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

June 30, 2012

Prepared by the Office of the United States Trade Representative

Ambassador Ron Kirk
United States Trade Representative

SIXTH REPORT TO THE CONGRESS ON
THE OPERATION OF
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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 30th, every year 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 sixth USTR report to Congress on the ATPA/ATPDEA, and covers the year 2011, unless otherwise indicated.

The ATPDEA renewed and expanded the ATPA, which had expired on December 4, 2001, providing beneficiary countries duty-free access to the U.S. market for any product not specifically excluded. Sections 203(c) and 203(d) and Section 204 (b)(6)(B) of ATPA, as amended by the ATPDEA, require that countries meet certain criteria in order to be designated as an ATPDEA beneficiary country and to maintain such beneficiary status. In Presidential Proclamation 7616 of October 31, 2002, the President designated all four ATPA beneficiary countries – Bolivia, Colombia, Ecuador, and Peru – as ATPDEA beneficiary countries. The ATPA, as amended, was originally set to expire on December 31, 2006, but Congress has enacted several extensions. On February 12, 2011, the privileges under ATPDEA lapsed but were reauthorized, retroactively, on October 21, 2011 for eligible countries pursuant to section 501 of the United States-Colombia Trade Promotion Agreement Implementation Act (the Implementation Act) (P.L. 112-42).

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

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

At the time of the 2011 re-authorization, only Colombia and Ecuador were eligible beneficiary countries. Pursuant to the Implementation Act, Colombia was no longer a beneficiary country as of May 15, 2012, leaving Ecuador as the only remaining beneficiary country.

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 continued to make progress in achieving these goals.

[1] 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.

The United States was the leading source of imports and the leading export market for the ATPA/ATPDEA beneficiary countries. Colombia and Ecuador together represented a market of about $20.1 billion for U.S. exports in 2011, and were home to about $7.9 billion in U.S. foreign direct investment in 2010. Thus, the ATPA/ATPDEA has benefited the trade of both the Andean region and the United States.

In furtherance of the ATPA/ATPDEA's objectives, in May 2004, the United States initiated free trade agreement (FTA) negotiations with Peru, Colombia, and Ecuador, with Bolivia participating as an observer. On December 7, 2005, the United States and Peru concluded negotiations on the United States-Peru Trade Promotion Agreement (PTPA) and signed the agreement on April 12, 2006. The PTPA entered into force on February 1, 2009. The United States and Colombia concluded negotiations on the United States-Colombia Trade Promotion Agreement (CTPA) on February 27, 2006, and signed the agreement on November 22, 2006. The United States-Colombia Trade Promotion Agreement Implementation Act was enacted on October 21, 2011, and included the re-authorization of the ATPA/ATPDEA. Negotiations with Ecuador took place through March 2006, but did not conclude. The United States did not initiate negotiations on an FTA with Bolivia.

This report is organized as follows. Chapter 1 briefly describes the key sections of the ATPA/ATPDEA, including the requirements and the designation of ATPA/ATPDEA beneficiary countries. Chapter 2 highlights trade between the United States and the ATPA/ATPDEA beneficiary countries. Chapter 3 evaluates 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 provided for the possibility of enhanced trade benefits for ATPA beneficiary countries. The ATPDEA amended the ATPA to provide duty-free treatment for certain products previously excluded under the ATPA. In Presidential Proclamation 7616 of October 31, 2002, the President designated all four ATPA beneficiary countries – Bolivia, Colombia, Ecuador, and Peru – as ATPDEA beneficiary countries.

In 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 six times. Currently, the ATPA/ATPDEA is scheduled to expire on July 31, 2013.

Countries participating in the ATPA/ATPDEA 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 those countries. U.S. imports under the ATPA/ATPDEA are not subject to the GSP's competitive need limitations or its country graduation requirements.

Country Eligibility

The ATPA/ATPDEA listed Bolivia, Colombia, Ecuador, and Peru as the only countries eligible to be designated by the President as ATPA/ATPDEA beneficiary countries and in 2002 the President designated all four countries as ATPA/ATPDEA beneficiary countries. Each ATPA/ATPDEA beneficiary country was eligible for the enhanced trade benefits of the ATPDEA if the President designated it as an ATPDEA beneficiary country, taking into account: (1) the criteria contained in sections 203(c) and 203(d) of the ATPA/ATPDEA; and (2) additional eligibility criteria provided for in section 204(b)(6)(B) of the ATPA/ATPDEA. These criteria are discussed in detail in Chapter 3, which also contains a discussion of Colombia's and Ecuador's compliance with the criteria during the reporting period. Section 204(b)(5)(A)(ii)(I) of the ATPA/ATPDEA also includes criteria related to customs cooperation.

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

Product Eligibility

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

As noted, the ATPDEA renewed the ATPA and amended it to provide preferential treatment for certain previously excluded products, including: certain textile and apparel articles, footwear, tuna packaged in foil or other flexible packages, petroleum and petroleum derivatives, watches and watch parts, and certain leather goods. Inclusion of all of the new benefits, except textiles and apparel articles, was subject to a Presidential determination that they are not import sensitive in the context of imports from ATPDEA beneficiary countries. The President did determine that certain footwear articles were import sensitive, as reflected in Presidential Proclamation 7616 of October 31, 2002. In addition, the following products continue to be excluded by statute from receiving preferential treatment: textile and apparel articles not otherwise eligible for preferential treatment under the ATPDEA; rum and tafia; above-quota imports of certain agricultural products subject to tariff rate quotas (TRQs), including sugars, syrups, and sugar-containing products; and tuna in cans.

Petition Process

Pursuant to Section 3103(d) of the Trade Act of 2002, in July 2003, USTR promulgated regulations (15 CFR Part 2016) (68 Fed. Reg. 43922) regarding reviews of the eligibility of countries and articles under the ATPA as amended. Under these regulations, USTR conducts reviews and provides an opportunity for the submission of petitions for the withdrawal or suspension of certain benefits of the program. Petitions must indicate the eligibility criterion that the petitioner believes warrants review. USTR, on behalf of the Trade Policy Staff Committee (TPSC), publishes a list of the petitions filed. The Andean Subcommittee of the TPSC conducts a preliminary review of the petitions. The U.S. Trade Representative has not recommended the withdrawal or suspension of ATPA/ATPDEA designation, or the withdrawal, suspension, or limitation of benefits for any of the beneficiary countries based on the results of the reviews of petitions filed under these procedures.

Safeguard Provisions

Section 204(d) of the ATPA authorizes the President to suspend duty-free treatment under the ATPA if temporary import relief is proclaimed for an article pursuant to Chapter 1 of Title II of the Trade Act of 1974 ("global safeguards") or Section 232 of the Trade Expansion Act of 1962. Section 204(e) of the ATPA provides for emergency relief from imports of perishable products from beneficiary countries, and specifies the procedures for using these safeguard provisions.

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

Reports on the Impact of the ATPA

Section 206 of the ATPA requires the U.S. International Trade Commission (USITC) to submit biennial reports to the Congress on the impact of the ATPA on the U.S. economy generally and on U.S. industries and consumers, and its effectiveness in promoting drug-related crop eradication and crop substitution efforts of beneficiary countries. The USITC submitted its most recent (fourteenth) report covering 2009 to Congress in September 2010.

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 2009, has been negligible. The fourteenth report estimated that U.S. imports of ATPA/ATPDEA-preference products could have potentially significant effects on domestic industries producing 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 (eighteenth) report covering 2010 was submitted to Congress in 2011. 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 Eighteenth Report found that, at the industry level, trends in U.S. domestic production and U.S. imports from the beneficiary countries since implementation of the ATPA/ATPDEA suggest that increased imports of certain fresh cut flowers due to the ATPA/ATPDEA trade preferences may have displaced some growers and workers in the United States; however, given the complexities involved, it is difficult to isolate conclusively the factors responsible for these trends.

Chapter 2

U.S. TRADE WITH ATPA/ATPDEA COUNTRIES

U.S. trade with the ATPA/ATPDEA countries was heavily influenced by two events in 2011—the exit of Peru from the program at the beginning of the year, and the lapse in the program from February 12, 2011, through October 21, 2011.[2] The total value of U.S. trade with the ATPA/ATPDEA countries was virtually unchanged in 2011, falling less than 0.1 percent following rapid growth of 34 percent in 2010. U.S. imports from ATPA countries rose 13 percent to $31.9 billion in 2011, despite the exit of Peru from the program. U.S. exports fell 17 percent to $18.3 billion, mainly reflecting the exit of Peru, resulting in a trade deficit of $13.5 billion. Over the past five years, U.S. imports from the region increased 43 percent and U.S. exports grew 58 percent.

Table 2-1.--U.S. Trade with ATPA/ATPDEA Countries,1991-2011*

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	76.8
1994	6,445.0	1.3	5,879.5	0.9	565.5
1995	7,820.2	1.4	6,968.7	0.9	851.5
1996	7,718.7	1.3	7,867.6	1.0	-148.9
1997	8,681.8	1.3	8,673.6	1.0	8.2
1998	8,670.1	1.4	8,361.0	0.9	309.0
1999	6,263.2	1.0	9,830.2	1.0	-3,567.0
2000	6,295.1	0.9	11,117.2	0.9	-4,822.1
2001	6,363.3	1.0	9,568.7	0.8	-3,205.3
2002	6,463.8	1.0	9,611.5	0.8	-3,147.7
2003	6,525.7	1.0	11,639.5	0.9	-5,113.8
2004	7,663.6	1.1	15,489.8	1.1	-7,826.2
2005	8,919.1	1.1	20,060.1	1.2	-11,141.0
2006	11,636.5	1.3	22,510.6	1.2	-10,874.1
2007	14,620.5	1.4	20,922.9	1.1	-6,302.4
2008	19,762.7	1.7	28,483.0	1.4	-8,720.3
2009	16,697.3	1.8	20,689.9	1.3	-3,992.5
2010	22,078.1	2.0	28,178.9	1.5	-6,100.8
2011	18,346.8	1.4	31,891.3	1.5	-13,544.4

*Includes trade with Bolivia through 2008 and with Peru through 2010.

**Domestic exports, F.A.S. basis.

***Imports for consumption, customs value.

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

[2] When ATPA was renewed in October 2011, importers were allowed to claim ATPA/ATPDEA status for eligible imports entered after ATPA expired, but these retroactive claims are not reflected in the trade data.

U.S. Imports from ATPA/ATPDEA Beneficiaries

U.S. imports from ATPA/ATPDEA countries rose to $31.9 billion in 2011 from $28.2 billion in 2010. The share of U.S. imports from ATPA/ATPDEA countries among all U.S. imports remained steady in 2011 at 1.5 percent. (See Table 2-1.)

U.S. imports from ATPA/ATPDEA countries consist primarily of derivatives of raw materials and agricultural products. Mineral fuels, mainly petroleum, accounted for 70 percent of imports in 2011, up from 60 percent in 2010. In 2011, higher oil prices were primarily responsible for the increased share. Other leading imports from ATPA/ATPDEA countries in 2011 were precious metals, gemstones and jewelry, primarily nonmonetary gold; coffee; organic chemicals, mainly acyclic and cyclic hydrocarbons; cut flowers; fruits and nuts, primarily bananas; and fish and crustaceans, primarily shrimp.

About 49 percent of U.S. imports from ATPA/ATPDEA countries enter the U.S. market duty-free under ATPA/ATPDEA, GSP, the U.S.-Peru FTA, or Normal Trade Relations (NTR) tariff rates (formerly known as Most Favored Nation (MFN) tariff rates) compared to 88 percent in 2010. The lapse in ATPA/ATPDEA during 2011 was responsible for the larger part of the lower duty-free share, while the exit of Peru (and its duty-free imports under the PTPA) was responsible for a smaller part. (See Table 2-2.) All of the 20 leading imports from the region in 2011 have been eligible for duty-free treatment when the ATPA/ATPDEA program has been in effect. 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 and 2010, before falling to the 49 percent share in 2011. Thirty-four percent of U.S. imports from the region entered duty free under NTR duty rates in 2011. Such traditional U.S. imports from ATPA/ATPDEA countries as coffee, bananas, shrimp, and coal enter the U.S. market NTR duty-free. Another two percent of U.S. imports entered under the GSP. Fourteen percent of U.S. imports from the region entered under ATPA/ATPDEA in 2011, falling from 51 percent in 2010, and compared to an average of 18 percent in the three years prior to the implementation of ATPDEA. In 2009 and 2010, there was a substantial shift in claims for preference on imports from Peru from ATPA/ATPDEA to the PTPA. In 2011, there was a substantial shift in the entry status of imports from ATPA/ATPDEA to dutiable at NTR rates, because of the lapse in ATPA/ATPDEA.

U.S. imports under ATPA/ATPDEA fell 70 percent to $4.4 billion in 2011, following a 48 percent increase in 2010. 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, as Peru began taking greater advantage of its FTA opportunities. The ATPA/ATPDEA share rose slightly to 51 percent in 2010 before plunging in 2011.

Petroleum-based imports accounted for 89 percent of U.S. imports under ATPA/ATPDEA in 2011. Cut flowers was the next largest category of imports under ATPA/ATPDEA, accounting for 6 percent of the total. The third largest category was apparel, with 1.2 percent of the total. Imports of other products made up small shares of the total. U.S. imports under ATPA/ATPDEA of all of these products declined between 2010 and 2011.

Table 2-2--U.S. Imports from ATPA/ATPDEA Countries[1], Total and Under Import Programs, 2009-2011, (*thousands of dollars*)							
Country	Import Program	2009	Percent of total	2010	Percent of total	2011	Percent of total
Colombia	Total	11,209,359	100.0	15,672,605	100.0	22,390,947	100.0
.	GSP	188,730	1.7	158,516	1.0	383,634	1.7
	Total ATPA/ATPDEA	5,589,485	49.9	9,472,561	60.5	2,674,630	12.0
.	ATPA[2]	796,854	7.1	933,706	6.0	306,245	1.4
.	ATPDEA	4,792,631	42.8	8,538,855	54.5	2,368,385	10.6
	MFN free	4,175,188	37.2	4,882,298	31.2	9,139,684	40.8
Ecuador	Total	5,245,899	100.0	7,333,774	100.0	9,500,327	100.0
.	GSP	52,263	1.0	54,273	0.7	147,406	1.6
	Total ATPA/ATPDEA	2,748,446	52.4	4,179,067	57.0	1,705,504	18.0
.	ATPA[2]	271,525	5.2	292,456	4.0	110,862	1.2
.	ATPDEA	2,476,921	47.2	3,886,611	53.0	1,594,642	16.8
	MFN free	1,444,768	27.5	1,273,509	17.4	1,691,915	17.8
Peru	Total	4,234,615	100.0	5,172,521	100.0	([3])	([3])
.	Peru-U.S.	980,516	23.2	2,224,014	43.0	([3])	([3])
.	GSP	30,696	0.7	0	0.0	([3])	([3])
	Total ATPA/ATPDEA	1,376,313	32.5	759,278	14.7	([3])	([3])
.	ATPA[2]	583,305	13.8	225,217	4.4	([3])	([3])
.	ATPDEA	793,008	18.7	534,061	10.3	([3])	([3])
	MFN free	1,609,566	38.0	1,709,536	33.1	([3])	([3])
All ATPA countries	Total	20,689,874	100.0	28,178,899	100.0	31,891,274	100.0
	Peru-U.S.	980,516	4.7	2,224,014	7.9	([3])	([3])
	GSP	271,688	1.3	212,789	0.8	531,039	1.7
	Total ATPA/ATPDEA	9,714,243	47.0	14,410,907	51.2	4,380,134	13.7
	ATPA[2]	1,651,683	8.0	1,451,379	5.2	417,107	1.3
	ATPDEA	8,062,560	39.0	12,959,528	46.0	3,963,027	12.4
	MFN free	7,229,522	34.9	7,865,343	27.9	10,831,599	34.0

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

[2] ATPA in this table refers to the original ATPA (ATPA excluding ATPDEA).

[3] Not included. Peru was not an ATPA/ATPDEA beneficiary country in 2011.

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 2011, having surpassed Ecuador in 2008. Colombia supplied 61 percent of U.S. imports under the ATPA/ATPDEA in 2011 and Ecuador supplied 39.percent (See Table 2.3.). The lapse in the ATPA/ATPDEA during 2011 affected U.S. imports under the program from both countries. U.S. imports under the ATPA/ATPDEA from each of the countries declined between 2010 and 2011, although the decline was larger for Colombia.

U.S. imports under ATPA/ATPDEA from Colombia decreased 72 percent to $2.7 billion in 2011. Petroleum-related products were primarily responsible for the decrease, accounting for 86 percent ($2.3 billion) of ATPA/ATPDEA entries from Colombia in 2011, down from an 87 percent share ($8.3 billion) in 2010. Other major U.S. imports under ATPA/ATPDEA from Colombia in 2011 included cut flowers, the second largest import ($207 million), which fell 62 percent in 2011, and apparel, the third largest import ($50 million), which fell 79 percent. Cut flowers and apparel accounted for 7.7 percent and 1.9 percent of ATPA/ATPDEA entries from Colombia, respectively, in 2011. Other important imports under ATPA/ATPDEA from Colombia were plastics ($24 million), miscellaneous edible preparations ($9.7 million), and aluminum products ($9.5 million), all of which declined in 2011 compared with 2010.

ATPA/ATPDEA entries from Ecuador decreased 59 percent to $1.7 billion in 2011, from $4.2 billion in 2010. Petroleum products ($1.6 billion) overwhelmingly dominated such imports from Ecuador, accounting for 93 percent in 2011, higher than the share in the two previous years. Other important imports under ATPA/ATPDEA from Ecuador in 2011 were cut flowers ($60 million), down 56 percent in 2011; and fruits, primarily fresh mangoes, and fresh pineapples, ($20 million), down 33 percent. Cut flowers and fruits accounted for 3.5 percent and 1.2 percent of ATPA/ATPDEA entries from Ecuador, respectively, in 2011.

Table 2-3.--U.S. Imports for Consumption under the ATPA/ATPDEA, by Country, 2009-2011

Country	2009	2010	2011	2011 share of total
	1,000 dollars	*1,000 dollars*	*1,000 dollars*	Percent
Colombia	5,589,485	9,472,561	2,674,630	61.1
Ecuador	2,748,446	4,179,067	1,705,504	38.9
Peru	1,376,312	759,278	([1])	([1])
Total	9,714,243	14,410,906	4,380,134	100.0

[1] Not included. Peru was not an ATPA/ATPDEA beneficiary country in 2011. Imports from Peru under ATPA/ATPDEA of $4.8 million in 2011 were reported after it was no longer a designated ATPA beneficiary country but not included in this table.

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

U.S. Exports to ATPA/ATPDEA Beneficiaries

U.S. exports to ATPA/ATPDEA countries (including Peru in 2010, but not in 2011), fell 17 percent to $18.3 billion in 2011, largely reflecting the exit of Peru from ATPA/ATPDEA. U.S.

exports to Colombia and Ecuador rose 15 percent from 2010 to 2011. The ATPA/ATPDEA countries' share of U.S. exports to the world was 1.4 percent in 2011.

The leading category of U.S. exports to ATPA/ATPDEA countries in 2011 was mineral fuels, primarily refined petroleum products, which decreased 5 percent to $5.0 billion in 2011. (U.S. exports of mineral fuels to Colombia and Ecuador increased 17 percent.) The second leading category 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 27 percent to $3.1 billion in 2011. (U.S. exports of nonelectrical machinery and parts to Colombia and Ecuador increased 5 percent.) U.S. exports of all other categories of U.S. exports among the top ten to the region also decreased in 2011 compared with 2010, including electrical machinery ($1.1 billion), organic chemicals ($1.0 billion), plastics ($926 million), and motor vehicles ($839 million). (U.S. exports to Colombia and Ecuador of all of these categories increased in 2011.)

Colombia was the larger market for U.S. exports at $12.8 billion, representing 70 percent of U.S. exports to ATPA/ATPDEA countries in 2011. Ecuador ranked second as a destination for U.S. exports, with $5.5 billion in U.S. goods (30 percent). U.S. exports to Colombia and Ecuador rose 17 percent and 10 percent, respectively, in 2011.

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 June 30, 2010, Fifth 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.[3]

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of the Andean Trade Preference Act, as amended."

Discretionary criteria *(for ATPDEA benefits only)*:

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

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

(3) the extent to which the country provides internationally recognized worker rights, including:

- the right of association;
- the right to organize and bargain collectively;
- a prohibition on the use of any form of forced or compulsory labor;
- a minimum age for the employment of children; and
- acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

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

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

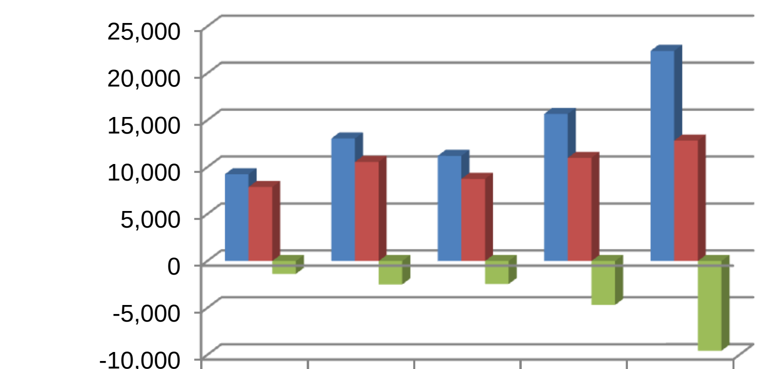
(6) the extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption;

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

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

COLOMBIA

Population: 45,239,079 (July 2012 est.)
GDP per capita (PPP): $10,100 (2011 est.)
Source: 2012 CIA World Fact Book



	2007	2008	2009	2010	2011
U.S. Imports	9,251	13,059	11,209	15,673	22,391
U.S. Exports	7,884	10,568	8,752	10,991	12,830
Trade Balance	-1,367	-2,491	-2,457	-4,682	-9,561

***Effect of ATPA/ATPDEA*:** In 2011, U.S. goods imports from Colombia totaled $22.4 billion, a 43 percent increase over 2010. U.S. imports under the ATPA/ATPDEA from Colombia were $2.7 billion in 2011, down 72 percent from $9.5 billion in 2010. The contrast between increased total imports from Colombia and decreased imports under the ATPA/ATPDEA from Colombia was due largely to the lapse in the program between February 12, 2011 and October 21, 2011, and extended across most major product groups. Petroleum-related products accounted for $2.3 billion (86 percent) of ATPA/ATPDEA entries from Colombia in 2011, compared to $8.3 billion (87 percent) in 2010. While petroleum-related imports from Colombia under ATPA/ATPDEA dropped 72 percent in 2011, total petroleum-related imports from Colombia increased by 27 percent, from $9.1 billion in 2010 to $11.6 billion in 2011, mainly as a result of higher crude petroleum prices. Cut flowers, the second largest U.S. import from Colombia entered under ATPA/ATPDEA, decreased 62 percent to $206 million in 2011, while total cut flower imports from Colombia increased by 2.6 percent, from $548 million to $562 million. Imports of apparel, the third largest import from Colombia under ATPA/ATPDEA ($50 million) fell 79 percent in 2011, while total apparel imports decreased 14 percent. Cut flowers and apparel accounted for 7.7 percent and 1.9 percent of ATPA/ATPDEA entries from Colombia, respectively, in 2011. Other important imports under ATPA/ATPDEA from Colombia were plastics ($24 million), miscellaneous edible preparations ($10 million), aluminum products ($9 million), ceramics ($8 million), and sugar ($7 million), all of which declined in 2011 compared with 2010.

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 and social interest. 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.

Reverse Preferences: Colombia's free trade agreements with Canada, Switzerland, and Liechtenstein entered into force in 2011. Colombia has signed free trade agreements with Norway and Iceland and the European Union, which have not yet entered into force. These agreements are not likely to have a significant adverse effect on U.S. trade with Colombia in light of the CTPA, which entered into force on May 15, 2012.

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);
- Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS);
- Berne Convention for the Protection of Literary and Artistic Works;
- Paris Convention for the Protection of Industrial Property;
- Patent Cooperation Treaty;
- Trademark Law Treaty;
- WIPO Performances and Phonograms Treaty;
- WIPO Copyright Treaty; and
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (enters into force on August 29, 2012).

Colombia has committed to join the following international conventions as part of the CTPA:

- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;
- Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite; and
- International Convention for the Protection of New Varieties of Plants.

The Colombian Congress has approved each of the treaties subject to review by Colombia's Constitutional Court.

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 the data protection of agricultural products. The Ministry of Justice administers copyrights. While the Ministry of Health and Social Protection does not issue patents, it handles data protection of products through the National Food and Drug Institute, which authorizes these types of products to be marketed in Colombia. In 2002, the Colombian government issued Decree 2085, which improved the protection of undisclosed test or other data for pharmaceutical products. The decree grants a five year period of protection for undisclosed data used to obtain a health registration for pharmaceutical products. 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.

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, then 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 CTPA provides 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. and Colombian citizens.

Workers' Rights: In addition to the strong labor protections contained in the CTPA, the Obama Administration worked closely with the Government of Colombia to address a number of serious labor concerns in that country, including violence against labor leaders and activists; impunity for the perpetrators of such violence; and insufficient protection of workers' rights. On April 7, 2011, the U.S. and Colombian governments announced an ambitious and comprehensive Colombian Action Plan Related to Labor Rights that called for major, swift, and concrete steps to improve the labor situation in Colombia. The Administration has confirmed that Colombia has met all of the Action Plan's milestones to date. Although more work still needs to be done, Colombia has made significant progress. Below are some of the major accomplishments under the Action Plan.

- Colombia has created a new Ministry of Labor, dedicated to "promoting the creation of dignified jobs…and guaranteeing good relations between workers and employers by promoting respect and protection for unions." President Santos appointed Rafael Pardo as Minister of Labor on October 31, 2011. Minister Pardo is a figure of significant stature in Colombia who previously served as the leader of Colombia's Liberal Party.

- The new Labor Ministry committed to making immediate progress in specific areas, including: 1) addressing the illegal practice of disguising employment relationships through the use of "cooperatives" and other forms of contracting that undermine workers' rights; 2) strengthening Colombia's labor inspection system, including by hiring and training hundreds of new labor inspectors; and 3) promoting labor rights and social dialogue by playing a leading role in improving labor-management relations throughout Colombia.

- At the request of the Government of Colombia, the International Labor Organization (ILO), with the help of funding from the U.S. Department of Labor, will significantly strengthen its presence in Colombia with an unprecedented level of expert staff and resources in the country.

- Colombia enacted new legal provisions in June 2011 to prohibit and sanction with significant fines the misuse of cooperatives and other employment relationships that undermine workers' rights. The Santos Administration subsequently issued regulations that implement these new provisions, including by creating incentives for the user companies to directly hire the affected workers. The new regulations also strengthen and clarify rules to help ensure that only legitimate, autonomous, and self-directed cooperatives are allowed to operate.

- In June 2011, Colombia began a comprehensive effort to inspect temporary service agencies. The Labor Ministry has since fined hundreds of temporary employment agencies, and dozens of these agencies lost their operating licenses.

- The Santos Administration secured the passage of legislation in June 2011 to establish criminal penalties, including imprisonment, for employers that undermine the right to organize and bargain collectively or threaten workers who exercise their labor rights. The law includes a provision making it a crime to offer a collective pact to non-union workers that has terms superior to those offered to union workers.

- In December 2011, the Labor Ministry imposed a roughly $1 million fine against a palm oil company in Puerto Wilches for contracting approximately 3,000 workers through five illegal cooperatives. The Labor Ministry also ordered the five sham cooperatives working for the palm oil company to be disbanded but, consistent with the Action Plan, offered to reduce fines if the palm oil company hired and retained the workers.

- The Colombian government expanded the scope of the existing government protection program for union leaders to include protection for labor activists (such as shop stewards and bargaining committee members), workers who are trying to organize or join a union, and former union activists still under threat. In order to provide this expanded protection, the Santos Administration increased the program's budget and personnel by over 30 percent. The program currently protects over 1,300 union members and had a budget of $83.5 million in 2011.

- In response to concerns from labor stakeholders, the Santos Administration also moved quickly to eliminate a backlog of hundreds of risk assessments for persons who have sought to be included under the protection program. The Interior Ministry reformed the protection program's risk assessment process in September 2011 to expand the risk assessment committee from only representatives of Colombia's National Police to include representatives from various state agencies.

- In response to the particular risks faced by teachers in Colombia, especially those who work in remote areas, President Santos strengthened the teacher protection program in consultation with teachers' union representatives, including by eliminating disincentives for those seeking relocation due to threats. In 2011, 282 teachers were temporarily reassigned under the protection program, and 38 received permanent relocations.

- In 2011, Colombia's Prosecutor General's office directed prosecutors to determine at the beginning of every murder investigation whether the victim was a union member. The Prosecutor General also issued guidance to prosecutors aimed at accelerating cases involving labor violence, with a special emphasis on the most recent cases, as well as priority cases identified by Colombian unions.

- The Santos Administration increased the 2012 budget of the Prosecutor General's Office, in particular the sub-unit for labor rights, to expand personnel and implement other measures designed to reduce impunity. As a result, the Prosecutor General's sub-unit for labor rights has 33 new prosecutors dedicated exclusively to crimes against union members and labor activists. The National Police has assigned an additional 100 full-time judicial police investigators to the Prosecutor General's sub-unit for labor rights.

- The Prosecutor General's Office and the National Labor School (ENS) (Colombia's foremost labor rights NGO and think tank) have held five in-depth meetings over the past year to help improve the quality and efficiency of investigations and prosecutions in labor-related cases. The following developments arose out of these meetings: 1) the ENS has provided information to prosecutors and investigators on the history and causes of cases of violence against union members; 2) the ENS and the Prosecutor General's Office have been comparing data on specific cases involving union members; 3) the ENS has provided the Prosecutor General's Office suggestions for improving investigation methodologies to identify and document crimes against union members; and 4) the ENS and the Prosecutor General's Office have compared statistics on the number of registered unions and union members in Colombia.

- The Prosecutor General's Office has posted on its website all the convictions and sentences resulting from labor violence cases concluded since January 1, 2011, and has developed a methodology for posting aggregate information about all completed criminal cases involving labor violence. The Prosecutor General's Office has also developed a plan and identified budgetary needs for victims' assistance centers specializing in human rights cases, including those involving crimes against unionists.

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 (BITs) Colombia has negotiated. Real GDP growth in 2011 was 5.9

percent, underscoring the strength of the Colombian economy. Growth between 2006 and 2011 averaged 4.8 percent. According to UNCTAD and Central Bank figures, the stock of global foreign direct investment (FDI) in Colombia increased from $3.9 billion in 1992 to an estimated $72 billion in 2011, with annual flows increasing from $1.4 billion in 1994 to approximately $9.5 billion in 2011. The stock of U.S. foreign direct investment in Colombia was $10.9 billion as of the third trimester of 2011, a 3 percent increase from 2010's end of year figures. Unemployment in February 2012 was 11.9 percent. Poverty rates dropped from 42 percent in 2008 to 37 percent in 2010.

Market Access*:* Colombia has opened its economy considerably since the early 1990s. Customs duties have been cut and many non-tariff barriers eliminated. Most MFN 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 resulted 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. The U.S. Government addressed market access concerns regarding U.S. exports to Colombia in the CTPA.

The United States and Colombia have worked together to resolve a number of sanitary and phytosanitary (SPS) barriers to agricultural trade. For instance, in April 2012 the U.S. and Colombian governments exchanged letters addressing concerns related to U.S. exports of paddy rice, poultry, and poultry products. The two governments are currently working together to address concerns related to U.S. exports of fresh and chilled pork and pork products.

Participation in Free Trade Negotiations: The Santos Administration has pursued an aggressive trade agenda, which includes FTAs, BITs, and Double Taxation Agreements. Colombia eliminated most of its tariffs on imports from the United States on May 15, 2012, the day the CTPA entered into force, and will eliminate the remaining tariffs over defined time periods. Besides the CTPA, Colombia has 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; expanded its existing FTA with Mexico in 2011; and concluded FTA negotiations in 2010 with the European Union. Colombia is now negotiating FTAs with Turkey, Israel, Japan, Panama, and South Korea. Colombia is a member of the Pacific Alliance, which intends to harmonize trade agreements among Chile, Colombia, Mexico, and Peru.

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 2010 to fight the effects of severe flooding throughout the country, but no certificates have been issued since November 2011.

Regional Trade Policies: Colombia is a member of the Andean Community of Nations (CAN). Colombian exports to Bolivia, Ecuador, and Peru (Venezuela's commitments to the Andean Community ended in April 2011) totaled $3.4 billion in 2011, about 6 percent of Colombia's entire exports. Imports from these countries totaled $2.3 billion in 2011, about 4 percent of total imports. Trade with Venezuela dropped by almost 70 percent after Venezuela imposed unilateral restrictions on Colombian exports in 2009. President Santos reestablished commercial relations with Venezuela in 2010 and in 2011 the two countries signed a trade accord to regulate their bilateral commercial relations. Colombian exports to Venezuela increased 22 percent in 2011 relative to 2010 reaching $1.7 billion – as compared to $6 billion in exports to that country in 2008. Imports from Venezuela in 2001 were $564 million in 2011. Colombian exports to MERCOSUR were $1.7 billion in 2011, while imports, exceeded $4.7 billion, with approximately 58 percent coming from Brazil. Imports from Mexico grew 57 percent in 2011 reaching $6.1 billion.

The Colombian government has negotiated or is pursuing trade accords with many countries in the region. It trades most goods with Bolivia, Ecuador, and Peru duty-free as part of the Andean Community arrangement. Colombia is a member of the Latin American Integration Association (ALADI), which promotes economic integration and cooperation in the region. Colombia signed a trade agreement with the members of MERCOSUR (Argentina, Brazil, Paraguay, and Uruguay) in 2004. Colombia's FTA with Guatemala, Honduras, and El Salvador entered into force in 2009 and 2010 and its FTA with Chile entered into force in 2009. Also in that year, Colombia and Mexico concluded negotiations of an updated FTA, which entered into force in 2011 and replaced the more limited G-3 agreement dating from 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 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.

Colombia remains one of the world's largest producers and exporters of cocaine, as well as a source country for heroin and marijuana. According to the U.S. Department of Justice's 2010 Cocaine Signature Program, 95.5 percent of the cocaine seized in the United States in their sampling system originates in Colombia. Colombia's marijuana is typically not sent to the United States, but feeds internal and Latin American consumption. The Colombian government continues to make significant progress in its fight against the production and trafficking of illicit drugs. The U.S. Government found that the area devoted to coca cultivation in 2010 was down 14 percent compared to 2009, from 116,000 to 100,000 hectares (ha). Crediting sustained aerial and manual eradication operations and aggressive enforcement activity in 2010, the U.S. Government also reported a decline in potential pure cocaine production of 7.4 percent, from 290 metric tons (MT) in 2009 to 270 MT in 2010 – and a 61.4 percent drop from the 700 MT estimated pure cocaine production potential in 2001. The United Nation's (UN) 2010 assessment of the drug problem in Colombia reflected a similar trend from 2009 to 2010. The UN Office for Drug Control estimates that in 2010, coca area under cultivation fell 15 percent to 62,000 ha from 73,000 ha, and cocaine production potential dropped 19 percent to 330 MT from 410 MT. Although estimates differ due to dissimilar methodologies, both reflect a similar declining trend in coca cultivation and cocaine production potential.

In 2011, the Colombian government continued its aggressive interdiction and eradication programs, and maintained a strong extradition record for persons charged with crimes in the United States. The government extradited 119 fugitives to the United States in 2011, the vast majority of which were wanted for drug crimes. According to the Colombian government, authorities seized over 186 MT of cocaine and cocaine base and eliminated hundreds of tons of additional potential cocaine through the combined aerial and manual eradication of 137,794 ha of coca. The government also continued to address increasing domestic drug consumption, and raised the profile of drug prevention and treatment efforts.

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, 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.

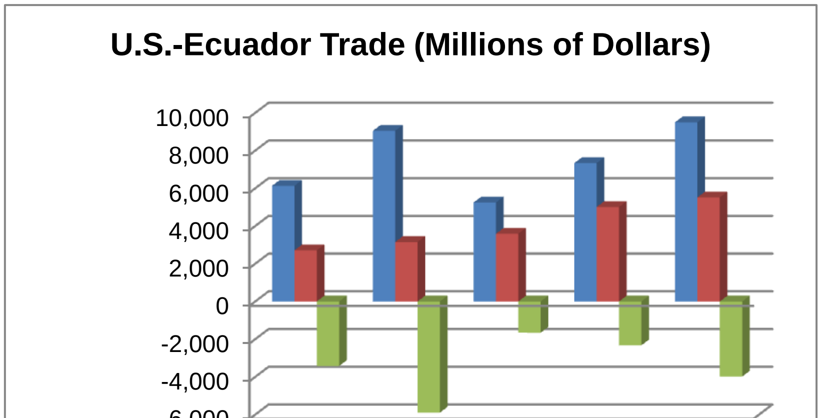
Colombia's increased law enforcement efforts and expansion of government control into previously hard-to-govern areas is ongoing under the country's National Consolidation Plan. Under this approach, security, counternarcotics, rule of law, and economic and alternative development opportunities are being 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.

In recent years Colombian security forces have captured or killed a number of high-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. Chapter 9 of the CTPA covers government procurement and grants unconditional national treatment to U.S. goods and services and to the suppliers of such goods and services in procurements covered by the CTPA.

ECUADOR

Population: 15,223,680 (July 2012 est.)
GDP per capita (PPP): $8,300 (2011 est.)
Source: 2010 CIA World Fact Book



	2007	2008	2009	2010	2011
U.S. Imports	6,131	9,044	5,246	7,334	9,500
U.S. Exports	2,709	3,150	3,589	5,009	5,517
Trade Balance	-3,422	-5,894	-1,656	-2,325	-3,983

Effect of ATPA/ATPDEA: In 2011, U.S. goods imports from Ecuador totaled $9.5 billion, a 30 percent increase over 2010. ATPA/ATPDEA entries from Ecuador decreased 59 percent to $1.7 billion in 2011, from $4.2 billion in 2010. The decrease in imports from Ecuador under ATPA/ATPDEA in 2011 resulted mainly from the lapse in the program between February 12, 2011 and October 21, 2011, although total imports from Ecuador increased. Petroleum-related products accounted for $1.6 billion (93 percent) of ATPA/ATPDEA entries from Ecuador in 2011, compared to $3.8 billion (91 percent) in 2010. While petroleum-related imports from Ecuador under ATPA/ATPDEA dropped 59 percent in 2011, total petroleum-related imports from Ecuador increased by 31 percent, from $5.5 billion in 2010 to $7.3 billion in 2011, mainly as a result of higher crude petroleum prices. Cut flowers, the second largest U.S. import from Ecuador entered under ATPA/ATPDEA, decreased 56 percent to $60 million in 2011, while total cut flower imports from Ecuador increased by 7.1 percent, from $137 million to $147 million. Cut flowers accounted for 3.5 percent of ATPA/ATPDEA entries from Ecuador in 2011. Other major imports under ATPA/ATPDEA from Ecuador in 2011 were fruits, primarily fresh pineapples, fresh mangoes, and frozen fruits ($20 million); tuna ($12 million); vegetables ($11 million); and vegetable and fruit preparations ($10 million), all of which declined in 2011 compared with 2010.

***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 for a public purpose, in a nondiscriminatory manner, in accordance with due process of law, and with 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 few years give rise to concerns about the government's long-term commitment to international arbitration for the settlement of investor disputes. In September 2009, the government requested the Ecuadorian National Assembly to approve the 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. The National Assembly has voted in favor of terminating five of the BITs but against terminating four others. It has not voted on the U.S. BIT. As of the date of this report, only Ecuador's BIT with Finland has been terminated. The United States-Ecuador BIT remains in force. Separately, Ecuador withdrew from the World Bank's International Center for the Settlement of Investment Disputes (ICSID) on January 7, 2010, although the government continues to participate in pending international arbitration cases.

In August 2011, a U.S. company obtained an arbitral award 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's petition to have the award set aside was denied in May 2012, although that decision may be appealed. In September 2009, the company filed another arbitration claim against Ecuador under the BIT, claiming, among other things, government mistreatment in connection with a then-pending lawsuit in the Ecuadorian courts, a lawsuit decided against the company in February 2011. The Ecuadorian government sought a stay of the arbitration in U.S. federal court, but that request was denied. In February 2012, the arbitral panel issued an interim award directing the Ecuadorian government to suspend enforcement and recognition of the judgment against the company in the lawsuit. The Administration is monitoring developments in connection with these matters under the relevant ATPA eligibility criteria.

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

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

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

Works are protected under copyright law for the life of the author plus 70 years. A 2006 decision by Ecuador's Supreme Court upheld the right of music composers to be compensated by television and radio stations who broadcast their compositions. Article 32 of the Law on Higher Education, published in October 2010, states that software companies must provide a discount on licenses to entities that provide higher education and use the software for academic purposes. The same article also obligates higher education institutions to use open source software.

Trademark registration is permitted for renewable 10 year periods. Ecuador's IPR law provides protections for well-known trademarks and in the past few years processing time has been greatly reduced. In 2011, Ecuador processed 17,106 trademark applications.

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

Despite the laws on the books, intellectual property rights protection and enforcement remain major problems in Ecuador. The national police and the Customs Corporation of Ecuador are responsible for carrying out IPR enforcement orders, but it is sometimes difficult to have court orders enforced. IEPI and Ecuadorian Customs have enforcement authority in their areas of competence under which they can act with or without a formal complaint by the right holder, through administrative sanctions imposed by IEPI or the interception of counterfeit goods by Customs. In early 2011, IEPI undertook a series of significant enforcement actions against the sale of pirated DVDs. These actions were subsequently challenged in court, however, and while the case remains pending, IEPI has essentially suspended large-scale enforcement. 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 in Ecuador. Pirated CDs and DVDs are found on many street corners and in shops, and the import and sale of products that infringe registered trademarks are common. Sellers of pirated goods market their illegal wares with little fear of prosecution. In April 2001, USTR removed Ecuador from the Special 301 Watch List to reflect improvements in Ecuador's IPR regime. However, Ecuador's weakened enforcement efforts led to its being relisted in 2003, and it has remained on the Watch List since that time.

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

The Ecuadorian government has implemented a policy concerning compulsory licensing of certain patented inventions. In late 2009 Presidential decrees established policy frameworks for issuing compulsory licenses for patented pharmaceutical products and agrochemicals, and in 2010 the government established application procedures. 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. To date, this is the only compulsory license the Ecuadorian government has issued.

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, public employees that do not fall into the technical, administrative, or professional categories may join a union and bargain collectively. Public sector employees in strategic sectors, as designated in the 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. Some of the sectors defined as strategic exceeded the ILO standard for essential services. 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.

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

The Constitution and the labor code prohibit forced labor. The law also prohibits the employment of persons under the age of fifteen, except in special circumstances, such as an apprenticeship. Enforcement of this provision is uneven, especially in rural communities. Ecuador's National Institute of Statistics and Census' 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. There are about 150 government labor inspectors nationwide who are in charge of all forms of labor code violations. These inspectors have the authority to cite violations and sanction companies and employers found to have illegally hired child labor. The government claimed that 40,000 children were removed from child labor as part of their comprehensive efforts on child labor eradication, but did not provide separate numbers for minors removed due to inspections.

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

Workers have the constitutional right to a healthy and safe work environment. A worker may request that an inspector from the Ministry of Labor and Employment investigate a workplace hazard; if confirmed, the inspector may close down the workplace. Workers do not have the right to remove themselves from situations that endanger health or safety without jeopardy to their employment. Response time for inspectors ranges from three days in major cities to much longer in the countryside.

The minimum wage has increased substantially, from $170/month in 2007 to $292/month in 2012. However, Ecuadorian government studies indicate that a family earning only 1.6 minimum wages still would not have sufficient income to afford the basic consumption basket ($572.35 in December 2011). The majority of workers are employed in the large informal sector, and these workers may not receive the minimum wage, social security, or other legally mandated benefits. A May 2011 national referendum made it mandatory for employers to register their employees with social security. The government has increased enforcement of the requirement that employees, including domestic workers, have contracts and receive minimum wage and other benefits.

Economic Conditions: In March 2000**,** Ecuador adopted the U.S. dollar as its national currency in response to a serious economic crisis. Dollarization, combined with responsible fiscal policies, helped tame inflation and bring the country back to positive growth and economic stability. In 2008, Ecuador's economy grew by 7.2 percent 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, prompting the Ecuadorian government to put into place import restrictions. Although oil prices rebounded during the year, Ecuador recorded a $332 million trade deficit and flat growth for 2009.

As the global economy began to recover in 2010, Ecuador's economy grew by 3.6 percent, but lagged behind some regional neighbors. Limited access to international financing, following a $3.2 billion sovereign default in late 2008/early 2009, forced the government to reduce expenditure levels and cover a budgetary financing gap with loans from international financial institutions, funds from Ecuador's Social Security Institute, and financing from China. High export oil prices stemming from unrest in the Middle East provided Ecuador with substantial extra-budgetary revenue in 2011 and an annual growth rate of 7.8 percent. The Ecuadorian government has forecast GDP growth of 5.35 percent in 2012 with a $26 billion budget premised on an $80 per barrel average price for Ecuadorian crude. Additional loans from China are expected to help the government maintain high levels of government expenditures in 2012.

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

To expand production long-term, the Ecuadorian government plans to release 21 concessions in the southeast of the country in 2012, four reserved for state companies Petroecuador and Petroamazonas, seven going to foreign state oil companies, and the remainder being offered to private companies. Ecuador signed its first large-scale mining contract in March 2012 with a Chinese company to exploit an open-pit copper mine; negotiations with several other foreign mining companies for production of gold and silver are pending.

Starting in 2007, the Ecuadorian government began lowering caps for interest rates in the banking sector, including mortgage, corporate, consumer, and micro-credit lending. Although the caps were initially being reduced each month, they have remained relatively stable since October 2008 and unchanged since May 2010. Price controls were also implemented across a range of services, including withdrawals, transfers, and checking products.

Ecuador's Central Bank only publishes FDI figures as net flows. According to the Central Bank, the net flow of FDI into Ecuador dropped from $1 billion in 2008 to $321 million in 2009, before declining to $157 million in 2010. In 2011, Ecuador received $568 million in FDI, mostly in the mining sector followed by manufacturing. According to Central Bank statistics, there were net outflows from Ecuador of U.S. foreign direct investment in 2005, 2006, 2008, and 2009. In 2010, the net inflow if U.S. FDI into Ecuador totaled close to $7 million, but in 2011 reached $71 million, mostly in retail and business services. According to the U.S. Bureau of Economic Analysis, the stock of U.S. FDI in Ecuador in 2009 (the last year available) was approximately $1.3 billion. 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 has delayed and even blocked the entry of some agricultural imports from the United States. In August 2011, the Ecuadorian government implemented a non-automatic import licensing regime on 42 products, including automobiles, tires, mobile phones, televisions/monitors, refrigerators/freezers, and semi-finished iron and steel products. Some importers expressed concern the regime could be used to restrict imports, or pressure sectors into voluntary import limits.

Late in 2011, Ecuadorian importers for U.S. restaurant franchises were denied import licenses to import certain cheeses from the United States. Ecuador's Agriculture Ministry justified the denial stating that those products were available locally and directed the franchises to source the products domestically. The Ministry has since resumed authorizing cheese imports, but the import authorization process continues to take much longer than its previous average of two weeks.

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. 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, invoking the WTO's balance of safeguard provisions. The safeguards were not eliminated until June 2010.

Although Ecuador phased out prior authorization requirements for most imports, it 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 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 phytosanitary regulations.

As a member of the Andean Community (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 CAN 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 delayed 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. Presidential Decree 285, published in March, 2010, mandated the creation of a "single window" procedure to streamline customs procedures. In addition, Ecuador's Production Code, published in November 2010, added provisions to improve customs processes and requirements in an effort to reduce costs and minimize delays for importers.

Ecuador's foreign investment policy is governed largely by the national implementing legislation for Andean Community Decisions 291 and 292 of 1991 and 1993. Foreign investors are accorded the same rights of entry as Ecuadorian private investors, may own up to 100 percent of enterprises in most sectors without prior government approval, and face the same tax regime. 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.

On November 24, 2011, the Ecuadorian government increased the tax on all capital outflows from 2 percent to 5 percent. The Production Code established tax incentives to attract both domestic and foreign investment in certain priority sectors: fresh and processed food, forestry, agro-forestry, metalworking, petrochemical products, pharmaceuticals, tourism, renewable energies, logistical services, biotechnology, applied software, and those determined by Ecuador's President to be "strategic import substitution" sectors. These incentives, which may take the form of tax exemptions, income tax deductions, as well as a five-year tax holiday, are only available for investments made outside of Quito and Guayaquil. To qualify for the tax incentives, an investment proposal must be approved by a yet-to-be formed Technical Secretary of the Sectoral Council for Production. Implementing regulations for the Production Code were published in April 2011.

A number of U.S. companies operating in Ecuador, notably in regulated sectors such as petroleum and electricity, have filed for international arbitration resulting from investment disputes. Investors in more lightly regulated sectors have had fewer disputes. Despite the Ecuadorian government's intention to terminate many of its BITs due to their arbitration clauses, the Production Code contains a provision which allows the state to negotiate an international arbitration clause within contracts with private investors.

Participation in Free Trade Negotiations: In May 2004, the United States initiated negotiations on an FTA with Colombia, Ecuador, and Peru. Bolivia participated as an observer. The United States ultimately concluded FTAs with Peru and Colombia. Negotiations with Ecuador were suspended indefinitely. In March 2012, Ecuador agreed in principle to accede to the multiparty commercial agreement negotiated between the European Union and Andean Community countries Colombia and Peru, but the European Union has not yet reached a final decision on starting negotiations. Ecuador is exploring the possibility of negotiating trade agreements with Canada, Switzerland, South Korea, and China.

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

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

Ecuador's 2008 Constitution declares that Ecuador should be free of biotechnology crops and seeds. However, the Constitution grants the President the authority under exceptional circumstances to allow for imports of agricultural crops and seeds that may have been produced using biotechnology. This provision of the Constitution has yet to be elaborated through implementing legislation and regulations. A new Food Sovereignty Law and a Biodiversity Law are very general yet the Ecuadorian government has not issued implementing regulations to further define the framework for biotechnology products in Ecuador. Biodiversity laws that have been proposed, but not passed, have been rigorous about prohibiting the use of biotechnology in Ecuador. To date biotechnology cultivation and imports have continued without impediment.

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 13 percent of Ecuador's exports and provided 14 percent of its imports in 2011. Ecuador has signed a number of cooperation agreements with countries in the region, including Venezuela and Peru, on topics including energy and social development. Ecuador is also a member of the ALADI. ALADI countries purchased 26 percent of Ecuador's exports and supplied 30 percent of its imports in 2011. Ecuador has broad agreements for the liberalization of trade in goods with Chile and MERCOSUR. In 2008, Ecuador signed an association agreement with Chile, which included extending and broadening the existing economic complementation agreement. Ecuador also has agreements with Cuba and Mexico that establish tariff preferences for a limited number of products.

Venezuela, a former Andean Community country, has negotiated bilateral agreements with Ecuador. Venezuela received 7 percent of Ecuador's total exports and supplied 4 percent of total imports in 2011. Trade with Venezuela comprises the majority of Ecuador's trade with the eight Bolivarian Alliance for the Americas countries.

***Narcotics and Counter-Terrorism Cooperation*:** A Presidential determination issued in September 2011 under the Foreign Relations Authorization Act found that Ecuador had not "failed demonstrably" in its counternarcotics cooperation with the United States. Ecuador is not a significant coca-producing country, but is exploited significantly as a transit zone and, to a lesser but growing extent, for processing. With the support of the U.S. Government, Ecuador maintains an active drug detection and interdiction program. Its programs focus on interdiction, police training, drug detection, information sharing, demand reduction, and control of money laundering. The U.S. Government has also supported the implementation of a new criminal procedures code, adopted in 2001, with police and judicial training. In October 2005, Ecuador adopted a new money laundering law, and the U.S. Government has been supporting its implementation, although changes to the law in 2011 made it more difficult for Ecuadorian authorities to seize bulk cash by putting the burden of proof on the government to show that the bulk cash was obtained through illegal acts.

Ecuador's National Drug Council (CONSEP) activity against trafficking in controlled precursor chemicals continued during 2011. However, CONSEP is still not resourced at a level consistent with its broad responsibilities. The Ecuadorian government has continued to reinforce its security presence in the northern border area with an increased number of military operations since 2007.

The Counternarcotics Directorate (DNA) of the National Police decreased from 1,700 in 2009 to its currently level of 1,485 members. 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. In 2011, two new U.S. Government-constructed facilities that support the DNA opened at the Port of Guayaquil and in Catamayo near Ecuador's southern border.

The Ecuadorian government continues to work with the U.S. Government to reduce trafficking through Ecuador. Ecuador has criminalized the production, transport, and sale of controlled narcotic substances. Although smuggling of precursor chemicals through Ecuador remains a problem, the Ecuadorian government is making efforts to monitor and control these chemicals and to interdict processing laboratories. Nonetheless, it appears that despite Ecuadorian efforts, transshipment of narcotics through Ecuadorian maritime and land routes to the United States continues at a high level, even with the decreased overall production of cocaine from Colombia over the last two years. Since 2006, the Ecuadorian Coast Guard and the U.S. Coast Guard exercise an operational procedures agreement to board Ecuadorian flagged vessels in the high seas. This agreement is generally effective for vessels located outside of Ecuador's disputed 200 nautical mile territorial claim. Ecuador does not grant boarding permission for vessels located within 200 nautical miles of Ecuadorian coastline.

The expulsion of the U.S. Ambassador in April 2011 had a negative, short-term effect on the traditionally close counternarcotics cooperation between the two governments. In general, however, Ecuadorian law enforcement agencies cooperated well with U.S. and certain other foreign law enforcement agencies in 2011, and Ecuador's cocaine seizures in 2011 were higher than in 2010.

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 was followed by similar requests in May 2010 from two Mexicans and a Colombian who were facing deportation after completing sentences in Ecuador for drug trafficking. 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.

In September 2009, operations ceased at the Forward Operating Location (FOL) on the Ecuadorian Air Force base in Manta, as Ecuador's government did not renew the program's lease. It is still unclear whether the Ecuadorian government will permit follow-on activities to replace surveillance coverage of the Eastern Pacific. Maritime seizures have suffered following the 2009 closure of the Manta FOL. The Ecuadorian navy lacks resources and continues to be ineffective at interdiction efforts with no maritime seizures in 2011. Maritime cooperation between Ecuador and the United States declined in 2011; due to logistical and planning issues within both governments, they were unable to carry out any joint counternarcotics exercises.

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 illegally armed groups.

Ecuador is working with the Financial Action Task Force (FATF) and Financial Action Task Force of South America to address strategic deficiencies in its Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) regime. FATF has identified Ecuador as a jurisdiction with key deficiencies in AML/CFT since February 2010, and recently downgraded Ecuador for not making sufficient progress, despite having passed a new AML law at the end of 2010. FATF's public statement in February 2012 noted that, despite Ecuador's high level political commitment and improved legislation, FATF would identify Ecuador on its list of countries out of compliance with their agreed action plan if Ecuador did not take sufficient action towards addressing key deficiencies by June 2012. Ecuador is reportedly drafting changes to its penal code to address these issues.

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 National Institute of Public Contracting oversees 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.

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 (77 Fed. Reg. 24555, April 24, 2012) on whether the remaining countries designated as ATPA/ATPDEA beneficiary countries are meeting the eligibility criteria under the ATPA as amended.

USTR received sixteen comments in response to its request. The full texts of the submissions are available at http://www.regulations.gov, docket USTR-2012-0006. A summary of each submission follows.

Association of Floral Importers of Florida supports the extension of the ATPA for Ecuador. The comment states that more than 6,100 employees in Miami, Florida, depend on imported flowers from Ecuador.

Chevron Corporation calls into question Ecuador's eligibility for ATPA benefits in light of a court case in Ecuador and arbitration under the U.S.-Ecuador BIT. Citing multiple incidences of improprieties, Chevron indicates that the concerns it previously expressed in response to USTR requests for comments have only been heightened. Chevron's submission maintains that Ecuador's failure to enforce or recognize arbitral awards under the BIT is a violation of both Ecuador's treaty obligations to the United States and the ATPA eligibility criteria. As such, Ecuador should have its trade preferences revoked unless the Ecuadorian government takes appropriate actions to both recognize and enforce the arbitral awards under the BIT.

Choice Farms Corporation, an importer of fresh flowers from Ecuador, indicates that the company and its customers would be adversely affected if the ATPA program is not extended for Ecuador. Choice Farms imports 70 percent of its flowers from Ecuador and employs 16 people in the United States.

Ecuadorian–American Chamber of Commerce (AmCham) offers supporting information for the extension of the ATPA for Ecuador. The AmCham states that, since its inception, the ATPA has been successful on multiple fronts ranging from the development of jobs to supporting counternarcotics efforts. The submission cites the main sectors that have benefitted from the ATPA, including roses, broccoli, tropical fruits, albacore tuna, sugar cane, juices, and plywood. The submission also explains the Ecuadorian government's recent balance of payments measures in the context of the global financial crisis.

Embassy of the Republic of Ecuador to the United States supports the extension of the ATPA program through 2013 and beyond. The embassy cites the benefits both the United States and Ecuador have enjoyed as a direct result of the program. The submission presents information supporting Ecuador's eligibility and highlights the overall impacts of the ATPA with regard to counternarcotics cooperation, investor protections, intellectual property rights, worker rights, and economic conditions.

Emergency Committee for American Trade (ECAT) strongly supports the ATPA as an important tool to promote economic opportunities and diversification in the Andean region. However, ECAT has many concerns regarding Ecuador's continued eligibility. Its chief concern relates to Ecuador's systemic problems with the rule of law as well as its failures to protect intellectual property. ECAT further maintains that U.S. businesses have experienced expropriation and repudiation of contracts in the energy, construction, and other sectors of the economy. ECAT suggests that Ecuador's treatment of Chevron with respect to arbitral awards is a violation of the ATPA requirements.

Esmeralda Farms, Inc., an importer of fresh flowers from Ecuador, indicates that the company and its customers would be affected if the ATPA program is not extended for Ecuador. Esmeralda Farms imports 70 percent of its flowers from Ecuador and employs 79 people in the United States.

Equiflor Corporation, an importer of fresh flowers from Ecuador, indicates that the company and its customers would be adversely affected if the ATPA program is not extended for Ecuador. Equiflor imports 50 percent of its flowers from Ecuador and employs 55 people in the United States. It states that collectively the import of flowers from Ecuador supports approximately 200,000 jobs.

Fresca Farms, LC, an importer of fresh flowers from Ecuador, indicates that the company and its customers would be adversely affected if the ATPA program is not extended for Ecuador. Fresca Farms imports 35 percent of its flowers from Ecuador and employs 48 people in the United States.

Friends of Rule of Law in Ecuador Inc. urges the United States to cease any and all fund disbursements and waivers to Ecuador unless it restores a functioning rule of law. The submission further states that Ecuador has failed to respect the requirements under the ATPA.

Jet Fresh Flower Distribution, Inc. an importer of fresh flowers from Ecuador, indicates that the company and its customers would be adversely affected if the ATPA program is not extended for Ecuador. Jet Fresh Flower Distribution imports 50 to 60 percent of its flowers from Ecuador and employs 20 people in the United States.

Miaflora Farms, LLC, an importer of fresh flowers from Ecuador, indicates that the company and its customers would be adversely affected if the ATPA program is not extended for Ecuador. Miaflora Farms imports 50 percent of its flowers from Ecuador and employs 30 people in the United States.

National Association of Manufactures (NAM) questions whether Ecuador is meeting the eligibility requirements under the ATPA and BIT, citing concerns that Ecuador is repudiating its legal obligations. Moreover, NAM maintains that corruption continues to be a problem in Ecuador's judicial system. NAM also notes the recent developments concerning Chevron's ongoing claims as supporting evidence of Ecuador's violation of eligibility requirements of the ATPA and BIT. NAM suggests that Ecuador should only be granted a limited extension in order to comply with binding agreements or lose the privileges extended to it through the ATPA.

National Foreign Trade Council (NFTC) cites Chevron Corporation's dispute with Ecuador as a basis to conclude that Ecuador should be deemed ineligible for ATPA preferences. The submission states that Ecuador's breach of responsibilities and binding obligations under the BIT merit revocation of its beneficiary status. The NFTC further states that revocation of Ecuador's benefits would signal to the international community that the United States will not accept violations without consequence.

USA Bouquet Company, an importer of fresh flowers from Ecuador, indicates that the company and its customers would be adversely affected if the ATPA program is not extended for Ecuador. The USA Bouquet Company imports 40 percent of its flowers from Ecuador and employs 800 people in the United States.

U.S. Chamber of Commerce points out its consistent and outspoken support for the ATPA program, although with measured reservations regarding Ecuador's eligibility. Citing Ecuador's failure to respect the rule of law as it relates to fair treatment of U.S. investors and intellectual property holders, the Chamber believes Ecuador's status should be carefully reexamined. The Chamber also expresses its belief that considering Ecuador is the only remaining country with beneficiary status under the ATPA, it is appropriate to consider whether it can graduate to a high standard reciprocal free trade relationship or find another path forward which preserves the existing trade relationship and provides certainty to U.S. investors.

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 2010, USTR published a notice in the *Federal Register* announcing the 2010 Annual Review of the ATPA. Five parties filed submissions, but none of the submissions constituted petitions that were accepted for review.

The full texts of the submissions are available at http://www.regulations.gov, docket USTR-2010-0018. There was no 2011 Annual Review as the program had lapsed as of that time period.

Following is the list of all petitions from prior years that remain under review: two petitions relating to worker rights in Ecuador (filed by Human Rights Watch and USLEAP) and one involving Chevron Texaco and Ecuador. Since Peru is no longer an ATPA/ATPDEA beneficiary reviews of petitions related to that country have been terminated (petitions submitted by the companies Princeton Dover and Duke Energy).

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