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# THE ANDEAN TRADE PREFERENCE ACT: HISTORICAL EFFECTIVENESS, MODERN TRENDS, AND OUTLOOK FOR THE FUTURE

*Kevin Grubbs*

## I. INTRODUCTION

FOR nearly two decades, the United States has attempted to stem the tide of illicit narcotics entering its borders from South American countries in the Andean region.<sup>1</sup> In December 1991, Congress enacted the Andean Trade Preference Act.<sup>2</sup> Congress passed this Act as a specific and deliberate measure to combat the production and trafficking of illegal drugs coming from Andean South America.<sup>3</sup>

In theory, by providing economic incentives for Andean countries to focus their domestic agricultural and manufacturing efforts on legal goods, they will decrease their relative focus on producing and distributing narcotics.<sup>4</sup> But in practice, the results have not met these expectations.<sup>5</sup>

Despite the lackluster results emergent from the years immediately following the Andean Trade Preference Act—or perhaps because of those results—Congress not only renewed, but also expanded the scope of the Act.<sup>6</sup> In 2002, Congress enacted the Andean Trade Promotion and Drug Eradication Act.<sup>7</sup> This new and, some would say, improved iteration of the Andean Trade Preference Act applies to the same selection of countries, subject to the same qualification requirements.<sup>8</sup> But the provisions

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1. The Andean Trade Preference Act, Pub. L. No. 102-182, 105 Stat 1233 (1991) (Trade Preference Act).

2. *Id.*

3. See generally, Office of the United States Trade Representative, [http://www.ustr.gov/Trade\\_Development/Preference\\_Programts/ATPA/Section\\_Index.html](http://www.ustr.gov/Trade_Development/Preference_Programts/ATPA/Section_Index.html) (last visited March 4, 2009) (Office of the United States Trade Representative Website).

4. See J.F. HORNBECK, THE ANDEAN TRADE PREFERENCE ACT: BACKGROUND AND ISSUES FOR REAUTHORIZATION, CONGRESSIONAL RESEARCH SERVICE (2001), [http://www.sice.oas.org/TPD/USA\\_ATPA/studies/crs2001\\_e.pdf](http://www.sice.oas.org/TPD/USA_ATPA/studies/crs2001_e.pdf) [hereinafter HORNBECK, CRS REPORT].

5. *Id.*

6. *Id.*

7. Andean Trade Promotion and Drug Eradication Act of 2002, Pub. L. No. 107-210, 116 Stat. 933 (2002).

8. *Id.*

differ from those of its predecessor in offering a greatly expanded list of products eligible for duty-free treatment.

In the years following these enactments, the composition of goods from the Andean countries has shown only marginal change. Even so, Congress and the President have repeatedly passed extensions to provide for the Trade Agreements' continuation. This Comment seeks to demonstrate that the Andean Trade Preference Agreements, in their attempts to forestall narcotics proliferation from the Andean countries, have failed.

## II. TRADE PREFERENCE ACTS—A BACKGROUND

Trade preference programs are tools used by the U.S. government to help developing countries "through enhanced access to the U.S. market."<sup>9</sup> Generally, a common feature of this type of enhanced trade relationship is duty-free treatment to various qualifying goods.<sup>10</sup>

In addition to the Andean Trade Preference programs, the Office of the United States Trade Representative also has other trade preference arrangements.<sup>11</sup> The Generalized System of Preferences (GSP), for example, remains one of the oldest and most successful preference programs.<sup>12</sup> This program, instituted in 1976, has been reauthorized through the end of 2009.<sup>13</sup> Like other preference programs, the GSP was aimed at promoting economic growth for countries in the developing world.<sup>14</sup> Under the GSP, the United States offers enhanced status to nearly five thousand products from over 130 countries.<sup>15</sup>

Along with the GSP, there are at least two other U.S. trade preference systems: the highly successful African Growth and Opportunity Act (AGOA) and the Caribbean Basin Initiative (CBI).<sup>16</sup> The AGOA, enacted in 2000, provides duty-free treatment to products from countries in Sub-Saharan Africa.<sup>17</sup> The CBI began in 1983 as the Caribbean Basin Recovery Act. Congress expanded the Act in 2000, creating the Caribbean Basin Trade Partnership Act.<sup>18</sup> The CBI provides enhanced trading arrangements to nineteen beneficiary countries.<sup>19</sup>

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9. U.S. Trade Rep., ATPA, *supra* note 2.

10. *Id.*

11. *Id.*

12. See Office of the U.S. Trade Representative, Generalized System of Preferences (GSP), <http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp> (last visited Sept. 20, 2009).

13. *Id.*

14. *Id.*

15. *Id.*

16. Office of the U.S. Trade Representative, Preference Programs, <http://www.ustr.gov/trade-topics/trade-development/preference-programs> (last visited Sept. 20, 2009).

17. *Id.*

18. Office of the U.S. Trade Representative, Caribbean Basin Initiative (CBI), <http://www.ustr.gov/trade-topics/trade-development/preference-programs/caribbean-basin-initiative-cbi> (last visited Sept. 20, 2009).

19. *Id.*

### III. THE 1991 ANDEAN TRADE PREFERENCES ACT

In December of 1991, Congress enacted the Andean Trade Preference Act.<sup>20</sup> This Act, which initially had a ten-year sunset period, provided duty-free, or reduced-tariff, status to a variety of products coming into the United States from the countries in South America's Andean region.<sup>21</sup> When originally enacted, the Act's primary stated goal was "to promote export diversification and broad-based economic development that provides sustainable economic alternatives to drug-crop production in the Andean region."<sup>22</sup> Because almost all of the illegal cocaine sold within the United States comes from countries in the Andean region, many viewed the Andean Trade Preference Act as a vital tool in contributing to the United States' fight against illegal drug production and trafficking.<sup>23</sup>

#### A. COUNTRY QUALIFICATIONS AND BENEFITTED PRODUCTS

In order to benefit from the Trade Preference Act, both the country and the goods it seeks to export must qualify.<sup>24</sup> From the outset, the Act sets its scope to include only four countries: Bolivia, Colombia, Ecuador, and Peru.<sup>25</sup> Before those countries can benefit from the Act, they must first qualify under the Act's set standards.<sup>26</sup> Specifically, the Trade Preference Act provides that the president may not designate any country a beneficiary country under the Act if the U.S. government determines that that the country is a communist country.<sup>27</sup> Further, the president may not provide beneficiary status to any country that has wrongfully seized any property, physical or intellectual, from a U.S. citizen or U.S. business enterprise.<sup>28</sup> Additionally, the president may not recognize for beneficiary status a country that fails to act in good faith to recognize or enforce an arbitration award in favor of the United States or a citizen of the United States, or an enterprise that is at least fifty percent owned by U.S. citizens.<sup>29</sup>

Moreover, providing its own preferential treatment to other developed countries might affect the country's status under the Trade Preference Act.<sup>30</sup> If the United States determines that the country's preferential treatment to the other developed nation has a significant and adverse

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20. Andean Trade Preference Act, 19 U.S.C. §§ 3201-3206 (1991).

21. *Id.*

22. *Testimony on Renewal of the Andean Trade Preference Act Before the Sen. Fin. Comm., Subcomm. on Int'l Trade*, 107th Cong. (2001), (Statement by Ambassador Peter Allgeier, Deputy U.S. Trade Representative), [http://www.ustr.gov/assets/Trade\\_Development/Preference\\_Programs/ATPA/asset\\_upload\\_file113\\_3787.pdf](http://www.ustr.gov/assets/Trade_Development/Preference_Programs/ATPA/asset_upload_file113_3787.pdf).

23. *See id.*

24. *See* Andean Trade Preference Act, 19 U.S.C. § 3201 (2002).

25. *Id.* at § 3202(b)(1).

26. *Id.* at § 3202(c).

27. *Id.* at § 3202(c)(1).

28. *Id.* at § 3202(c)(2)(A), 3202(c)(2)(B)(ii).

29. Andean Trade Preference Act, 19 U.S.C. § 3202(c)(3) (2002).

30. *Id.* at § 3202(c)(4).

effect on the United States, then that country is likewise subject to preferential status denial under the Act.<sup>31</sup>

Additionally, the Trade Preference Act requires that the government of any potential beneficiary country not engage in the unlawful distribution or broadcasting of copyrighted materials.<sup>32</sup> That country must also have taken, or currently be taking, steps to afford internationally recognized worker rights to their country's workers.<sup>33</sup> Finally, the country must be a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of U.S. citizens.<sup>34</sup>

In addition to those formal requirements listed, the Act also establishes other factors for the president to consider in determining whether to grant or deny a country beneficiary status.<sup>35</sup> The factors listed include considerations regarding: whether the country has expressed a desired to gain benefits under the Act; the country's economic conditions and the living standards of its citizens; the extent to which the country has provided assurances that it will provide reasonable access to the country's markets and resources; the degree to which the country follows accepted rules of international trade provided for under the World Trade Organization Agreement and multilateral trade agreements; the degree to which the country's trade policies, as related to other possible beneficiary countries, are contributing to the region's revitalization; the degree to which the country is undertaking self-help measures to secure its own economic development; and the extent to which the country has cooperated with the United States in its anti-narcotics efforts.<sup>36</sup>

Once a country qualifies under the requirements of the Act, the goods it wishes to import into the United States must also qualify.<sup>37</sup> Generally, only goods imported directly from one of the beneficiary countries into the United States are eligible.<sup>38</sup> Then, the "content of materials and processing costs originating in . . . ATPA beneficiary countries. . . and up to 15 percentage points of U.S. origin value must sum to at least 35% of the value of the article when it enters the United States."<sup>39</sup> Additionally, the Act lists certain articles to which it specifically denies duty-free status.<sup>40</sup> These include: textile and apparel articles subject to textile agreements; footwear not designed as eligible under the general system of preferences; prepared or preserved tuna; petroleum or petroleum products<sup>41</sup>; watches and watch parts; sugars, syrups, and molasses; and rum

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31. *Id.*

32. *Id.* § 3202(c)(5).

33. *Id.* § 3202(c)(7).

34. Andean Trade Preference Act, 19 U.S.C. § 3202(c)(6) (2002).

35. *Id.* § 3202(d).

36. *Id.*

37. *Id.* at § 3203(a).

38. *Id.* at § 3203(a)(1)(A).

39. HORNBECK, CRS REPORT, *supra* note 3.

40. Andean Trade Preference Act, 19 U.S.C. § 3203(b) (2002).

41. *Id.* at § 3203(b)(4).

and tafia.<sup>42</sup>

After implementation of the Trade Preference Act, Colombia and Bolivia were the first two countries to qualify under the guidelines, each qualifying in the middle of 1992.<sup>43</sup> And about a year later, Peru and Ecuador were likewise qualified and became beneficiary countries under the Act.<sup>44</sup>

## B. FOREIGN EFFECTIVENESS

With the expiration of the Andean Trade Preference Act set for December of 2001, Congress and the Bush Administration were faced with the task of determining what fate should befall the lapsing trade program. Their primary consideration in making that determination was the degree to which the Act had been effective at achieving its objectives.<sup>45</sup>

Lawmakers looked to a number of indicators to determine what, if any, success the Trade Preference Act had achieved.<sup>46</sup> First, they looked to see if there has been any change in reported drug production and trafficking activity coming from the Andean Region.<sup>47</sup> Second, they looked to see if there had been any change in the overall trade volume between the United States and the Andean beneficiary countries.<sup>48</sup> Finally, they examined any variation in the composition of the goods being imported from the beneficiary countries.<sup>49</sup> A report produced by the Congressional Research Service (CRS) in 2001 provides a suitable summary of the results from the investigation.<sup>50</sup>

In addressing the first factor, the CRS Report notes that there had indeed been some reduction in the production and trafficking of illegal narcotics during the ten-year period the Trade Preference Act has been in effect.<sup>51</sup> More precisely, the report notes that there has been an eleven percent overall reduction in the cultivation of cocaine between 1991 and 1999.<sup>52</sup> That figure represents a fifty-five percent decrease in production coming from Bolivia, and a sixty-eight percent reduction from Peru.<sup>53</sup> But that illustrates only part of the story.<sup>54</sup> That nearly ten-year period also witnessed an increase in Colombian drug production by approximately 227 percent.<sup>55</sup>

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42. *Id.*

43. HORNBECK, CRS REPORT, *supra* note 3.

44. *Id.*

45. *Id.* at 2.

46. *Id.*

47. *Id.*

48. HORNBECK, CRS REPORT, *supra* note 3, at 2.

49. *Id.*

50. *See id.*

51. *Id.*

52. *Id.*

53. HORNBECK, CRS REPORT, *supra* note 3, at 2.

54. *See id.*

55. *Id.*

Although this is an indication of some changes taking place during the period in question, it is difficult to establish firmly whether the Trade Preference Act caused any of these changes.<sup>56</sup> Identifying the specific effects of the Trade Preference Act and differentiating them from the effects of other anti-narcotic programs or economic development incentives remains problematic.<sup>57</sup> Generally, however, the studies that examine this question have identified, at best, a marginal effect on crop substitution efforts as an anti-narcotics tool.<sup>58</sup>

Examining results from the differences in overall trade volume between the United States and the Andean beneficiary countries provides similarly unimpressive results.<sup>59</sup> From the enactment of the Trade Preference Act through the end of its first decade, U.S. trade with Andean beneficiary countries has remained comparatively small.<sup>60</sup> It has grown on par with average growth for U.S. trade generally, worldwide.<sup>61</sup> On a "relative basis, United States exports to ATPA countries have remained largely unchanged at approximately [1 percent] of total exports to the world."<sup>62</sup> U.S. imports from Andean beneficiary countries have maintained similarly unchanged levels.<sup>63</sup>

With little noticeable change from either the first or second indicators, examination proceeds by investigating any differences in the actual composition of the articles the Andean beneficiary countries imported into the United States.<sup>64</sup> The CRS Report shows data gathered from the U.S. International Trade Commission regarding import composition during the period of interest here.<sup>65</sup> The primary U.S. imports from the Andean beneficiary countries at the end of the period were: mineral fuels; precious stones and metals; spices, coffee, and tea; edible fruits and nuts, mostly bananas; fish and seafood; apparel; live plants and trees, specifically cut flowers; and copper articles, primarily cathodes.<sup>66</sup> Among the largest of these imports, petroleum products and petroleum-based products were ineligible for duty-free or enhanced trading status under the Trade Preference Act.<sup>67</sup> The only noticeable change in the composition of imports during the entire period in question was the increase in refined copper cathode imports from Peru.<sup>68</sup> By contrast, there was also a rela-

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56. *Id.* at 3.

57. *Id.* at 2.

58. HORNBECK, CRS REPORT, *supra* note 3, at 2.

59. *Id.* at 3.

60. *Id.* at 2.

61. *Id.* at 3.

62. *Id.*

63. HORNBECK, CRS REPORT, *supra* note 3, at 3-4.

64. *Id.* at 5; *see also* OFFICE OF THE U.S. INT'L TRADE COMM'N., SEVENTH REPORT TO CONGRESS ON THE IMPACT OF THE ANDEAN TRADE PREFERENCE ACT ON U.S. INDUSTRIES AND CONSUMERS AND ON DRUG CROP ERADICATION AND CROP SUBSTITUTION, (Sept. 2000), *available at* <http://www.usitc.gov/publications/docs/pubs/332/pub3358.pdf>, [hereinafter SEVENTH TRADE REPORT].

65. HORNBECK, CRS REPORT, *supra* note 3, at 5.

66. *Id.*

67. *Id.* at 6.

68. *Id.* at 5-6.

tive decrease in the coffee and seafood imports from the region.<sup>69</sup>

The findings in the CRS Report attribute these minimal changes in import composition to three factors.<sup>70</sup> First, most of the U.S. imports from Andean beneficiary countries were natural-resource based products or simple manufacturing goods.<sup>71</sup> Many of those types of articles were not eligible for the enhanced trade status under the Trade Preference Act.<sup>72</sup> Second, because petroleum products constitute such a large portion of the U.S. imports, their value tends to distort the overall importation figures, instead reflecting general variations in worldwide oil prices.<sup>73</sup> Finally, Colombia emerged as the dominant trade partner in the Andean region.<sup>74</sup> Imports from Colombia made up sixty percent of the total U.S. imports by the end of the decade from the Andean nations.<sup>75</sup> And because Colombia's primary import goods to the United States are petroleum based products, it is no surprise that the trade figures resulting from petroleum imports would skew those figures for the remaining imports.<sup>76</sup>

Rather than simply concluding that the data showed no significant change during the course of the Trade Preference program and end the study, the inquiry went further to investigate whether there were any changes in trade data at the individual article level.<sup>77</sup> If the Trade Preference Act had not affected imports on an aggregate level, perhaps it had had some effect on individual products or articles coming from the Andean nations into the United States.<sup>78</sup> In order to determine if any specific products were benefiting from the enhanced trade status, the Congressional Research Service first attempted to determine what portion of articles entering the United States did so exclusively under eligibility from the Trade Preference Act, and not through some other trade program or enhancement option.<sup>79</sup>

Studies of the data, presented in both the CRS Report and the U.S. International Trade Commission Report issued in 2000, indicate that only ten percent of the total imports coming from the Andean beneficiary countries come to the United States under the benefit of the Trade Preference Act.<sup>80</sup> This result means that a full ninety percent of goods imported into the United States from the four beneficiary countries arrive either without a preferential status or by way of another trade or preference agreement.<sup>81</sup> Contrasting the data from 1995 with that from 1999,

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69. HORNBECK, CRS REPORT, *supra* note 3, at 6.

70. *Id.*

71. *Id.*

72. *Id.*

73. HORNBECK, CRS REPORT, *supra* note 3, at 6.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. HORNBECK, CRS REPORT, *supra* note 3.

79. *Id.*

80. *Id.* at 7; see also SEVENTH TRADE REPORT, *supra* note 63.

81. HORNBECK, CRS REPORT, *supra* note 3.



the end of the original Trade Preference Act period, shows no difference in this figure between the years.<sup>82</sup> Trade Preference Act imports represented only ten percent of the total imports from the beneficiary countries at both points, leading to a preliminary conclusion that the Trade Preference Act had done little to change the overall amount of goods and articles being imported under the Act.<sup>83</sup> This is unlikely to change if the Trade Preference Act is left as-is, the report concludes, because the majority of imports from the Andean beneficiary countries come in the form of textiles and petroleum products.<sup>84</sup> Neither of these is eligible for duty-free or reduced-tariff status under the Trade Preference Act.<sup>85</sup>

While this data continues to support the idea that, on aggregate, the Trade Preference Act has little effect on import composition, it had not yet directly addressed the question on an individual product level.<sup>86</sup> The data demonstrated that the largest items being imported into the United States were cut flowers, copper cathodes, precious metals, pigments, non-canned tuna, and zinc.<sup>87</sup> A comparison of the Andean imports in the same 1995-2000 period showed some minimal changes in composition.<sup>88</sup> But, the Report continues, the changes were not necessarily predicable.<sup>89</sup> Specifically, cut flowers, while still the largest import from the region, have fallen as a percentage of the total.<sup>90</sup> In contrast, as a percentage of the total, copper cathodes, pigments, and zinc have all increased.<sup>91</sup>

While this represents some evidence that there is a change on the individual article level of import composition in the areas covered by the Trade Preference Act, data explored by the CRS Report and by the U.S. International Trade Commission does not clearly indicate that the small changes have occurred exclusively, or even primarily, because of the Trade Preference Act.<sup>92</sup> Rather, it is equally likely that changes in the domestic policies of the beneficiary countries themselves might be responsible for the changes.<sup>93</sup> In Bolivia, for example, while there was an increase in jewelry and wood exports to the United States coinciding with the benefits of the Trade Preference Act, these increases could just as likely have come from changes in the country's tax code that affected wood products and jewelry production.<sup>94</sup>

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82. *Id.*

83. *Id.*

84. *Id.* at 8; *see also* Andean Trade Preference Act, 19 U.S.C. §§ 3203(b)(1), (4) (1991).

85. HORNBECK, CRS REPORT, *supra* note 3, at 3; *see also* Andean Trade Preference Act, 19 U.S.C. §§ 3203(b)(1), (4) (1991).

86. *See* HORNBECK, CRS REPORT, *supra* note 3, at 7-8.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.* at 8.

91. HORNBECK, CRS REPORT, *supra* note 3, at 7-8.

92. *See id.* at 8-9.

93. *Id.* at 9-10.

94. *Id.*

## C. DOMESTIC EFFECTS

Decision makers, in deciding whether to continue the benefits provided under the Trade Preference Act, likely looked also to the Act's effect on domestic markets and employment. Unlike the reports published by the Congressional Research Service and the U.S. International Trade Commission, which detail the Act's effects on foreign markets, the U.S. General Accounting Office and the U.S. Department of Labor provide reports similarly detailing the Act's domestic effects.<sup>95</sup>

In its March 2001 report, the U.S. General Accounting Office addressed the effects of the Trade Preference Act specifically as it related to American asparagus producers and consumers.<sup>96</sup> The Asparagus Report, commissioned by the U.S. House of Representatives and the Senate on behalf of the American asparagus industry, found that the Trade Preference Act was a mixed blessing for American asparagus.<sup>97</sup>

Peru is the second largest asparagus importer to the United States, and benefits from the enhanced trade status under the Trade Preference Act.<sup>98</sup> Specifically, the Asparagus Report indicates that Peruvian asparagus comprised approximately thirty-four percent of American asparagus imports in 1999.<sup>99</sup> While Peru has traditionally enjoyed success in producing and importing fresh asparagus, the 1990s saw a marked increase in the Peruvian export of frozen and processed asparagus.<sup>100</sup>

The Asparagus Report noted that this increase in Peruvian asparagus was both good and bad in the context of the American asparagus market.<sup>101</sup> As a positive, Peruvian importation of fresh asparagus during the months between August and December, months when fresh domestic asparagus is normally not grown, provides the American asparagus consumers with the benefit of year-round fresh asparagus.<sup>102</sup> But as a negative, this increase in the availability of fresh asparagus has led to a decreased demand in the United States for domestically processed and frozen asparagus.<sup>103</sup> Between 1990 and 2000, covering the period the Trade Preference Act was in effect, the total value of American processed asparagus significantly decreased.<sup>104</sup> From \$60 million in 1990, the value of processed and frozen asparagus fell to \$44 million in 2000, marking a

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95. See U. S. DEP'T OF LABOR, BUREAU OF INT'L LABOR AFFAIRS, TRADE AND EMPLOYMENT EFFECTS OF THE ANDEAN TRADE PREFERENCE ACT, SEVENTH ANNUAL REPORT TO CONGRESS (Aug. 25, 2001) [hereinafter SEVENTH LABOR REPORT]; see also GENERAL ACCOUNTING OFFICE, IMPACTS OF THE ANDEAN TRADE PREFERENCE ACT ON ASPARAGUS PRODUCERS AND CONSUMERS, REPORT TO CONGRESS (March 2001) [hereinafter GENERAL ACCOUNTING OFFICE REPORT (2001)].

96. GENERAL ACCOUNTING OFFICE REPORT (2001), *supra* note 94 at 1.

97. See *id.*

98. *Id.* at 1.

99. *Id.*

100. *Id.*

101. See GENERAL ACCOUNTING OFFICE REPORT (2001), *supra* note 93.

102. *Id.* at 2.

103. *Id.* at 1.

104. *Id.*

twenty-five percent decrease.<sup>105</sup> Additionally, the Report notes that Peruvian asparagus has displaced between two percent and eight percent of the total value of fresh domestic asparagus.<sup>106</sup>

In 2001, the U.S. Department of Labor, as required by the Trade Preference Act, released a report exploring the Act's effect on domestic trade and employment.<sup>107</sup> The Report's main finding is, generally, that the preferred treatment under the Trade Preference Act has not had a significant negative effect on American markets and employment.<sup>108</sup>

The Labor Department report finds that while several American industries suffered employment downturns, those downturns could not be clearly attributed to the Trade Preference Act.<sup>109</sup> But the Report did suggest exceptions.<sup>110</sup> Although many areas of employment remained fundamentally strong, the manufacturing sector lost some 533,000 jobs between 1990 and 1993.<sup>111</sup> While there is by no means a consensus, some economists believe that the increase in Andean imports may be a partial cause of those losses.<sup>112</sup> Additionally, the Department of Labor Report, similar to the GAO report, notes that duty-free trade under the Trade Preference Act has affected the asparagus industry.<sup>113</sup> Moreover, there was a decrease, although a small one, in the number of food industry jobs between 1990 and 1999.<sup>114</sup>

Just as the U.S. International Trade Commission found it difficult to isolate the effects specific to the Trade Preference Act on changes to import content, the Department of Labor struggled to isolate the effects specific to the Trade Preference Act on changing trends in American markets and employment.<sup>115</sup>

The cut flower industry is one specific area in which the Department of Labor found a detrimental effect by the Trade Preference Act.<sup>116</sup> Although in the year immediately before expiration, there was a decrease in cut flowers from the Andean area, each year between then and 1990 saw a consistent increase in imports of those cut flowers.<sup>117</sup> Even with the recent import decrease, rose imports under the Trade Preference Act still gained an increased share in the U.S. markets.<sup>118</sup> The Labor Department Report further noted, "the preferences granted under the ATPA program

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105. See General Accounting Office Report (2001).

106. *Id.* at 2.

107. See The Andean Trade Preference Act, Pub. L. No. 102-182, § 201, 105 Stat. 1233, 1236-44 (codified as 19 U.S.C. §§ 3201-3206 (1991)); see also GENERAL ACCOUNTING OFFICE REPORT (2001), *supra* note 94.

108. See SEVENTH LABOR REPORT, *supra* note 94.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. SEVENTH LABOR REPORT, *supra* note 94.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. SEVENTH LABOR REPORT, *supra* note 94.

for roses continue to be a factor in the production declines in the domestic rose industry.”<sup>119</sup> The Report concludes its discussion of cut flowers by stating, “[t]he large volume of U.S. imports from the ATPA nations and the continual decrease in domestic production of carnations and cut roses, and to a lesser extent to chrysanthemums, over the last several years does suggest that ATPA imports may be negatively affecting U.S. production of these flowers.”<sup>120</sup>

And just as there was minimal evidence to support the conclusion that the Trade Preference Act has had some positive effect on Andean trade, there is similarly some evidence that supports the conclusion that those trade benefits have negatively affected the U.S. markets and employment.<sup>121</sup> But neither the wholly unconvincing positive benefits nor the wholly unremarkable negative side effects deterred Congress and the president from renewing and extending the Trade Preference Act at its expiration.<sup>122</sup> At the time for its renewal, Trade Preference Act proponents argued that its goal was as much a symbolic statement of support for Andean development as it was for the broad anti-narcotic efforts on the United States.<sup>123</sup> At the turn of the decade, those same supporters not only supported renewal, extension and expansion of the Trade Preference Act, notwithstanding lack of direct evidence regarding its positive effectiveness, but also favored including Venezuela as a beneficiary country.<sup>124</sup>

#### IV. THE 2002 ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT

Although there was a short period—less than one year—after the expiration of the decade-long tenure of the Andean Trade Preference Act when the Act had no effect, the proponents of the Act eventually won out.<sup>125</sup> In late 2002, the 107th Congress passed and the President signed the Trade Promotion Act of 2002.<sup>126</sup> The Act passed with a solid majority in the Senate, but by only three votes in the House of Representatives.<sup>127</sup> Among the provisions in this Act was the renewal and expansion

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119. *Id.*

120. *Id.*

121. *Id.*

122. *See* Andean Trade Promotion and Drug Eradication Act of 2002, Pub. L. No. 107-210, 116 Stat. 933 (2002).

123. *See* HORNBECK, CRS REPORT, *supra* note 3, at 8-10.

124. *Id.* at 13.

125. *See* Andean Trade Promotion and Drug Eradication Act of 2002, Pub. L. No. 107-210, 116 Stat. 933 (2002).

126. *Id.*

127. Senate Roll Call Vote, H.R. 3009, 107th Cong (2002), *available at* [http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=107&session=2&vote=00207](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=2&vote=00207); House of Representatives Roll Call Vote, H.R. 3009, 107th Cong (2002), *available at* <http://clerk.house.gov/evs/2002/roll370.xml>. Perhaps this is some indication by the House of Representatives that it was not entirely confident in the new provisions.

of the Trade Preference Act.<sup>128</sup> Revised and repackaged as the Andean Trade Promotion and Drug Eradication Act, this update of the Trade Preference Act sought to capitalize on the perceived “successes” of its predecessor and correct the observed faults by adding increased benefits to countries and to the goods and articles that they seek to export to the United States.<sup>129</sup>

Before proceeding into the details of the revised trade benefits, it is interesting to look at the Congressional “findings” published at the beginning of the Andean Trade Preference Act section of the Trade Promotion Act of 2002.<sup>130</sup> Despite the U.S. International Trade Commission’s reports, as well as Congress’s own Research Service findings, the Trade Promotion Act rhetorically proclaims that the “Andean Trade Preference Act has been a key element in the United States counternarcotics strategy in the Andean region, promoting export diversification and broad-based economic development that provides sustainable economic alternatives to drug-crop production, strengthening the legitimate economies of Andean countries and creating viable alternatives to illicit trade in coca.”<sup>131</sup> Results from the data analysis do not readily support this sweeping conclusion. Rather, such an inflated statement of the Trade Preference Act’s success is likely only symbolic, a reiteration of the United States’ goal to combat illegal narcotics production and trafficking from the Andean region.

Assuming they can be taken at face value, the congressional findings demonstrate some other positive effects the Trade Preference Act has had that would warrant the Act’s expansion.<sup>132</sup> For example, the findings note that further enhancement of legitimate trade between the United States and the Andean beneficiary countries provides an “alternative means for reviving and stabilizing the economies in the Andean region.”<sup>133</sup> Additionally, the findings note that renewal and expansion of the Trade Preference Act can lead to the increased confidence of “domestic private enterprise and foreign investors in the economic prospects of the region, ensuring that legitimate private enterprise can be the engine of economic development and political stability in the region.”<sup>134</sup>

#### A. COUNTRY QUALIFICATIONS AND BENEFITED PRODUCTS

Regardless of the precise reasons for renewal and expansion, Congress passed, and the President signed, the Andean Trade Promotion and Drug Eradication Act, which provided further trade enhancements to the coun-

128. See Andean Trade Promotion and Drug Eradication Act of 2002, Pub. L. No. 107-210, 116 Stat. 933 (2002).

129. *Id.*

130. See *id.* at § 3102.

131. *Id.* at § 3102(2).

132. See *id.* at § 3102.

133. Andean Trade Promotion and Drug Eradication Act of 2002, Pub. L. No. 107-210, 116 Stat. 933, § 3102(4) (2002).

134. *Id.* at § 3102(6).

tries in the Andean Region.<sup>135</sup> First, the Andean Trade Promotion and Drug Eradication Act renewed all of the provisions existing in the Andean Trade Preference Act.<sup>136</sup> All of the same eligibility qualifications and requirements for those benefits apply.<sup>137</sup> But the new Trade Preference Act expanded the benefits to over 5,500 items.<sup>138</sup> This included an expansion of nearly seven hundred articles with the Trade Act additions.<sup>139</sup>

Among the articles still ineligible for duty-free or reduced tariff status are: certain textile and apparel articles; rum and tafia; certain sugars, syrups, and sugar-containing products; and tuna prepared or preserved in airtight containers.<sup>140</sup> Other items, previously ineligible under the 1991 Trade Preference Act, now have the option to gain eligibility under the Trade Promotion Act.<sup>141</sup> If accompanied by a proclamation by the President that duty-free treatment under the Act is not import-sensitive, these items may also qualify for duty-free status.<sup>142</sup> Examples of these articles are footwear; petroleum products and products derived from petroleum; watches and watch parts; and handbags, luggage, flat goods, work gloves, and leather apparel.<sup>143</sup>

The new and expanded benefits of the Act are not, however, automatic. They must be qualified for separately from the parts of the program initiated under the original Trade Preference Act. Under the Trade Promotion Act, before the new beneficiary status may be granted and the new benefits begin, the President must investigate to discover whether each of the countries meets the eligibility standards established in the Act before.<sup>144</sup> Unlike the Trade Preference Act, the Trade Promotion Act provides for interagency review of a country's qualifications before admission as a beneficiary country.<sup>145</sup> Additionally, the new procedures allow for the public to make comments, and for those comments to be a part of the eligibility qualification process.<sup>146</sup>

In September of 2002, Colombia, Bolivia, and Peru were granted the new trade benefits under the Trade Promotion Act.<sup>147</sup> By the end of October 2002, by presidential proclamation, all four Andean countries had

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135. Andean Trade Promotion and Drug Eradication Act of 2002, Pub. L. No. 107-210, 116 Stat. 933 (2002).

136. Press Release, The Office of the United States Trade Representative, New Andean Trade Benefits Fact Sheet (Sept. 25, 2002), [http://www.ustr.gov/Document\\_Library/Fact\\_Sheets/2002/New\\_Andean\\_Trade\\_Benefits.html](http://www.ustr.gov/Document_Library/Fact_Sheets/2002/New_Andean_Trade_Benefits.html) [hereinafter New Andean Trade Benefits Fact Sheet].

137. *Id.*

138. *Id.*

139. *Id.*

140. Andean Trade Promotion and Drug Eradication Act of 2002, Pub. L. No. 107-210, 116 Stat. 933, § 3103(b)(2)(D) (2002).

141. *Id.* at § 3103(b).

142. *Id.*

143. *Id.* at § 3103(b)(1).

144. New Andean Trade Benefits Fact Sheet, *supra* note 135.

145. *Id.*

146. *Id.*

147. *Id.*

been made beneficiaries under the new Act.<sup>148</sup> Venezuela was not added as a potential beneficiary country under the Trade Promotion Act.<sup>149</sup>

## B. FOREIGN EFFECTIVENESS

Much like the first Trade Preference Act, the Trade Promotion Act required regular reports regarding the effectiveness of the Act in achieving its stated objectives.<sup>150</sup> The first report issued by the Office of the U.S. Trade Representative after the passage of the revised Trade Promotion Act was in 2003.<sup>151</sup> The Trade Representative's report notes that between the implementation of the first act and 2002, there was an eighty-three percent increase in two-way trade between the United States and Andean beneficiary countries.<sup>152</sup> But there was less than a one percent increase in two-way trade between 2002 and 2003 for the same region.<sup>153</sup> Primarily because of weak demand in the United States for many of the largest imported goods coming from the Andean Region, imports from those Andean countries had been declining since 2000.<sup>154</sup> Those numbers might be skewed, however, because for much of 2002, the region was not under the duty-free enhancements of the Trade Preference Act.<sup>155</sup> For an eight-month period during 2002, the Trade Preference Act had expired, and Congress had not yet acted to pass its counterpart.<sup>156</sup>

The second report issued by the Office of the U.S. Trade Representative provides a better look at the data.<sup>157</sup> Issued in 2005, the report covers 2003 and 2004.<sup>158</sup> The report indicates that two-way trade between the United States and Andean beneficiary countries has continued to increase since the first report.<sup>159</sup> Two-way trade increased by thirteen percent in 2003 and by an additional twenty-seven percent in 2004.<sup>160</sup> In all, imports from the region have more than tripled since the trade program's first enactment in 1991.<sup>161</sup> During the recent years of the Trade Preference agreement, the leading imports from the Andean regions have been

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148. Proclamation No. 7616, 67 Fed. Reg. 67,283 (Nov. 5, 2002).

149. See Andean Trade Promotion and Drug Eradication Act of 2002, Pub. L. No. 107-210, 116 Stat. 933 (2002).

150. See *Id.* at §§ 3202(f), 3103(f).

151. OFFICE OF THE U.S. TRADE REPRESENTATIVE, FIRST REPORT TO THE CONGRESS ON THE OPERATION OF THE ANDEAN TRADE PREFERENCE ACT AS AMENDED (April 30, 2003), [http://www.ustr.gov/Trade\\_Development/Preference\\_Programs/ATPA/Reports/Section\\_Index.html](http://www.ustr.gov/Trade_Development/Preference_Programs/ATPA/Reports/Section_Index.html) [hereinafter FIRST TRADE REPORT].

152. *Id.* at 8.

153. *Id.*

154. *Id.* at 8-9.

155. *Id.* at 9.

156. FIRST TRADE REPORT, *supra* note 150.

157. OFFICE OF THE U.S. TRADE REPRESENTATIVE, SECOND REPORT ON THE OPERATION OF THE ANDEAN TRADE PREFERENCE AGREEMENT AS AMENDED (2005), available at [http://www.sice.oas.org/TPD/USA\\_ATPA/Studies/2005Report\\_e.pdf](http://www.sice.oas.org/TPD/USA_ATPA/Studies/2005Report_e.pdf) [hereinafter SECOND TRADE REPORT].

158. *Id.* at 6.

159. *Id.*

160. *Id.*

161. *Id.*

mineral fuels, along with gemstones, apparel, cut flowers, fruits and nuts, coffee, copper articles, fish, tin, and vegetables.<sup>162</sup>

At this point, nearly ninety percent of all U.S. imports coming from the Andean beneficiary countries entered by way of the benefits provided under the Trade Preference Act, Trade Promotion Act, and the GSP.<sup>163</sup> The report continues, noting that between 2002, when the Andean Trade Promotion and Drug Eradication Act was enacted, and 2003, the percentage of imports from the Andean region that came into the United States duty-free rose from approximately fifty-three percent in 2002 to eighty-five percent in 2003.<sup>164</sup>

More importantly, however, the 2007 report issued by the U.S. International Trade Commission found that any effects of the Trade Promotion Act on illicit narcotics were minimal and indirect.<sup>165</sup> In fact, in Bolivia, Colombia, and Peru during the period the Act was in effect, the net land area in which coca cultivation actually took place had increased.<sup>166</sup> Even so, growth in cut flowers and asparagus production in recent years had reportedly provided job opportunities to Andean workers, giving them an alternative to engaging in coca related job activities.<sup>167</sup>

### C. DOMESTIC EFFECTS

Just as the original Trade Preference Act required, the Trade Promotion Act required submission of reports from the U.S. Department of Labor addressing the program's impact on the domestic markets and employment.<sup>168</sup> In early 2006, the Department of Labor submitted its report for 2005, coinciding with what was supposed to be the end of the Trade Promotion Act's term.<sup>169</sup>

This report, similar to the one four years earlier, noted the difficulty of accurately judging the Act's effects.<sup>170</sup> Specifically, the Report observed, "a definitive evaluation of the domestic employment impact of the ATPA/ATPDEA cannot be made because the effects of the duty-free provisions on U.S. imports cannot be isolated from the effects of other trade preference programs such as the [Generalized System of Preferences]."<sup>171</sup> Even so, the Department of Labor report states that it is unlikely that either Act has significantly affected overall employment in the

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162. SECOND TRADE REPORT, *supra* note 156, at 7.

163. *Id.*

164. *Id.*

165. U.S. Int'l Trade Comm'n, ANDEAN TRADE PREFERENCE ACT: IMPACT ON U.S. INDUSTRIES AND CONSUMERS AND ON DRUG CROP ERADICATION AND CROP SUBSTITUTION, 2007, USITC Publication 4037 (Sept. 2008), <http://hotdocs.usitc.gov/docs/pubs/332/pub4037.pdf> [hereinafter INTERNATIONAL TRADE COMMISSION REPORT (2007)].

166. *Id.* at x-xi.

167. *Id.* at xi.

168. Seventh Labor Report, *supra* note 94.

169. *Id.*

170. *Id.* at 18

171. *Id.*



United States.<sup>172</sup> The overall level of American imports from Andean countries, it reports, has remained relatively small—only about 1.1% of total American imports.<sup>173</sup> Moreover, the reports notes that even with “the inclusion of additional products. . . that were previously excluded from the ATPA[,]. . . the amounts enter[ing] duty-free have remained quite modest.”<sup>174</sup>

Interestingly, the Report finds that while the Andean Trade Program offers an incentive for beneficiary countries to diversify their product exports, subsequent trade agreements between the United States and other countries could negatively affect the Andean Trade Arrangements.<sup>175</sup> Specifically, trade arrangements with Canada, Jordan, Singapore, Chile, and Australia have “reduced the margin of tariff preference available to the ATPA/ATPDEA beneficiaries.”<sup>176</sup> Generally, however, the Report indicates that the Andean Trade Promotion and Drug Eradication Act has not had a significant negative impact on U.S. markets and employment.<sup>177</sup>

Also notable, however, is the report the U.S. International Trade Commission issued in 2008.<sup>178</sup> This report, covering data gathered from 2007, provides an informative summary of the effects of the new Trade Promotion Act.<sup>179</sup> The report identifies three primary ways in which the Act can affect the United States.<sup>180</sup> First, it could affect “U.S. consumers by providing lower prices and increased product variety.”<sup>181</sup> Second, it could affect the United States Treasury by decreasing revenue derived from tariffs.<sup>182</sup> Finally, it could affect American producers by displacing American producers of goods with those offered through the enhanced-treatment program.<sup>183</sup>

As with the Department of Labor Report, the Trade Commission’s findings indicate a minimal economic impact on the American Economy.<sup>184</sup> And like the Department of Labor and the Asparagus Report, the Trade Commission’s report notes that the two domestic industries most affected by the Trade Preference Act and Trade Promotion Acts were cut-flowers and chilled asparagus.<sup>185</sup>

172. *Id.*

173. *Id.*

174. SEVENTH LABOR REPORT, *supra* note 94.

175. *Id.*

176. *Id.*

177. *See* SEVENTH LABOR REPORT, *supra* note 94.

178. INTERNATIONAL TRADE COMMISSION REPORT (2007), *supra* note 164.

179. *See id.* at ix.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. INTERNATIONAL TRADE COMMISSION REPORT (2007), *supra* note 164.

185. *Id.* at xi.

## V. RECENT DEVELOPMENTS

Three further developments regarding the Trade Preference Act and the Trade Promotion Act are noteworthy. First, near the expiration of the Trade Promotion Act, Congress and the President passed a series of short-term extension, continuing the Act's effectiveness throughout the subsequent few years. The second noteworthy development was the continued attempt by the United States and most of the beneficiary nations of the Andean region to create and initiate a formal and permanent Free Trade Agreement. During the later period of continuing extension, beginning approximately in May of 2004, the United States began negotiations with Colombia, Ecuador, and Peru regarding the possible formation of Free Trade Agreements, with Bolivia participating only as an observer. The final major development, occurring in late 2008, was the demise of Bolivia as a beneficiary country under the Act.

## A. PRELIMINARY EXTENSIONS

As with the original Trade Preference Act, the Trade Promotion Act was not an indefinite creation.<sup>186</sup> Rather, Congress gave this subsequent version of the Trade Preference Act a much shorter life span—only four years.<sup>187</sup> The Act specified that preferential treatment status for all beneficiary countries was not to extend beyond December 31, 2006.<sup>188</sup> Even so, in December of 2006, Congress and President Bush passed the first of several extensions to the lapsing Trade Promotion Act.<sup>189</sup> This first extension was to last approximately six months, extending the operation of the Act through June 30, 2007.<sup>190</sup> In early July of 2007, Congress and President Bush passed a second extension.<sup>191</sup> This second extension further lengthened operation of the Act by an additional eight months, setting the Act to expire again in early 2008, at which time the Act was subsequently extended for another ten months.<sup>192</sup>

But even then, the extensions continued. On October 16, 2008, President Bush signed into law H.R. 7222, the Andean Trade Preference Act Extension.<sup>193</sup> This Act, like the predecessor extension, was meant to carry operation of the Preference Agreements into the future.<sup>194</sup> With

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186. Andean Trade Promotion and Drug Eradication Act of 2002, Pub. L. No. 107-210, 116 Stat. 933 (2002).

187. *Id.* at § 3104(a).

188. *Id.*

189. See Press Release, The Office of the U.S. Trade Representative, USTR Expresses Appreciation for Extension of ATPA Preferences (July 2, 2007), [http://www.sice.oas.org/TPD/USA\\_ATPA/USTR\\_extension0702\\_e.pdf](http://www.sice.oas.org/TPD/USA_ATPA/USTR_extension0702_e.pdf).

190. *Id.*

191. *US Senate OKs 8-month Andean Trade Pact Extension*, REUTERS, June 28, 2007, <http://www.reuters.com/article/latestCrisis/idUSN27294490>.

192. *Congress Extends Andean Trade Benefits 10 Months*, REUTERS, Feb. 28, 2008, [www.reuters.com/article/politicsNews/idUSN2860042120080228](http://www.reuters.com/article/politicsNews/idUSN2860042120080228).

193. See Press Release, The White House, President Bush Signs H.R. 7222, the Andean Trade Preference Act Extension (Oct. 16, 2008), [http://www.sice.oas.org/TPD/USA\\_ATPA/ATPA\\_extension1209\\_e.pdf](http://www.sice.oas.org/TPD/USA_ATPA/ATPA_extension1209_e.pdf).

194. *Id.*

that extension, President Bush again extended the Act only for a short period.<sup>195</sup> H.R. 7222 called for the expiration of preferential status of all beneficiary countries by December 31, 2009.<sup>196</sup>

#### B. FORMAL TRADE AGREEMENT TALKS

As early as 2003, President Bush directed U.S. Trade Representative Robert B. Zoellick to begin negotiations with the Andean countries to form a regional free trade agreement.<sup>197</sup> Intending to begin these negotiations in mid 2004, the President meant only to include Colombia and Peru in the first set of trade agreements.<sup>198</sup> Zoellick stated that “[a]n FTA with Colombia, Peru, Ecuador, and Bolivia. . . will help foster economic growth and create higher paying jobs in the United States by reducing and eliminating barriers to trade and investment between the Andean countries and the United States.”<sup>199</sup> Almost as a side note, Zoellick mentioned the relevance of the proposed trade agreement in continuing to advance goals of combating Andean narcotics production.<sup>200</sup>

With talks proceeding through the following years, Representative Zoellick concluded trade talks with Peru in 2005.<sup>201</sup> In December 2005, Zoellick announced the completion of a comprehensive trade agreement, an agreement that is “a key building block in our strategy to advance free trade within our hemisphere, which we hope to later bring in [sic] the other Andean countries including Colombia and Ecuador.”<sup>202</sup> But there was no mention of Bolivia.<sup>203</sup>

Later, in February 2006, the United States and Colombia completed their trade agreement talks.<sup>204</sup> Creating a similarly comprehensive trade agreement, Representative Zoellick mentioned, although he did not emphasize, that the agreement with Colombia “is an essential component of our regional strategy to. . . combat narco-trafficking.”<sup>205</sup> Again, there was no mention of Bolivia.<sup>206</sup> The President, the U.S. Congress, and the Peruvian government formalized the trade agreements in the United

195. Andean Trade Preference Act Act Extension, Pub. L. No. 110-436, 122 Stat 4976 (2008).

196. *Id.*

197. Press Release, Office of the U.S. Trade Representative, USTR Notifies Congress of Intent to Initiate Free Trade Talks with Andean Countries (Nov. 18, 2003), [http://www.sice.oas.org/TPD/AND\\_USA/Negotiations/Intent\\_e.pdf](http://www.sice.oas.org/TPD/AND_USA/Negotiations/Intent_e.pdf).

198. *Id.*

199. *Id.*

200. *Id.*

201. Press Release, Office of the U.S. Trade Representative, United States and Peru Conclude Free Trade Agreement (Dec. 7, 2005), [http://www.sice.oas.org/TPD/AND\\_USA/Negotiations/US\\_PERUconclude\\_e.pdf](http://www.sice.oas.org/TPD/AND_USA/Negotiations/US_PERUconclude_e.pdf).

202. *Id.*

203. *See id.*

204. Press Release, Office of the U.S. Trade Representative, United States and Colombia Conclude Free Trade Agreement (Feb. 27, 2006), <http://lists.essential.org/pipermail/ip-health/2006-February/009168.html> [Free Trade Agreement].

205. *Id.*

206. *See id.*

States-Peru Trade Promotion Agreement.<sup>207</sup>

While the Trade Preference Act and the Trade Promotion Act have primarily focused on providing trade benefits to the Andean countries, these new formal trade agreements create a mechanism for two-way trade, allowing U.S. industries to access the foreign Andean markets.<sup>208</sup>

### C. THE DEMISE OF BOLIVIA

The final major development in the Andean Trade Preference saga was the demise of Bolivia. This demise culminated on November 25, 2008.<sup>209</sup> On that day, President Bush signed a presidential proclamation that suspended Bolivia's designation as a beneficiary country.<sup>210</sup> According to a statement released by then White House Press Secretary Dana Perino, the suspension, which was to take effect in mid-December, was "the result of Bolivia's failure to cooperate with the United States on counternarcotics efforts."<sup>211</sup> Such cooperation was one of the requirements for eligibility under both the Trade Preference Act and the Trade Promotion Act.<sup>212</sup> Press Secretary Perino's released statement closed by saying that "[i]f Bolivia were to improve its performance under the ATPA and ATPDEA programs' criteria, the President would have the discretion to issue a proclamation to redesignate Bolivia as a beneficiary country."<sup>213</sup>

Given the turmoil within Bolivia and the seemingly shaky relationship between the United States and Bolivia in the preceding months, it should have come as no surprise that the exchange resulted in the suspension of Bolivia's trade beneficiary status. Hints of the problems were detectable several months before.<sup>214</sup> For example, earlier that year, amid internal strife and political turmoil, President Evo Morales of Bolivia strongly advocated that U.S. Ambassador Philip S. Goldberg should be expelled from the country.<sup>215</sup>

In September of 2008, declaring Ambassador Goldberg a "*persona non grata*," President Morales claimed that Ambassador Goldberg had been in league with his political enemies.<sup>216</sup> Specifically, President Morales accused Ambassador Goldberg of conspiring against the unity of the Bolivian people and threatening its democracy.<sup>217</sup> President Morales further accused Ambassador Goldberg of being the mastermind behind the continuing violent conflicts between the eastern and western lowland regions

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207. Proclamation No. 8341, 74 Fed. Reg. 13 (Jan. 22, 2009).

208. See Free Trade Agreement, *supra* note 203.

209. Press Release, The White House, Statement by Press Secretary Dana Perino (Nov. 26, 2008), [http://www.sice.oas.org/TPD/USA\\_ATPA/Suspension\\_Bolivia\\_e.pdf](http://www.sice.oas.org/TPD/USA_ATPA/Suspension_Bolivia_e.pdf).

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. Jean Friedman-Rudavsky, *Bolivia to Expel US Ambassador*, TIME, Sept. 11, 2008, <http://www.time.com/time/world/article/0,8599,1840469,00.html>.

215. *Id.*

216. *Id.*

217. *Id.*

of Bolivia.<sup>218</sup> The accusations even went so far as to declare that Ambassador Goldberg had “arranged for a media ‘dirty war’ against Morales and is now encouraging the violent takeover of government institutions to force out the president.”<sup>219</sup> The United States responded to Bolivia’s expulsion by similarly expelling Bolivia’s ambassador.<sup>220</sup>

The situation improved very little in the subsequent months. In November of 2008, Bolivian President Evo Morales ordered that the U.S. Drug Enforcement Agency be removed from Bolivia.<sup>221</sup> With his paranoia apparently still raging, President Morales accused the U.S. Drug Enforcement agents of political espionage.<sup>222</sup> He claimed the agents were financing criminal organizations to act against President Morales, as well as “maintaining ties with anti-government groups that staged violent protests.”<sup>223</sup>

These activities, combined with a marked increase in cocaine production within Bolivia, the government’s failure to close illegal coca farms, and the stated government policies that increase sanctioned coca cultivation, were enough to cause President Bush to begin the procedure for removing Bolivia’s trade preference status.<sup>224</sup>

According to the text of both the Andean Trade Preference Act and the Andean Trade Promotion and Drug Eradication Act, the President has the authority to withdraw or suspend the beneficiary designation of any beneficiary country.<sup>225</sup> In order to do this, the acts require that the president publish, in the Federal Register, a notice of the proposed action to withdraw or suspend the status at least thirty-days prior to taking suspension actions.<sup>226</sup> During that thirty-day waiting period, the U.S. Trade Representative is tasked with accepting public comments regarding the action and holding a public hearing on the action.<sup>227</sup>

Although the facts of the situation seemed to demonstrate that Bolivia’s non-cooperation was not likely to change in the future, the decision to suspend its trade preferential status was not universally applauded by U.S. lawmakers.<sup>228</sup> For example, Congressman Eliot Engel, Chairman of the House Foreign Affairs Subcommittee on the Western Hemisphere,

218. *Id.*

219. Jean Friedman-Rudavsky, *supra* note 231.

220. *Morales: Government Will Take Over for the DEA in Bolivia*, CNN, Nov. 1, 2008, <http://www.cnn.com/2008/WORLD/americas/11/01/bolivia.dea/index.html>.

221. Carlos Quiroga, *Bolivia’s Morales Bars “Spying” U.S. DEA Agents*, REUTERS, Nov. 1, 2008, <http://www.reuters.com/do/emailArticle?articleId=USTRE4A011W20081102>.

222. *Id.*

223. *Id.*

224. Press Release, U.S. Trade Representative, U.S. Trade Representative Schwab Announces Proposed Suspension of Bolivia’s Tariff Benefits (Sept. 26, 2008) (on file with author).

225. Andean Trade Preference Act, Pub. L. No. 102-182, 105 Stat. 1233 (1991).

226. *Id.*

227. *Id.*

228. See Press Release, Congressman Eliot Engel, Engel Objects to Suspension of Bolivia from Andean Trade Preferences (Oct. 23, 2008), [http://foreignaffairs.house.gov/press\\_display.asp?sub\\_id=137](http://foreignaffairs.house.gov/press_display.asp?sub_id=137).

released a press statement expressing his displeasure with the decision.<sup>229</sup> The Chairman argued that such a suspension “would unfortunately do more harm than good. . . [it] would empower champions of anti-Americanism, and would make the United States less and less relevant in Bolivia.”<sup>230</sup> In the end, however, the Administration prevailed and Bolivia’s status was suspended.<sup>231</sup>

Bolivia’s President, Evo Morales, received Bolivia’s suspension poorly.<sup>232</sup> Days after President Bush issued the proclamation removing Bolivia’s status, President Morales responded by accusing President Bush and the United States of “political vengeance.”<sup>233</sup> Specifically, President Morales cited data from the United Nations, insisting that the United States’ claims of non-cooperation were incorrect.<sup>234</sup> President Morales asserted that Bolivia had done a better job of complying with the requirements of the Andean Trade Preference Agreements than both Peru and Colombia.<sup>235</sup> President Morales believed that Bolivia’s suspension resulted less from non-compliance with requirements than from Bolivia’s disagreement with “capitalism, provoked wars [. . .] or the free market.”<sup>236</sup>

United Nations’ data tends to support President Morales’ statements, at least in part.<sup>237</sup> According to the reports from the United Nations, “coca crops expanded to cover nearly 250,000 acres (100,000 hectares) in Colombia in 2007 and over 124,000 acres (50,000 hectares) in Peru, while in Bolivia coca-growing area was roughly stable at 69,200 acres (28,000 hectares).”<sup>238</sup> And yet, both Peru and Colombia continue to receive benefits under the Andean Trade Preference Acts.

President Morales was so outraged by the perceived political retaliation that he, and Bolivia, prepared a litigious response.<sup>239</sup> President Morales said, “Bolivia had prepared an international lawsuit to enforce the rules.”<sup>240</sup> Instead of proceeding with the lawsuit, however, President Morales suspended it, hopeful that then President-Elect Barack Obama would be able to “repair this injustice, this vengeance.”<sup>241</sup> President

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229. *Id.*

230. *Id.*

231. Press Release, The White House, Statement by Press Secretary Dana Perino (Nov. 26, 2008) (on file with author).

232. Carlos Quiroga, *Bolivia calls U.S. Trade Move “Political Vengeance”*, REUTERS, Nov. 27, 2008, <http://www.reuters.com/articlePrint?articleId=USTRE4AQ7HA20081127> [hereinafter Quiroga, *Political Vengeance*].

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

237. Quiroga, *Political Vengeance*, *supra* note 231.

238. *Bolivia Blasts US on Trade Benefits*, PRESSTV (Nov. 28, 2008), <http://www.presstv.com/detail.aspx?id=76790&sectionid=351020706>.

239. Mark Weisbrot, *The United States and Bolivia: A New Beginning?*, THE HUFFINGTON POST (Feb. 25, 2009), [http://www.huffingtonpost.com/mark-weisbrot/the-united-states-and-bol\\_b\\_170006.html](http://www.huffingtonpost.com/mark-weisbrot/the-united-states-and-bol_b_170006.html).

240. *Id.*

241. *Id.*

Morales thought this to be an act of good will, designed to demonstrate a willingness to improve relations with the incoming President.<sup>242</sup> This is especially so because indications suggest that Bolivia would have a strong case at the World Trade Organization.<sup>243</sup> Under the rules of the World Trade Organization, “countries are allowed to establish rules for preferential access to their markets, but the rules must be applied equally to all countries receiving the preferences.”<sup>244</sup>

While the situation would appear to suggest that repairing the relationship between Bolivia and the United States might be a protracted affair, the changing of administrations in the United States seems to bring renewed eagerness on the part of the wayward former Andean partner towards renewing the trade agreements.<sup>245</sup> With President Obama’s administration, Bolivia might take the opportunity to try for a fresh start.<sup>246</sup> It has been reported that President Morales has expressed some desire to redefine trade relationships with the Obama administration.<sup>247</sup> Bolivian Foreign Minister David Choquehuanca has also stated that the Bolivian government would be interested in renewing ties with the United States and accepting an American ambassador back into Bolivia.<sup>248</sup>

Although President Morales has presumably taken steps to work towards improving the relationship between Bolivia and the United States, most notably by refraining from filing the international lawsuit at the World Trade Organization, there appears to be another obstacle in the path of renewed cooperation.<sup>249</sup> At the same time that President Bush was in the process of suspending Bolivia’s beneficiary status, the Bolivian government was in the process of voting on a new constitution.<sup>250</sup> This new constitution declared that health care is a human right and thus is not susceptible to privatization.<sup>251</sup> In doing so, Bolivia requested the World Trade Organization’s permission to rescind its commitment to open its medical facilities and health care industry to foreign corporations.<sup>252</sup> The United States, still operating under President Bush’s administration, objected to this request.<sup>253</sup>

Since then, President Obama has taken office and his administration has not yet made a decision as to whether it will continue with the com-

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242. *Id.*

243. *Id.*

244. *Id.*

245. See Chris Kraul, *DEA Presence Ends in Bolivia*, L.A. TIMES, Jan. 30, 2009, <http://articles.latimes.com/2009/jan/30/world/fg-bolivia-dea30http://www.latimes.com/news>.

246. *Id.*

247. *Id.*

248. *Id.*

249. See Weisbrot, *supra* note 238.

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.*

plaint to the World Trade Organization.<sup>254</sup> If President Obama wishes to improve relations with Bolivia, it will likely rescind the complaint.<sup>255</sup> But even though President Obama has not taken any further affirmative steps towards rebuilding relations with President Morales and Bolivia, the U.S. House of Representatives has become active in the Bolivia trade arena.<sup>256</sup> As recently as March 3, 2009, the House of Representatives Committee on Foreign Affairs held a hearing specifically designed to discuss the future of the United States-Bolivia relations.<sup>257</sup>

At the Congressional Hearing, the members talked generally about how Bolivia has made developmental progress in some areas, but that President Morales' actions and rhetoric are inconsistent with a renewed spirit of cooperation between Bolivia and the United States.<sup>258</sup> Specifically, Ambassador DeShazo, now director of the Center for Strategic and International Studies Americas Program, commented at the hearing that President Morales' re-election campaign speeches were filled with anti-American rhetoric.<sup>259</sup> President Morales declared that, if re-elected, he would be "a nightmare for America."<sup>260</sup> Ambassador DeShazo spoke further, indicating that while it is possible for a repaired relationship between the nations in the future, it is equally likely that the situation could worsen.<sup>261</sup> Ambassador DeShazo continued, suggesting that it would behoove the new Obama administration to take a first step towards rebuilding relations by some form of unilateral initiative.<sup>262</sup>

Kathryn Ledebur, director of the Andean Information Network, suggests that instead of focusing on unilateral actions, rebuilding the United States-Bolivia relationship would be served best by reinstating mutual ambassadors in the countries.<sup>263</sup> Without this open line of diplomatic channels, the United States and Bolivia would continue to talk to each other through the media and other indirect channels, with largely unproductive and highly inflammatory statements.<sup>264</sup>

Dr. Daremblum, Director for the Center of Latin American Studies, preceded with a different rationale for improving Bolivia-American relations.<sup>265</sup> Dr. Daremblum focused not on the United States' anti-narcotics efforts, but instead on the other strategic resources Bolivia has, primarily natural gas.<sup>266</sup> He referred to the recently increased ties between Bolivia

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254. Weisbrot, *supra* note 238.

255. *Id.*

256. See *U.S.-Bolivia Relations: Looking Ahead, Before Subcomm. on the W. Hemisphere, H. Comm. on Foreign Affairs*, 111th Cong. (2009), [http://foreignaffairs.house.gov/hearing\\_notice.asp?id=1050](http://foreignaffairs.house.gov/hearing_notice.asp?id=1050) (hearing viewed via webcast).

257. *Id.*

258. *Id.* at 3.

259. *Id.*

260. *Id.*

261. *U.S.-Bolivia Relations: Looking Ahead Hearing, supra* note 255.

262. *Id.*

263. *Id.* at 18.

264. *Id.* at 26.

265. *Id.*

266. *U.S.-Bolivia Relations: Looking Ahead Hearing, supra* note 255.



and Iran, and between Bolivia and Venezuela, two countries with which the United States currently does not share the best relations.<sup>267</sup> By re-opening trade enhancements and improving relations with Bolivia, the United States would be working to limit this increasing relationship.<sup>268</sup>

Congressman Engel, in a press release issued shortly after Dr. Daremblum's statements, called for President Morales' administration and President Obama to "immediately initiate a high level bilateral dialogue that can quickly result in an exchange of ambassadors, a renewed strategy for joint counternarcotics efforts, and in turn, a reinstatement of. . . benefits for Bolivia."<sup>269</sup>

## VI. CONCLUSION

The Bush Administration's repeated short-term extensions seem to demonstrate a lack of full commitment to the program. Appearing more as a stopgap measure designed to keep trade continuing while real, formal trade arrangements talks are ongoing, these minimal extensions likely create an uncertain business atmosphere in the Andean region. But most notably, Bolivia has not been among the countries with which the United States seeks to establish full, formal trade ties.

The results from numerous studies indicate that any positive effects the Trade Preference Act and the Trade Promotion Act have had on illegal narcotics trade in the Andean region remain quantitatively small. Nonetheless, the presence of the Act has remained of both symbolic and actual importance, both to the United States and to the Andean beneficiary nations. As President Obama begins anew for the United States, perhaps his administration will continue to seek expansion and extension of the Andean Trade Preference Programs and continue the steps the countries have taken together towards forming a regional Free Trade Agreement and making real progress towards curbing the illegal narcotics production and trade in the Andean region. In doing so, however, special attention should focus on Bolivia, as to do otherwise would invite President Morales to continue to build relationships with those countries far more unfriendly to the United States, and would leave the world's third-largest cocoa producer free from the subtle influences of American diplomacy.

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267. *Id.* at 41.

268. *Id.*

269. Press Release, Congressman Eliot Engel, Engel Calls for Immediate High Level Bilateral Dialogue Between US and Bolivia (Mar. 3, 2009), [http://foreignaffairs.house.gov/press\\_display.asp?sub\\_id=142](http://foreignaffairs.house.gov/press_display.asp?sub_id=142).