government has announced that it intends to start expropriating “unused” agricultural land and provide it to small landless producers (under Ecuadorian law, land that has been “unused” for two years may be expropriated). Under the United States-Ecuador BIT, expropriation of U.S. investments can only be carried out only for a public purpose, in a nondiscriminatory manner, in accordance with due process of law, and upon payment of prompt, adequate, and effective compensation.

**Arbitral Awards:** The United States-Ecuador BIT provides for international arbitration of disputes at the investor's initiative. However, developments in the past year give rise to concerns as to the government's commitment to international arbitration for the settlement of investor disputes. In September 2009, the government requested the Ecuadorian National Assembly approve termination of 13 BITs, including the BIT with the United States, stating that the BIT's provisions on international arbitration and national treatment conflict with the country's 2008 Constitution. As of publication, the National Assembly had returned the request to the Executive, pending a Constitutional Court opinion; for the moment, the United States-Ecuador BIT remains in force. Separately, in July 2009, the government submitted written notice of its withdrawal from ICSID, again citing conflicts with the 2008 Constitution. Ecuador's withdrawal from the ICSID became effective on January 7, 2010; however, the government continues to participate in pending international arbitration cases.

In March 2010, a U.S. company won an arbitral award against Ecuador for violating 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, the resolution of which the arbitral tribunal held to have been unduly delayed. The government has indicated that it intends to contest the arbitral award. In September 2009, the same U.S. company filed another arbitration under the BIT, claiming, among other things, government mistreatment in connection with a longstanding lawsuit pending against the company in an Ecuadorian court. The Ecuadorian government sought a stay of the arbitration in U.S. federal court, but that request was denied. The Ecuadorian government is appealing this decision.

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

**Intellectual Property:** Ecuador's intellectual property regime is governed by the "Law on Intellectual Property" adopted in 1998 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 Decisions 344 (the Common Industrial Property Regime) and 345 (the Common Regime to Protect Plant Varieties). Copyrights are protected by Andean Community Decision 351 (the Common Regime on Copyright and Neighboring Rights) and Decision 486 (the Common Regime on Industrial Property). The Ecuadorian Intellectual Property Institute (IEPI) was established in January 1999 to handle patent, trademark, and copyright registrations on the Ecuadorian government's behalf.

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

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

- Paris Convention for the Protection of Industrial Property.

Works are protected under copyright law for the life of the author plus 70 years. A 2006 decision by Ecuador's Supreme Court upheld the right of music composers to be compensated by television and radio stations who broadcast their compositions. The Ecuadorian government has not taken action, however, to clarify that Article 78 of the 1999 Law on Higher Education does not permit software copyright infringement by educational institutions.

Trademark registration is permitted for renewable 10 year periods. Ecuador's IPR law provides protections for well-known trademarks. The time for processing trademark applications has been reduced from 24 months in 2007 to four months in 2009. Local registration of unauthorized copies of well-known trademarks has also been reduced.

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.

In 2009, IEPI continued an anti-piracy campaign entitled "Ecuador is Original," which features popular Ecuadorian recording artists promoting an anti-piracy message. The campaign was disseminated via national radio, IEPI's website, and You Tube. In 2009, IEPI also organized several seminars to increase public awareness of the importance of copyrights, trademarks, and patents.

Despite the laws on the books, intellectual property rights protection and enforcement remain major problems in Ecuador. The national police and the Customs Corporation of Ecuador (CAE) are responsible for carrying out IPR enforcement orders, but it is sometimes difficult to have court orders enforced.

IEPI and Ecuadorian Customs have enforcement actions in their areas of competence where 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. Both the number of administrative actions initiated by right holders that IEPI has resolved and seizures by Ecuadorian Customs fell in 2009. In 2008, the Prosecutor General's office and Ecuadorian Customs created special IPR units focused on investigations, fines, and seizures. However, the effectiveness of these units appears to be limited. The Ecuadorian government has not yet established specialized IPR courts as required under its current IPR law.

Piracy in products with copyright and trademark protection is pervasive. 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. Sellers of pirated goods sell their illegal wares with little fear of prosecution. In April 2001, USTR removed Ecuador from its Special 301 Watch List to reflect improvements in Ecuador's IPR regime. However, weakened enforcement efforts led to Ecuador's re-listing in 2003, and it has remained on the Watch List since that time.

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, the Ministry of Industry has accepted for review a

petition filed in September 2009 alleging that a 2007 case of a U.S. pharmaceutical company successfully defending its patent constituted an abuse of market position. The petition is still under review by the Ministry of Industry.

The amount of time required to process a patent application has been reduced from nine years in 2007 to six years in 2009. IEPI aims to further reduce the processing time to five years.

The Ecuadorian government has implemented a policy concerning compulsory licensing of certain patented inventions. Presidential decrees establishing policy frameworks for issuing compulsory licenses for patented pharmaceutical products and agrochemicals were issued in October 2009 and December 2009, respectively. On January 15, 2010, IEPI issued detailed requirements and procedures for applying for compulsory licenses for pharmaceutical products; procedures for agricultural chemicals are not yet in place.

IEPI has established two types of compulsory licenses for pharmaceuticals, those for public non-commercial use and those for commercial use. The resolution defines public non-commercial use as “the acquisition of pharmaceuticals by any Ecuadorian public sector entity in order to meet the needs of its health programs.” A license for non-commercial use allows for the production or importation of a product, primarily for domestic use.

Licenses for commercial use are limited to production (there is no importation provision), primarily to supply the domestic market. In addition, a potential licensee must also provide evidence that they have attempted to obtain the authorization of the right holder on “reasonable commercial terms and conditions” and that they did not receive a favorable response within 45 days. For both types of licenses, the resolution states that IEPI will establish the level of remuneration to the patent holder.

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.

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

***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, 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 new Constitution, may not take any action that paralyzes those sectors, including striking. The Constitution lists health, environmental sanitation, education, justice, the fire brigade, 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. Most public employees maintained 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, labor groups occasionally attempt to stage national strikes to protest economic reform measures.

Ecuador's 2008 Constitution provides additional language regarding worker rights. Revisions to the Labor Code to reflect this are expected eventually. The Constitution includes new language promoting the democratic, participatory, and transparent functioning of labor unions. It prohibits any type of outsourcing or partial contracting for activities that are part of a company's core business. Outsourcing had been used in the past by some companies to have a more flexible workforce, prevent formation of unions and to avoid some labor obligations. Most companies have re-hired workers on a permanent basis. In the past, most workers in export processing zones were hired on temporary contracts, and did not appear to be protected by some elements of the labor code. The status of these types of contracts under the 2008 Constitution is unclear.

The Constitution and the labor code prohibit forced labor. The law also prohibits the employment of persons under the age of fifteen, except in special circumstances, such as an apprenticeship. Enforcement of this provision is uneven, especially in rural communities. Ecuador's National Institute of Statistics and Census' National Child Labor Survey found that the number of children between the ages of five and fourteen working illegally fell from 550,000 in 2001 to 367,000 in 2006. The children were working primarily in rural areas in the informal sector. The Ecuadorian government utilizes 29 child labor inspectors. These inspectors have the authority to cite violations and sanction companies and employers found to have illegally hired child labor. During the year the inspectors conducted 3,992 workplace inspections and removed 2,056 minors working in dangerous conditions in violation of labor laws.

Ecuador's labor code provides for a 40 hour work week, 15 calendar days of annual paid vacation, restrictions on child labor, general protection of worker health and safety, minimum wages and bonuses, 90 days of maternity leave, and employer-provided benefits. Ecuador's legislative commission passed a 15 day paternity leave law on February 9, 2009. By law, companies must distribute at least 15 percent of pre-tax profits to their employees.

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

The minimum wage was increased 18 percent in 2008, another 9 percent in 2009 and 10 percent in 2010, but there are concerns that a family earning only 1.6 minimum wages would not have sufficient income to afford the basic consumption basket (\$528.90 in December 2009). Most organized workers in state industries and in the formal sector (private enterprises) earn more than the minimum wage and are provided other significant benefits through collective bargaining. However, the majority of workers are employed in the large informal sector, and these workers do not have recourse to the minimum wage, social security, or legally mandated benefits.

***Economic Conditions:*** In March 2000, Ecuador adopted the U.S. dollar as its national currency in response to a serious economic crisis. Dollarization, combined with responsible fiscal policies, helped tame inflation and bring the country back to positive growth and economic stability. The economy grew 3.9 percent in 2006 but slowed to 2.5 percent in 2007, constrained by declining petroleum production and reduced private sector investment. The economy grew by 7.2 percent in 2008 due to high oil prices and increased government spending. However, by the end of 2008 the Ecuadorian economy began to experience the consequences of the global economic crisis, as oil prices dropped sharply, remittances from Ecuadorians abroad fell, and Ecuador realized a trade deficit for the last four months of the year, causing its balance of payments to deteriorate. These trends continued through the first quarter of 2009. Starting with the last quarter of 2008, Ecuador experienced three consecutive quarters of economic contraction.

Ecuador's balance of payments improved in the second and third quarters of 2009 with an improvement in the trade balance, mainly the result of rebounding oil prices, a recovery in remittance inflows from abroad, and import restrictions. By the third quarter of 2009, as the world economic crisis eased and international oil prices rebounded, Ecuador's economy began to recover. Ecuador's Central Bank estimated 0.36 percent economic growth for 2009. Ecuador registered a trade deficit of \$332 million in 2009. Annual inflation was 8.8 percent in 2008, but fell to 4.3 percent in 2009.

In April 2006, Ecuador revised its hydrocarbons law requiring companies to share at least 50 percent of extraordinary revenues with the government. In 2007, this share was increased to 99 percent, prompting some companies to sell their assets to the government and leave the country, and others to initiate international arbitration cases claiming the government breached its contract by unilaterally changing the rules. The windfall tax rate was subsequently lowered to 70 percent for new contracts. In 2006 and 2007 the Ecuadorian government sought to renegotiate petroleum production contracts with foreign oil companies, but did not reach agreement. In 2008, the government signed new short-term agreements with a number of foreign oil companies but stated that it intended to negotiate long-term agreements based on a new service contract model, transitioning away from production sharing contracts. A few companies have converted to service contracts, but most others negotiated interim production sharing agreements.

In September 2009, the government circulated a draft Hydrocarbons Law, but it has yet to submit the legislation to the National Assembly. While last year the government discussed in general terms a new model for service contracts, it did not provide the text of the new model to foreign oil companies until March 1, 2010. The government has stated that the foreign oil companies must sign new service contracts immediately, even though the new Hydrocarbons Law is not in

place yet.

In December 2008, the Ecuadorian government defaulted on a commercial bond issuance, and in March 2009 defaulted on another commercial bond issuance. The government has continued to pay a third commercial bond issuance and has remained current on its obligations to multilateral lenders. The government presented a repurchasing proposal in April 2009, which allowed the repurchase of 73 percent (\$ 2.9 billion) of the commercial debt in June 2009. This repurchase severely drained the government's liquidity and therefore reduced the level of the country's international reserves. However, the increase in international oil prices has contributed to increase reserve levels to \$4.0 billion by April 1, 2010.

During the first nine months of 2008, the Ecuadorian government lowered the maximum interest rates for the banking sector on a monthly basis. However, since October 2008, downward adjustments of rates for corporate, small business, and housing lending have been frozen. Between June 2009 and January 2010, the interest rate ceiling for consumer credit was temporarily increased in an effort to reduce pressure on the financial sector. In May 2010, interest rates for microfinancing were reduced.

Outside of regulated sectors such as petroleum, mining, and banking, a number of companies reported that they enjoyed growing business for much of 2008 and 2009. A number of companies report that they have good access and a constructive relationship with the Correa Administration, although the private sector has noted concern with a number of the government's economic policies.

Ecuador's Central Bank has changed the methodology it uses to calculate foreign direct investment (FDI), and now only publishes net flows. According to the Central Bank, the net flow of FDI into Ecuador was \$195 million in 2007, \$993 million in 2008 and \$467 million through the third quarter of 2009. In 2008, most of the FDI inflow was associated with renewal of telecommunication concessions. In 2009, FDI appears concentrated in the mining, transportation, and communication sectors.

According to Central Bank statistics, the net flow of U.S. FDI into Ecuador was \$50 million in 2007, in contrast to net outflows of \$18 million in 2008 and \$34 million through the third quarter of 2009. According to the U.S. Bureau of Economic Analysis, the stock of U.S. FDI in Ecuador in 2008 was \$1.3 billion, up from \$977 million in 2007. For Ecuador to take full advantage of the potential investment benefits associated with the ATPA/ATPDEA, it would need to improve its investment climate by providing greater transparency and certainty for foreign investors.

**Market Access:** Ecuador's accession to the WTO in 1996 was an important step in improving access to Ecuador's market. However, a number of trade barriers remain, including a lack of transparency and inefficiency in the sanitary registration process, that have delayed and even blocked the entry of some agricultural imports from the United States.

Since 2007, Ecuador has taken a number of steps to reduce import tariffs on raw materials, inputs, and capital goods, while increasing tariffs on consumer goods. In August 2008, Ecuador also eliminated tariffs on airplanes and airplane parts. However, in January 2009, Ecuador

imposed higher tariffs and quotas on a large number of imports from all countries, including those from the United States, at levels which exceeded their WTO bound rates. On February 18, 2009, Ecuador notified the WTO that it was invoking the WTO's balance of payments safeguard provisions as a justification for these measures. In response to concerns raised during meetings of the WTO Committee on Balance of Payment Restrictions, Ecuador committed to converting most quotas to tariffs, and to remove all trade measures imposed for balance of payments purposes no later than January 22, 2010. Ecuador did not remove the safeguard measures by January 22, 2010, but instead began implementing a phase-out of the measures that is to be completed by July 23, 2010. The U.S. Government has raised concerns within the WTO Committee on Balance of Payment Restrictions over Ecuador's failure to keep to the January 22, 2010 deadline for eliminating the safeguards, and continues to consult with Ecuador on this issue.

Although Ecuador phased out prior authorization requirements for most imports, Ecuador still requires prior authorization for importing approximately 80 agricultural products. For certain sensitive products such as corn, soybean meal, dairy, and poultry, the Minister of Agriculture or a designee must sign the import authorization. The Ministry of Health is required to provide prior authorization for imports of processed, canned, and packaged products in the form of a sanitary registration. The ability to import some products, such as rice, corn, soybeans, and soybean meal, depends on the Ministry of Agriculture's use of "consultative committees," which authorize imports of bulk commodities based on a complex supply and demand assessment.

Ecuador's import ban on all U.S. live cattle, beef, and beef products due to BSE-related concerns following the detection of a BSE positive animal in the United States in 2003 has remained in effect. However, Andean Community Resolution 1314, promulgated on April 20, 2010, allows each member (Ecuador, Bolivia, Colombia, and Peru) to develop its own regulations regarding the importation of live cattle from the United States. Development of those regulations in Ecuador is ongoing.

AGROCALIDAD, the new agency established in December 2008 with responsibility for animal and plant health and food safety, began by recruiting 90 new professional staff. The Ministry of Agriculture has recently announced plans to reorganize the agency with responsibilities for implementation of animal and plant health programs, such as the foot-and-mouth eradication efforts, being shifted to the Ministry, with AGROCALIDAD being solely responsible for the development and enforcement of sanitary and phyto-sanitary regulations.

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

In December 2008, the Ecuadorian Quality Council (CONCAL) issued new conformity assessment procedures for several products including lubricants, some automotive parts, tires, apparel, footwear, and appliances, among others. These measures did not provide a transition period for exporters and importers to adjust to the new measures; the immediate implementation disrupted some exports. In January 2009, CONCAL issued a new conformity assessment regulation that relaxed conformity assessment procedures.

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

Ecuador's foreign investment policy is governed largely by the national implementing legislation for Andean Community Decisions 291 and 292 of 1991 and 1993, respectively. Foreign investors are accorded the same rights of entry as Ecuadorian private investors, may own up to 100 percent of enterprises in most sectors without prior government approval, and face the same tax regime. Constitutional provisions directing the State to prioritize domestic private investment could impact the right of entry in the future. In December, 2007, the Ecuadorian government passed a broad tax reform package, which included establishing a 0.5 percent tax on capital outflows. This tax was increased to one percent in December 2008 and to two percent effective January 1, 2010. There are no performance requirements associated with foreign investment in Ecuador other than local content requirements in the automotive sector.

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

***Participation in Free Trade Negotiations:*** In May 2004, the United States initiated negotiations on an FTA with Colombia, Ecuador, and Peru. Bolivia participated as an observer. To date, the United States has concluded FTAs with Peru and Colombia. Negotiations with Ecuador were suspended and were not concluded. In July 2009, Ecuador suspended negotiations with the European Community on an association agreement, but is exploring resumption of these negotiations.

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

Ecuador maintains a local crop absorption program based on Ministerial Agreement 067 of February 20, 1978. This measure prohibits imports of soybean meal and corn during the local harvest season. Ecuador committed to eliminate this ruling during its WTO accession. Nevertheless, it is still being implemented and enforced through Ministerial Agreement 347 of December 14, 2004. Through this program, the industry is obliged to purchase 100 percent of the local production of the aforementioned commodities, usually at high prices set by consultative committees that are often dominated by local producers, before imports of these commodities are allowed.

Ecuador's 2008 Constitution declares Ecuador free of biotechnology crops and seeds. However, the Constitution grants the President the authority to allow for imports of agricultural crops and seeds that may have been produced using biotechnology under exceptional circumstance in the

national interest. These provisions require further implementing legislation and regulations. A new Food Sovereignty Law, which was expected to further define the framework for biotechnology products in Ecuador, is in the final stages of the approval process. The law is very general and requires implementing regulations for clarification. The law would provide a broad legislative framework for the use of biotechnology. In the interim, biotechnology cultivation and imports have continued normally. Interested private sector industries are working with Ecuadorian authorities to develop implementing regulations that will not impede trade in products derived from biotechnology.

***Regional Trade Policies:*** As noted above, Ecuador is a member of the Andean Community. According to the Ecuadorian government, the Andean Community absorbed 16 percent of Ecuador's exports and provided 22 percent of its imports in 2009. 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 Latin American Integration Association (ALADI). ALADI countries purchased 24 percent of Ecuador's exports and supplied 37 percent of its imports in 2009. Ecuador has broad agreements for the liberalization of trade in goods with Chile and MERCOSUR. In 2008, Ecuador signed an association agreement with Chile, which included extending and broadening the existing economic complementation agreement. Ecuador also has agreements with Cuba and Mexico that establish tariff preferences for a limited number of products.

***Narcotics and Counter-Terrorism Cooperation:*** For fiscal year 2010, Ecuador was found to have not failed demonstrably in its counternarcotics cooperation with the United States in a Presidential Determination announced in September 2009. 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. The Ecuadorian government is now working to strengthen its Financial Intelligence Unit to better monitor financial transactions and identify illegal activities.

Ecuador's National Drug Council (CONSEP) activity against trafficking in controlled precursor chemicals continued at a high level. However, CONSEP is still not funded at a level consistent with its broad responsibilities. The Ecuadorian government has continued to reinforce its security presence in the northern border area with an increased number of military operations each year since 2007.

The Counternarcotics Directorate (DNA) of the National Police was increased from 1,385 to 1,700 members in 2009, and remains at that level. New DNA bases and stations were opened with U.S. Government assistance in 2007 in Carchi Province at Tulcan and the Port of Esmeraldas in Esmeraldas Province, both near the Colombian border. New DNA facilities are under construction now at the Port of Guayaquil and near Ecuador's Southern Border in Catamayo, also with U.S. assistance.

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

In general, Ecuadorian law enforcement agencies cooperated well with U.S. and certain other foreign law enforcement agencies in 2009. However, Ecuadorian government actions in early 2009 that prompted the U.S. Government to end its cooperation with specialized police units, and the subsequent expulsion of members of the U.S. Mission, have continued to have negative effects on the traditionally close cooperation between the two governments. For example, there continues to be disagreement over U.S. government requirements for vetting of specialized police units. Nonetheless, cooperation continues with some police units and on a case-by-case basis, such as the action in April 2010 that was taken based on U.S. and Colombian Interpol warrants to arrest and deport Ramon Quintero, founding member of the Colombian North Valley Cartel. However, in a separate case, in April 2010, the President of Ecuador denied the U.S. request for extradition of narcotics trafficker and Colombian citizen Danilo Nieves to the Southern District of California. Despite an attempt by Nieves to avoid extradition and gain freedom by submitting requests to the Ecuadorian government for refugee status and asylum, which were denied, he remains incarcerated, as Ecuadorian prosecutors pursue new charges against him for the use of false identification documents. A judge has approved preventative detention based on these new charges. If found guilty, Nieves could serve another six to nine years in prison.

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

Maritime cooperation has increased in recent years in response to a surge in maritime smuggling out of Ecuador. Ecuadorian forces, in cooperation with the United States, through training and access to new equipment, have adapted to a shift in trafficking patterns on the high seas from large multi-ton loads in fishing vessels to smaller loads on go-fast vessels that stay closer to shore. In the past several years, there has been a greater tendency toward the use of self-propelled semi-submersible vessels, which are capable of carrying multi-ton loads for long distances. Overall, traffickers appear to be bringing larger quantities of their product into Ecuador and storing them there for longer periods of time.

In September 2009, operations ceased at the Forward Operating Location at the Ecuadorian Air Force base in Manta as Ecuador's government did not renew the program's lease. It is still unclear whether the Ecuadorian government will permit follow-on activities to replace surveillance coverage of the Eastern Pacific.

Ecuador is a party to the UN Convention for the Suppression of the Financing of Terrorism, and in 2006, the Ecuadorian government ratified the Inter-American Convention against Terrorism. Ecuador is making efforts to improve control of its borders, 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. Since then, Ecuador has seen 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. 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 terrorist groups.

Ecuador has not criminalized terrorist financing, and the Financial Action Task Force (FATF) and Financial Action Task Force of South America have encouraged the Ecuadorian government to adopt appropriate counterterrorism financing legislation and regulations. On February 18, 2010, FATF identified Ecuador as a jurisdiction with strategic deficiencies in Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT). FATF's public statement noted that Ecuador had not committed to an action plan developed with the FATF to address key deficiencies related to AML/CTF as of February 2010, and called on its member countries to consider the risks arising from these deficiencies.

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.

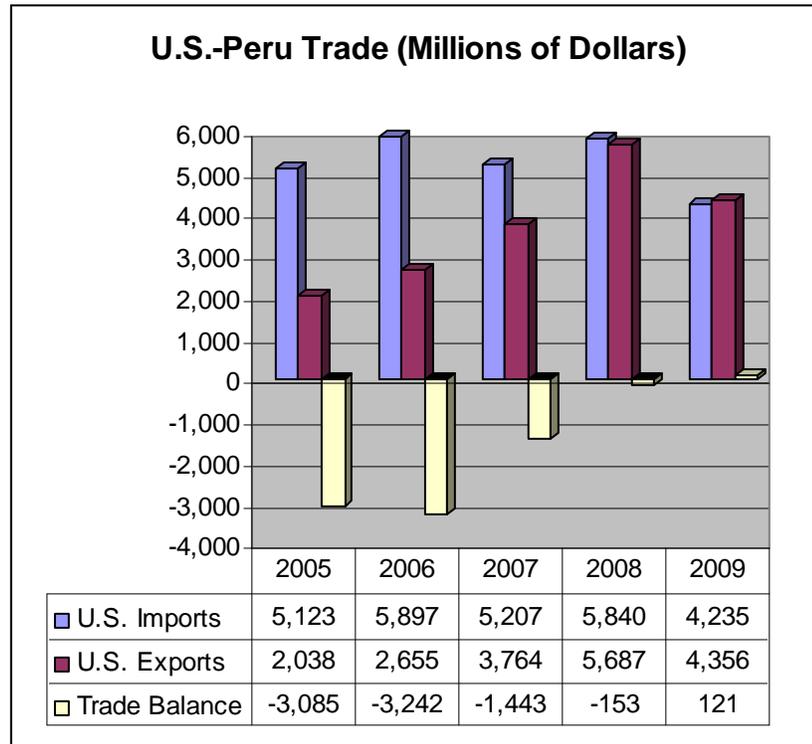
**Government Procurement:** Ecuador's public contracting law grants priority to locally produced products and services in public purchases, although foreign suppliers can compete for the contracts. The law created the National Institute of Public Contracting (INCOP) to oversee transparency and timeliness of the contracting process. Foreign bidders must be registered in Ecuador and have a local legal representative in order to participate in government procurement. Ecuador is not a signatory or an observer to the WTO Agreement on Government Procurement.

## PERU

**Population: 29,546,963**  
(July 2009 est.)

**GDP per capita (PPP):**  
**\$8,600 (2009 est.)**

*Source: 2010 World  
Fact Book*



**Effect of ATPA/ATPDEA:** In 2009, U.S. goods imports from Peru totaled \$4.2 billion, a 28 percent decrease from 2008. U.S. imports under ATPA/ATPDEA from Peru decreased 57 percent, from \$3.2 billion in 2008 to \$1.4 billion in 2009, reflecting sharply lower prices for resource-based products and a shift in entry of some imports from ATPA/APTDEA to the United States-Peru Trade Promotion Agreement (PTPA). The leading ATPA/ATPDEA entry from Peru was apparel, which declined 47 percent to \$408 million in 2009, accounting for 30 percent of total ATPA/ATPDEA entries from Peru. The second largest U.S. import under ATPA/ATPDEA from Peru was petroleum products, which decreased 56 percent to \$384 million in 2009. The third largest import in 2009 was copper articles, primarily copper cathodes, and which was formerly the leading import under ATPA/ATPDEA from Peru, at \$241 million, down 73 percent from 2008. Other leading ATPA/ATPDEA imports from Peru in 2009 were vegetable and fruit preparations (\$91 million); fruits, primarily grapes and mangoes (\$56 million); and fresh asparagus (\$45 million). Total U.S. imports of fresh asparagus actually increased 6 percent, but a large share of such imports shifted from ATPA/ATPDEA to the PTPA.

**Expropriations:** Pursuant to Peru's Constitution, the government can only expropriate private property on public interest (e.g., for public works projects) or national security grounds. Any

expropriation requires the passage of a specific act of the Congress. The Peruvian government has expressed its intention to comply with international law standards concerning expropriations, and it has agreed to adhere to such standards in the PTPA (including payment of prompt, adequate, and effective compensation). Adequate payment to owners of agricultural lands expropriated by the Peruvian government in the late 1960s and early 1970s is still under discussion with some foreign investors. In 2006, the Peruvian government resolved one such claim involving an American company.

**Arbitral Awards:** Peru has consented to binding international arbitration of investment disputes between foreign investors and the Peruvian government, in accordance with national legislation or international treaties in force. A December 1992 decree and the 1993 Constitution provide for international arbitration of disputes between foreign investors and the government or state-controlled firms. Peru is a party to the New York Convention. Peru became a contracting party to the ICSID Convention in 1993. Disputes between foreign investors and the state regarding contracts predating Peru's accession to the ICSID Convention, and otherwise not covered by an international agreement, must be submitted to national courts.

**Reverse Preferences:** A free trade agreement between Peru and Canada entered into force on August 1, 2009. Peru has also a free trade agreement in effect with the United States.

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

- Convention Establishing the World Intellectual Property Organization (WIPO);
- WIPO Copyright Treaty;
- WIPO Performances and Phonograms Treaty;
- Berne Convention for the Protection of Literary and Artistic Works;
- Patent Cooperation Treaty;
- Paris Convention for the Protection of Industrial Property;
- The Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974);
- The Budapest Treaty on the international Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedure (1977), as amended in 1980;
- The WIPO Copyright Treaty (1996);
- The WIPO Performances and Phonograms Treaty (1996);
- The Patent Cooperation Treaty (1970), as amended in 1979; and
- The Trademark Law Treaty (1994).

As a result of the PTPA, Peru made changes to its legal regime to raise its standards for intellectual property protection and enforcement. Some of these improvements include: protecting trademarks used in Internet domain names; strengthening measures to prevent the circumvention of technological devices for preventing Internet-based copyright piracy; removing burdens for patent registration; protecting against unfair commercial use of test data and other undisclosed information submitted in connection with regulatory approval for pharmaceutical and agricultural chemical products; and providing deterrent-level penalties for piracy and

counterfeiting. The U.S. Government will monitor Peru's implementation of these obligations. Peru is listed on the 2009 Special 301 Watch List.

Despite some Peruvian government efforts to improve enforcement, including increased raids on large-scale distributors and users of pirated material, piracy remains widespread, due notably to a failure to apply deterrent penalties. The government, in coordination with the private sector, has conducted numerous raids over the last few years on large-scale distributors and users of pirated goods and has increased other types of enforcement. However, lack of adequate prosecution and sentencing has allowed many IPR infringers to resume their operations after these raids.

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

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

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

On January 15, 2010, President Garcia signed the new Labor Procedural Law which mandates the reduction of time taken for judicial decisions on labor conflicts to six-months -- a process that used to take four to eight years. The new system of labor courts requires that both sides present oral arguments (not previously allowed) and decisions are to be rendered without undue delay. Workers or worker organizations filing claims of labor violations are to be provided free representation.

Peru's Constitution and the Law of Collective Labor Relations provide for freedom of association for all citizens. Labor regulations provide that workers may form unions based on their occupation, employer affiliation, or geographic territory. Workers are not required to seek authorization prior to forming a trade union, nor may employers legally condition employment on union membership or non-membership.

There are no restrictions on the affiliation of labor unions with international bodies. Several major unions and labor confederations belong to international labor organizations such as the

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

Peru's Constitution recognizes the right to strike, but there are limitations and exceptions based on public interest considerations. It also requires strikers to notify the Ministry of Labor before carrying out a job action, which is contrary to ILO policy that this responsibility should rest with an independent body. Peru's Law on Collective Labor Relations defines a strike as a collective suspension of work conducted in a peaceful and voluntary manner by workers who leave the work site. Supreme Decree 024-2007 established new procedures for calling strikes, including a revised requirement that allows labor unions to declare a strike with a simple majority of voting members, as opposed to the previous rule which required a two-thirds majority vote.

Peru's Constitution provides for collective bargaining, but specifies that this right must be exercised in harmony with broader social objectives and ensures that the collective bargaining agreements are binding. Supreme Decree 013-2006-TR clarified that employers cannot unilaterally change previously agreed-upon collective bargaining agreements, and reduced arbitration costs for collective bargaining agreements. Peru's four Export Processing Zones (EPZs) are not exempt from national labor laws.

The Peruvian Congress unanimously passed the General Labor Inspection Act which went into effect in 2006. The law helps strengthen and professionalize labor inspections by establishing guidelines for labor inspections, setting up separate offices for investigations and for fines, and establishing a National Bureau of Labor Inspections to oversee the inspections process. Currently, there are over 412 labor inspectors, 233 in Lima and the remainder working throughout the country. Additionally, the law redefines acts of union interference as administrative violations, allowing acts of union interference by employers to be punishable with fines. However, the government did not effectively enforce the law, and some employers engaged in antiunion practices.

Peru's Constitution prohibits forced or bonded labor. Despite government efforts to combat forced labor, the ILO's 2008 Committee of Experts observed that forced labor practices, including slavery and debt bondage, affected workers from indigenous communities. The ILO estimated that nearly 30,000 persons are involved in forced labor in Peru, particularly in the logging industry located in two departments of the Amazon River provinces. In January 2007, the Ministry of Labor created an interagency committee to combat forced labor and has chaired a multi-sectoral commission on the prevention of child labor since 2003. Also, in 2008 the Ministry of Labor trained its first group of labor inspectors specialized in forced labor. Laws exist to protect children from exploitation in the workplace and prohibit forced or compulsory labor; however, in practice, child labor remained a serious problem, and the laws were violated routinely in the informal sector. It is estimated that approximately 2.1 million children work in Peru, particularly in gold mining, brick and fireworks manufacturing, stone extraction, timber production, Brazil nut production, and coca production as well as domestic services and street vending. In January 2006, the Ministry of Labor created a special Office of Labor Protection for Minors, responsible for conducting on-site inspections to ensure that legal codes regarding child labor are enforced. The Office of the Ombudsman for Children and Adolescents works with the

Ministry of Labor and Employment Protection to document complaints regarding violations of child labor laws. More than 1,300 offices are located in communities throughout the country.

The Constitution provides that the State is responsible for promoting social and economic progress and occupational education. It states that workers should receive a "just and sufficient" wage to be determined by the government in consultation with labor and business representatives, as well as "adequate protection against arbitrary dismissal." The statutory monthly minimum wage is 550 soles (\$192), which did not provide a decent standard of living for many families according to the ILO.

The Constitution also provides for a 48-hour workweek, a weekly day of rest, and an annual vacation. The law requires companies to pay overtime to employees who work more than 8 hours per day, to provide additional compensation for work at night, and to provide a 45-minute meal break to employees during their 8-hour shift. In 2006, the Ministry of Labor and Employment Protection issued a decree requiring businesses to maintain a register of hours that employees work in order to ensure that workers receive due compensation for working more than eight hours per day. The law also requires employers to document the 45-minute lunch break and to make these records available to workers and unions.

In 2009, a supreme decree was passed clearly stating what constitutes acts of discrimination against domestic workers. Employers have frequently required long hours from domestics and paid low wages.

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

In cases of industrial accidents, compensation is usually determined by an agreement between the employer and worker. The worker does not need to prove an employer's culpability in order to obtain compensation for work-related injuries. No provisions exist for workers to remove themselves from potentially dangerous situations without jeopardizing employment.

***Economic Conditions:*** Over the past decade, Peru has been transformed by market-oriented economic reforms and privatizations that generated many of the conditions for long-term growth. Peru has posted stellar macroeconomic figures for the past seven years until 2008. Real GDP growth rate in 2008 was estimated at almost 10 percent, driven by investment, exports, and private consumption. GDP per capita reached an estimated \$4,366 in 2009, up significantly from \$2,047 in 2001. Mining, banking and retail services, manufacturing, agriculture, and fishing are key economic sectors.

Peruvian exports (balance of payments basis) of \$26.9 billion in 2009 were 15 percent below the record \$31.5 billion of 2008, with imports of \$21.0 billion, producing a trade surplus of \$5.9 billion. Peru's major trading partners in 2009 included the United States, China, Switzerland,

Canada, Japan, South Korea, Chile, Colombia, Venezuela, the European Union (led by Germany, Spain, and Italy), and Brazil. The United States receives approximately 17 percent of Peruvian exports and 20 percent of Peruvian imports originate from the United States (both Customs basis). Exported goods include copper, gold, zinc, lead, tin, iron ore, molybdenum, textiles, crude petroleum and petroleum derivatives, coffee, asparagus, grapes, fishmeal, and fishoil. Imports include petroleum and petroleum products, soybean residues for animal feed, soybean crude oil, corn, wheat, medicines, mobile telephones, automatic data processing machines, plastics, machinery, vehicles, sound/TV sets, iron and steel, fertilizers, and paper. According to Peru's Central bank, Peru's stock of foreign direct investment (FDI) was over \$36.9 billion in 2009. The United States and Spain are the leading investors. Stock of U.S. FDI in Peru was \$8.4 billion in 2008, a 12 percent increase from 2007. FDI is concentrated in privatized sectors such as metals mining, oil and gas, electricity, telecommunications, and finance.

Peru's economy is one of the better-managed in Latin America, but challenges remain. The Peruvian government still faces strong social pressures to reduce its poverty and underemployment rates. Maintaining long-term growth will require improving the investment climate, reducing corruption, and completing other reforms.

**Market Access:** The most recent extension of the ATPA/ATPDEA by the U.S. Congress provided benefits for Peru through 2010. The PTPA eliminated the tariff disparity between the United States and Peru. Following entry into force of the agreement on February 1, 2009, almost 90 percent of current U.S. agricultural trade enters the Peruvian market duty-free. These products include high quality beef, whey, cotton, wheat, soybean, and soybean meal, vegetables and fruits such as apples, pears, peaches, and cherries, and processed food products. In addition, Peru immediately eliminated its price band system on trade with the United States. Tariffs on other agricultural products will be eliminated gradually, most within five to fifteen years. Within seventeen years, all U.S. agricultural exports entering the Peruvian market will be duty-free.

Eighty percent of U.S. consumer and industrial exports to Peru were also duty-free upon entry into force of the PTPA in February 2009. Within five years of entry into force, an additional six percent of U.S. industrial products will become duty-free, and another four percent within seven years. Duties on the remaining 10 percent will be phased out over ten years. The PTPA will provide significant new opportunities for U.S. manufacturers of information technology products, industrial machinery, chemicals, remanufactured equipment, medical equipment, and electrical power generation and distribution equipment. Peru has also joined the Information Technology Agreement.

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

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

agreement with the U.S. Congress. Congress enacted legislation approving and implementing the PTPA in December 2007. The PTPA entered into force on February 1, 2009.

***Subsidies or Other Requirements that Distort International Trade:*** Peru has eliminated almost all non-tariff barriers, including subsidies, import licensing requirements, import prohibitions, and other quantitative restrictions. However, it bans the following imports for a variety of reasons: several insecticides, fireworks, used clothing, used shoes, used tires, radioactive waste, cars over five years old, and trucks over eight years old. Used cars and trucks that are permitted to be imported must pay a 45 percent excise tax – compared to 20 percent for a new car – unless they are refurbished in an industrial center in the south of the country upon entry, in which case they are exempted entirely from the excise tax.

***Regional Trade Policies:*** Peru is a member of the Andean Community. According to the Peruvian government, Peruvian exports to Andean Community (CAN) countries reached \$1.5 billion in 2009 representing 5.7 percent of Peru's total exports. Imports from these three countries were \$2.3 billion in 2009, about ten percent of total imports. Exports to Brazil totaled \$508 million (1.9 percent) and imports from Brazil totaled \$1.7 billion (7.7 percent).

Peru is also a member of ALADI. Within the framework of ALADI, Peru has extended limited concessions to Argentina, Brazil, Chile, Cuba, Mexico, Paraguay, and Uruguay. Peru is in the process of negotiating free trade agreements with Mexico, South Korea, and Japan. Peru has concluded negotiations for free trade agreements with Thailand, the European Union, and EFTA. In 2009, Peru's trade agreements with the United States, Chile, Canada, and Singapore entered into force. On March 1, 2010, the Peru-China free trade agreement entered into force. Peru plans to pursue trade agreement negotiations with India, Russia, New Zealand, Australia, Morocco, and South Africa.

***Narcotics and Counter-terrorism Cooperation:*** In 2008, Peru cooperated fully with the United States on counter-narcotics issues. Peru is the second largest cocaine producer in the world and a major exporter of high purity cocaine and cocaine base to markets in South America, Mexico, the United States, and Europe.

About 90 percent of coca leaf harvested in Peru is used to produce cocaine or its intermediate products. The remainder is used by the local population or for legal medical and commercial consumption in the United States and Europe. Coca cultivation is expanding to new areas while densities are increasing in the traditional source zones. With U.S. Government support, Peru eradicated 10,025 hectares of coca in 2009. Alternative development programs supported legal productive activities on almost 49,200 hectares since 2002.

Drug traffickers continue to move coca products, as well as some opium latex and morphine, out of Peru by land, air, and sea, to U.S., South American, and European markets. Mexican and Colombian trafficking organizations are implicated in using Peru as a primary source of cocaine base and cocaine hydrochloride (HCl). Maritime smuggling of cocaine shipments is the primary method of transporting multi-ton loads of cocaine base and HCl. Law enforcement efforts in 2008 focused on maritime and port investigations and interdictions. In 2009, approximately 19.7 metric tons of cocaine base and cocaine HCl were seized. The U.S. Government and the

Peruvian government have cooperated to improve port security and to address increased maritime smuggling at key Peruvian port locations. Importantly, the National Port Authority (APN) made very significant advances in promoting the timely attainment of International Ship and Port Security (ISPS) requirements in 2008. The U.S. Government is continuing to work with the Peruvian government to enhance its capacity to identify and inspect suspect cargo shipments.

Peru is taking action against both international and domestic terrorism, and the government is seeking an integrated approach to eradicating the terrorism threat in the country. There continue to be indications that *Sendero Luminoso* (Shining Path) is directly participating in the various early stages of narcotics trafficking, and is attempting to rebuild its base through expanding its influence in universities throughout Peru. The Peruvian Congress created a national security system designed to improve intergovernmental cooperation and strengthen terrorism prosecutors. The National Police (PNP) Directorate of Counterterrorism works closely with the U.S. Embassy in counterterrorism activities. The PNP continues to break up Shining Path camps and capture leaders. Peru aggressively prosecutes terrorist suspects. After the Constitutional Tribunal overturned numerous provisions in Fujimori-era terrorism laws in 2003, then President Toledo issued new decree legislation and established the procedures for reviewing and retrying terrorism cases. Around 750 cases were retried in 2005. Peru is a party to all 12 of the international conventions and protocols relating to terrorism. Peru, Colombia, and Brazil signed a border cooperation agreement that addresses terrorism and arms trafficking, along with other issues.

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

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

## Chapter 4

### SUMMARY OF 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 (74 Fed. Reg. 6440, February 9, 2009) on whether the countries designated as ATPDEA beneficiary countries in Presidential Proclamation 7616 of October 31, 2002, are meeting the eligibility criteria under the ATPA as amended.

USTR received twelve comments in response to its request. The full texts of the submissions are available at <http://www.regulations.gov>, docket USTR-2010-0012. A summary of each submission follows.

**The American Apparel and Footwear Association** supports continued inclusion of Peru in the ATPA program despite the entry into force of a free trade agreement between Peru and the United States. The Association questions the WTO consistency of the duties Ecuador imposed on a range of goods while invoking the WTO balance of payments safeguard provision, and expresses concern about protective measures the Ecuadorian government may use to replace those duties.

**The Association of Colombian Flower Exporters** presents itself as a clear success story of the ATPA program. It notes that during the life of the program its workforce has grown tenfold, and that Colombian flowers represent 60 percent of U.S. cut flower imports. It states that its flowers are produced in an environmentally sustainable manner and with social responsibility towards its workforce.

**The Association of Ecuadorian Pineapple Producers** indicates that its members cannot compete in the U.S. market with other sourcing countries without the benefit of the ATPA program. It states that the Ecuadorian pineapple industry complies with international labor standards.

**Chevron** calls into question whether the Ecuadorian government is meeting the eligibility criteria of the ATPA program relating to the honoring of contracts with U.S. companies and recognizing arbitral awards involving U.S. companies. Chevron also states that the Ecuadorian government has demonstrated a lack of commitment to its legal obligations under the U.S.-Ecuador BIT.

**The Colombian Government Trade Bureau** describes the importance of the ATPA program for Colombia and the impact it has had on the Colombian economy. It states that, pending the entry into force of the United States-Colombia free trade agreement, the ATPA market access preferences are essential to support Colombia's continuing efforts to combat drug trafficking and improve the economic welfare of its citizens. The submission provides information regarding Colombia's compliance with the ATPA eligibility criteria.

**CropLife America** believes that Ecuador's Decree 183 of 2009, which provides for the granting of compulsory licenses for agricultural chemicals, falls short of the minimum standards provided for in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). CropLife America points out that TRIPS Article 31(b) requires candidate licensees to first attempt to obtain authorization from the patent holder on reasonable commercial terms and conditions. The association indicates that although TRIPS Article 31(b) allows a government to waive this requirement in certain cases, such as a national emergency, Decree 183 requires no such circumstances for a waiver.

**The Ecuadorian-American Chamber of Commerce** describes the ATPA program as the cornerstone of an export promotion policy that has helped curb the production and trafficking of narcotics. The submission states that the program has promoted investment and stimulated employment in such sectors as flowers, textiles and apparel, broccoli, wood articles, tropical fruit, and tuna. It addresses Ecuador's recent balance of payments measures and describes steps the Ecuadorian government has taken to meet the ATPA eligibility criteria.

**The Embassy of the Republic of Ecuador to the United States** cites a number of positive benefits the ATPA program has provided Ecuador, including job creation, lifting people out of poverty, supporting counternarcotics efforts, and promoting political and economic stability in Ecuador. The submission reports on Ecuadorian government efforts related to a number of the program's eligibility criteria.

**The Emergency Committee for American Trade (ECAT)** strongly supports the ATPA program, believing it has promoted diversification and economic opportunities in the Andean region and strong economic relationships with Colombia and Peru. However, it states that a continued deterioration in the rule of law in Bolivia warrants its continued suspension from the program. ECAT questions whether Ecuador is meeting the program's eligibility criteria, stating that U.S. and other foreign businesses are experiencing expropriation and the repudiation of contracts in industries such as energy and construction. It says that Ecuador's judicial system often denies due process, notes that Ecuador has withdrawn from the International Centre for Settlement of Investment Disputes (ICSID), and states that Ecuador's recent issuance of a compulsory license may be inconsistent with Ecuador's WTO obligations.

**The International Intellectual Property Alliance** believes that it is critical for the four Andean countries, three of which are current ATPA beneficiary countries, to continue to take all appropriate actions in their respective territories to improve the protection of copyrights. It finds that for the most part the legal regimes are adequate but that enforcement efforts to combat copyright piracy are insufficient, and cites specific steps it believes each country should take to remedy the situation.

**The National Business Association of Colombia** details the trade benefits that have accrued to Colombian exporters under the ATPA. It also outlines areas in which the Colombian government has made progress in dealing with worker rights and the issue of violence against union members.

**Oxfam America and the Center for International Environmental Law** focus on Chevron's legal dispute with the Ecuadorian government. They state that the company bears responsibility for significant environmental damage in Ecuador and that the Ecuadorian government has complied with the ATPA eligibility criteria.

**The U.S. Chamber of Commerce** indicates that the ATPA has proven to be an effective tool to generate trade, growth, and jobs among the beneficiary countries, while also benefitting U.S. businesses. The Chamber expresses unreserved support for Colombia's continued inclusion until the United States-Colombia Trade Promotion Agreement is approved and enters into force; supports Peru's continued participation; and calls into question whether Ecuador is meeting the program's eligibility criteria. The Chamber states that the Ecuadorian government often fails to respect property and concession rights, particularly in the oil and gas sectors, exhibits systemic weaknesses in its judicial system, and failed to provide due process protections with respect to the compulsory licensing of a pharmaceutical product.

## 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 2009, USTR published a notice in the *Federal Register* announcing the 2009 Annual Review of the ATPA. Seven parties filed submissions, but none of the submissions constituted petitions that were accepted for review. Submissions from the Embassy of Ecuador to the United States and the Ecuadorian-American Chamber of Commerce stated that Ecuador is meeting the program's eligibility criteria. The National Association of Manufacturers and the Emergency Committee for American Trade urged a reconsideration of Ecuador's eligibility, but did not cite specific violations of the eligibility criteria. Chevron updated its earlier petition concerning Ecuador and the Amazon Defense Coalition presented counterarguments. The U.S. Labor in the Americas Project (USLEAP) updated its earlier petition on Ecuador. The full texts of the submissions are available at <http://www.regulations.gov>, docket USTR-2009-0024.

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), a petition involving gold trading company Princeton Dover in a dispute with Peru, one matter currently in international arbitration (Duke Energy versus Peru), and one involving Chevron Texaco and Ecuador.

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