

**THE ANDEAN TRADE PREFERENCE ACT:  
PAST ACCOMPLISHMENTS AND PRESENT  
CIRCUMSTANCES WARRANT ITS IMMEDIATE  
RENEWAL AND EXPANSION**

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I. INTRODUCTION

Located on a continent thousands of miles away, the fate of the Andean states, as well as their potential impact on the United States, naturally escapes the minds of most. While this generalized incomprehension of the United States-Andean link normally proves to be benign, recent developments necessitate a thorough understanding of this somewhat complex international relationship. In particular, the majority of merchandise exported from Bolivia, Colombia, Ecuador, and Peru has entered the United States free of customs duties thanks to the Andean Trade Preference Act (ATPA) since 1991.<sup>1</sup> Among the chief goals of the ATPA are assisting the Andean countries in eliminating the production of illegal drugs such as cocaine, fostering alternative economic activities in the region to replace the revenue that narcotics production formerly generated, and facilitating export diversification as a means to sustainable development. At the same time, although the United States does not receive corresponding duty-free access under this non-reciprocal preferential trade program, the ATPA protects U.S. national security by maintaining stability in the Andean region, strengthens the national anti-drug campaign, and advances one of the United States' paramount trade goals of establishing the Free Trade Area of the Americas (FTAA) by 2005.

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1. See OFFICE OF THE U.S. TRADE REPRESENTATIVE, 3D REPORT TO CONGRESS ON THE OPERATION OF THE ANDEAN TRADE PREFERENCE ACT 11 (2001).

Based on the positive results yielded to date by the ATPA and the circumstances that have changed since its enactment in 1991, serious efforts are underway not only to renew, but to expand the ATPA to grant duty-free access to additional merchandise (including textiles and apparel) from the Andean region before its expiration in December 2001. Unfortunately, fierce opposition by lawmakers representing those states whose economies depend heavily on the local textile industry (Textile Caucus) has managed to frustrate all attempts to renew and expand the ATPA thus far. Even more troubling, in their zeal to pass a bill granting President Bush trade promotion authority (TPA), formerly known as "fast track" authority, which serves to facilitate the negotiation of future trade pacts, Republican leaders gave the Textile Caucus a written pledge in exchange for its votes on the issue (Textile Compromise) that would severely limit or possibly exclude textiles and apparel as goods eligible for duty-free treatment under the ATPA, and revoke the textile-related preferences granted to the Caribbean nations in 2000 pursuant to the Caribbean Basin Initiative. Meanwhile, in light of the Textile Compromise and the failure to renew and expand the ATPA, the Andean nations are becoming increasingly irritated with the U.S. Congress and the Bush administration. Along with this aggravation, signs of economic and social problems resulting from the expiration of the ATPA are already appearing.

Part II of this Article will describe the most important provisions of the current ATPA as enacted in 1991. Part III will provide a chronological overview of the recent legislative activities related to the ATPA. Part IV will set forth the principal arguments in opposition to the expansion and renewal of the ATPA, questioning the validity of each claim in turn in an effort to provide a comprehensive analysis of the ATPA debate. Part V further strengthens the argument in favor of renewing and enhancing the ATPA to the greatest extent possible, identifying a plethora of benefits that would result for both the United States and the Andean region. Finally, Part VI acknowledges that certain U.S. industries may be potentially injured by this action, but further recognizes that advocating the retraction of legislative promises such as the Textile Compromise would be too blatantly hypocritical, even for Washington. Moreover, attempting to do so would surely delay or outright destroy the possibility of expanding the ATPA preferences to the greatest extent possible. Accordingly, this Article concludes that the best course of action in light of the circumstances would be to expand the ATPA broadly enough to uphold the Textile Compro-

mise, while still fulfilling the objectives of the ATPA, current and future alike. Only in this manner will the United States also be able to achieve its trade-related goals, particularly those involving Latin America.

## II. DESCRIPTION OF THE ANDEAN TRADE PREFERENCE ACT

Unlike reciprocal trade agreements whereby all nations involved are required to make certain concessions in exchange for direct benefits that they receive, such as tariff reductions, less restraint on foreign investment, resolution of disputes according to set mechanisms, the ATPA is one of the United States' unilateral trade preference programs designed to aid developing countries. In that sense, the ATPA is similar to the Generalized System of Preferences created in 1974 to foment the growth of 190 developing nations; the Caribbean Basin Initiative established in 1984 to assist the development of 21 nations in Central America and the Caribbean; and the African Growth and Opportunity Act designed to encourage economic advancement in 34 African nations.<sup>2</sup> While the precise unilateral benefits offered by the United States differ under each of these programs, the primary objective is invariable: to give poorer countries a few advantages in commodities where they have a reasonable chance to succeed, thereby providing an opportunity to participate in trade, create jobs, and further long term growth.<sup>3</sup>

In contrast to the other programs, the ATPA focuses principally on the elimination or significant reduction of illicit drugs in Colombia, Peru, Ecuador, and Bolivia because each of these states has a history of producing, trading, or transporting narcotics. Due to the pervasiveness of illegal drugs in the region that represent a threat to U.S. national security, the primary objectives in enacting the ATPA are to reduce the supply of illicit drugs such as cocaine and heroin, which are consumed primarily in the United States, and provide viable economic alternatives to producing illegal narcotics by offering duty-free treatment to the majority of products grown or manufactured in the Andean nations.<sup>4</sup>

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2. See generally DAVID SERKO, *IMPORT PRACTICE – CUSTOMS AND INTERNATIONAL TRADE LAW* 281-340 (2d ed., 1991) (providing an overview of the various U.S. trade preference programs).

3. See EDWARD GRESSER, *ANDEAN TRADE PREFERENCE ACT REFORM: FOR PEACE AND RECOVERY IN A TROUBLED REGION*, available at [http://www.ndol.org/documents/andean\\_trade.pdf](http://www.ndol.org/documents/andean_trade.pdf) (June 21, 2001).

4. See Magda Kornis, *U.S. Trade with the Beneficiaries of the Andean Trade Preference Act*, [Int'l Trade Comm'n Publ'n 3379] INT'L ECON. REV. 1(2000).

Promulgated on December 4, 1991, the ATPA authorizes the president of the United States to permit duty-free access to the U.S. market to all merchandise deemed to be "eligible articles" from any Andean nation considered a "beneficiary country."<sup>5</sup> In order for the president to award country status to a particular state beneficiary, the ATPA provides that certain criteria be met. For instance, a country (1) cannot be communist; (2) may not take measures that have the effect of nationalizing, expropriating, or seizing property owned by U.S. citizens or companies without prompt and adequate compensation; (3) must act in good faith in recognizing and enforcing arbitral awards in favor of U.S. citizens or companies; (4) cannot grant trade preferences to developing nations that would have a significant adverse effect on U.S. commerce; (5) must provide effective protection of intellectual property rights; and (6) must take steps to grant internationally recognized worker rights.<sup>6</sup> In addition to these mandatory criteria, the president may examine certain discretionary factors in determining whether to classify a state as a beneficiary country. The U.S. leader may take into account, among other things, a state's expressed desire to be a beneficiary country, the economic conditions of a nation or region, the extent of a nation's compliance with the rules of the World Trade Organization, the degree to which a nation's trade policies are contributing to the revitalization of the region, and whether the state has met the criteria for anti-narcotics cooperation certification.<sup>7</sup> By means of presidential proclamation, Colombia and Bolivia attained beneficiary status in 1992, while Ecuador and Peru received their designations in 1993.<sup>8</sup>

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5. 19 U.S.C. § 3201 (1999).

6. *See id.* § 3202(c).

7. *See id.* § 3202(d).

8. *See* Proclamation No. 6455, 57 Fed. Reg. 30,069 (July 2, 1992) (designating Colombia as a beneficiary country); *see also* Proclamation No. 6456, 57 Fed. Reg. 30,097 (July 2, 1992) (designating Bolivia as a beneficiary country); Proclamation No. 6585, 58 Fed. Reg. 43,239 (Aug. 11, 1993) (designating Peru as a beneficiary country). Although located in the Andean region, Venezuela has never achieved the status of a beneficiary country. Recent efforts have been made by the other Andean nations to include their neighbor in the ATPA. The Bush administration, however, is strongly opposed to doing so for several reasons, including Venezuelan President Hugo Chavez's relationship with Fidel Castro of Cuba, Chavez's overt criticism of U.S. war efforts in Afghanistan, and the alleged relationship between the Venezuelan army and rebel groups in Colombia. *See* Juan O. Tamayo, *Chavez's Links to Cuba Heighten Concerns*, MIAMI HERALD, June 10, 2001, at 1A; *see also* Anthony DePalma, *Andean Trade Renewal Stalls*, at <http://www.query.nytimes.com/search/abstract?res=F50A15FA3A5F0C778EDDA80894DA404482> (Nov. 29, 2001); Marc Lifsher, *Love Him or Hate Him: Divide Over Chavez Grows*, at <http://online.wsj.com/article/0,4286,SB1012861565631420960,00html?mod=americas%5Fbusiness> (Feb. 4, 2002); Marc Lifsher,

With respect to eligible articles, the ATPA requires that the merchandise (1) be grown, produced, or manufactured in a beneficiary country; (2) be imported directly from a beneficiary country into the United States; and (3) meet the value-content requirement.<sup>9</sup> While most merchandise may qualify as eligible articles, the ATPA sets forth several explicit exceptions. The law mandates, in particular, that duty-free treatment shall *not* extend to packaged tuna, petroleum and petroleum products, watches and watch parts, sugar and rum, and textile and apparel articles that are subject to textile agreements.<sup>10</sup> These express exclusions are the result of lobbying efforts by special-interest organizations and political pressure from various lawmakers whose constituents would have suffered from the inclusion of such items.

While most eligible articles are not subject to quotas limiting the amount of duty-free merchandise permitted to enter the United States, the ATPA does contain certain safeguard provisions that empower the president to suspend duty-free treatment of eligible articles if their continued importation would seriously injure, or threaten with serious injury, U.S. industries that produce very similar or directly competitive products.<sup>11</sup> Likewise, the ATPA provides that the president may suspend duty-free treatment more rapidly and with less rigamarole if the potential threat to the U.S. industry concerns perishable products such as agricultural items.<sup>12</sup>

Designed to continually gauge the improvements in the beneficiary countries as well as the effects on the United States, the law requires that both the U.S. International Trade Commission and the U.S. Department of Labor prepare and submit intermittent reports to Congress.<sup>13</sup> Finally, the ATPA declares that duty-free treatment shall extend for a period of ten years, ending December 4, 2001.<sup>14</sup>

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*U.S. Is Re-Evaluating Its Policy Involving Venezuelan President*, at <http://onlinewsj.com/article/0,,SB1005053308175668760,00.html> (Nov. 6, 2001).

9. See 19 U.S.C. § 3203(a) (1999). The value-content requirement dictates that to be eligible for duty-free treatment under the ATPA, the sum of the cost or value of the materials produced in a beneficiary country or countries, plus the direct cost of processing operations performed within a beneficiary country or countries must not be less than thirty-five percent of the appraised value of the merchandise at the time that it is imported into the United States.

10. See *id.* § 3203(b).

11. See *id.* § 3203(d).

12. See *id.* § 3203(e).

13. See *id.* §§ 3204-3205.

14. See *id.* § 3206(b).

### III. RENEWAL AND EXPANSION OF PREFERENTIAL TREATMENT

With the expiration of the ATPA rapidly approaching, on March 13, 2001, Senator Bob Graham of Florida introduced S.525 (Senate Bill), a bill designed to renew the act until 2005 and expand it to offer duty-free treatment to, among other things, certain textiles and apparels manufactured in the Andean region.<sup>15</sup> According to Senator Graham and his supporters, expansion of the ATPA was absolutely urgent because numerous companies had already relocated or threatened to relocate their operations to the Caribbean in order to take advantage of the textile and apparel preferences offered to the Central American and Caribbean nations in 2000 under the Caribbean Basin Initiative. Estimating that 100,000 Colombian textile workers alone would lose their jobs if such a massive relocation were to occur, supporters of the Senate Bill argued that “[t]his is absolutely, totally, immediately necessary in order to prevent a well-intended initiative . . . to help the Caribbean from causing even more aggravation to Colombia.”<sup>16</sup> On August 3, 2001, the Senate Finance Committee, Subcommittee on International Trade, held hearings on the Senate Bill where there emerged diverse and strong opinions, particularly regarding the inclusion of textiles, apparel, asparagus and tuna as articles eligible for duty-free treatment under the ATPA.<sup>17</sup>

Soon thereafter, on October 5, 2001, lawmakers introduced H.R. 3009 (House Bill), a bill in the U.S. House of Representatives that also intended to renew and expand the ATPA.<sup>18</sup> In comparison to the Senate Bill, the House Bill was considerably more liberal, providing for broader concessions for textile and apparel products from the Andean region and including tuna as an eligible article.<sup>19</sup> In its report on the House Bill, the Ways and Means Committee, Subcommittee on Trade, referred to the ATPA as the “cornerstone” of U.S. efforts to cease the production of illegal drugs and undertake the growth and manufacture of legitimate products in

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15. See S. REP. NO. 107-126, at 17 (2001).

16. Rossella Brevetti, *Senators Introduce Bill to Renew and Expand Andean Trade Preferences*, 18 INT'L TRADE REP. (BNA) 438 (2001). Referring to the significant relocation of manufacturing operations to the Caribbean Basin Initiative region, Senator Graham vehemently argued that passing the Senate Bill expeditiously was paramount in order to “suture that particular hemorrhage.” *Id.*

17. See S. REP. NO. 107-126, at 18-19 (2001); see also *The Andean Trade Preference Act: Hearing Before the Subcomm. on Int'l Trade of the Senate Comm. on Finance*, 107th Cong. (2001) (providing a comprehensive summary of the Congressional debate).

18. See Rossella Brevetti, *House Ways and Means Panel Approves Bill Extending, Expanding Andean Trade Benefits*, 18 INT'L TRADE REP. (BNA) 1610 (2001).

19. See *id.*

the Andean region.<sup>20</sup> Lauding the success of the program thus far, the report emphasized that total two-way trade between the United States and the Andean region had nearly doubled in the last ten years.<sup>21</sup> Moreover, the report mentioned that the beneficiary countries had introduced significant market reforms, changed policies to favor legitimate enterprise, and noticeably opened their borders to foreign goods and services.<sup>22</sup> In short, the Andean nations are “realizing that legitimate trade creates jobs, reduces poverty, and decreases the incentive to trade in illegal narcotics.”<sup>23</sup> On November 16, 2001, the House Bill was approved, but the measure still faced “stiff opposition” in the Senate, especially from the Textile Caucus.<sup>24</sup>

After reviewing the approved House Bill, on November 29, 2001, the Senate Finance Committee, Subcommittee on International Trade, incorporated the Senate Bill with certain modifications into the House Bill. The full Senate, however, never submitted this piece of legislation to a vote, a necessary requirement to become a law.<sup>25</sup> As an attempt to avoid the expiration of the ATPA on December 4, 2001, certain U.S. senators inserted a temporary six-month extension into an economic stimulus bill.<sup>26</sup> Lamentably for the Andean region, the economic stimulus package never gained approval, and the ATPA thus expired on December 4, 2001. The duty-free status of all the formerly eligible articles, therefore, disappeared and the Andean nations faced substantial duty rates on all exports to the United States.

Meanwhile, on December 6, 2001, the U.S. House of Representatives approved a bill (S.3005) granting the president TPA by a one-vote margin of 215 to 214. Under TPA Congress may only approve or reject a trade bill in its entirety without making modifications. This congressional restriction facilitates the negotiation of trade

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20. H.R. REP. NO. 107-290, at 9 (2001).

21. *See id.* at 4.

22. *See id.* at 9.

23. *Id.*

24. Rossella Brevetti, *House Approves Measure to Expand Andean Trade Benefits*, 18 INT'L TRADE REP. (BNA) 1875 (2001).

25. *See* Chris Rugaber, *Senate Panel Approves Expanded Andean Trade Preferences Measure*, 18 INT'L TRADE REP. (BNA) 1960 (2001).

26. *See* Sarah Staton, *Trade Focus: Andean Trade Preference Act*, 22 WASH. REP. ON THE HEMISPHERE 3 (2002); *see also* Anthony DePalma, *In Trade Issue, the Pressure Is On Flowers*, at <http://query.nytimes.com/search/abstract?res=F50A15FA3A5F0C778EDDA80894DA404482> (Jan. 24, 2002).

bills with foreign nations.<sup>27</sup> Approval of TPA was extremely controversial because the bill received the necessary votes only after Republican leaders made a pledge to the Textile Caucus that they would “correct” existing and future trade bills to address concerns regarding textiles. Specifically, the written pledge stated that no trade-related bills such as the ATPA would be presented to the House of Representatives for a vote unless the bill required that all fabrics undergo dyeing, finishing, and printing operations in the United States in order to qualify for duty-free treatment. This so-called Textile Compromise stated that existing trade programs such as the Caribbean Basin Initiative would be amended to meet these requirements.<sup>28</sup> Withdrawing concessions previously granted pursuant to U.S. unilateral trade preference programs may not be commonplace, but such actions are possible. As the U.S. Trade Representative so brashly explained, “what Congress giveth, Congress can taketh away.”<sup>29</sup>

Almost immediately after the crafting of the Textile Compromise, the Bush administration, which greatly benefited from obtaining the TPA vote, demonstrated its support for the maneuver.<sup>30</sup> On January 25, 2002, U.S. Secretary of Commerce Donald Evans announced the creation of an interagency textile task force to adhere to the Textile Compromise. Leaving no room for misinterpretation regarding the support of the Bush administration for the Textile Compromise, Secretary Evans stated that “[b]oth the President and I are committed to doing what it takes to ensure that this industry can compete in world markets. This is exactly what textile-state representatives asked us in advance of the vote [for

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27. See JOHN H. JACKSON, *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS* 81-87 (4th ed. 2002).

28. See Rossella Brevetti, *House Passes TPA Measure by One Vote After GOP Sways Vote with Textile Promises*, 18 INT'L TRADE REP. (BNA) 1977 (2001). The Textile Compromise was signed by Speaker of the House Dennis Hastert, House Majority Leader Richard Armey, and House Majority Whip Tom DeLay. It stated: “[W]e pledge to bring no future bills with trade provisions to the House floor until the Trade and Development Act [that expanded the Caribbean Basin Initiative] is corrected to require that U.S. knit and woven fabrics be required to undergo all dyeing, finishing and printing procedures in the United States in order to qualify for the benefits.” *Id.*

29. See Chris Rugaber, *Zoellick Says TPA Vote Provides ‘Guidance’ to Move Forward with Chile Pact*, 19 INT'L TRADE REP. (BNA) 283 (2002).

30. See Chris Rugaber, *Bush Pledges Support for Textile Promises Made to Win TPA Passage*, 18 INT'L TRADE REP. (BNA) 2017 (2001). When asked if President Bush had second thoughts about the promises made (i.e. the Textile Compromise) to secure the passage of TPA, the White House Press Secretary answered in the negative, claiming that Congress “did the right thing, for the right policy reasons, to promote American trade, which helps all workers.” *Id.* at 2018.



TPA] this past December, and this administration will work to ensure that we accomplish this goal.”<sup>31</sup> Initial meetings of the textile task force, which have enjoyed the participation of representatives from the U.S. Departments of Commerce, Labor, Treasury, State and Justice, provide further evidence of adherence to the Textile Compromise.<sup>32</sup>

This overt support of the Textile Compromise notwithstanding, the Bush administration continues to assure the Andean nations that it is “firmly committed” to obtaining the requisite Congressional approval to renew and expand the ATPA in 2002. In its written communications to the Andean leaders expressing this sentiment, however, the issue of whether the proposed expansion would include duty-free treatment for textiles and apparel is conspicuously absent.<sup>33</sup> Despite its ambiguity the Bush administration has recently decided to defer the collection of duties on U.S. imports from the Andean region for a period of ninety days while Congress continues to debate the renewal of the ATPA.<sup>34</sup>

#### IV. OPPOSITION TO THE RENEWAL AND EXPANSION OF THE ATPA

As mentioned previously, the idea of renewing and expanding the ATPA has been confronted with considerable opposition, primarily from those U.S. industries strapped with fear that offering such preferential treatment to products from the Andean region will be to their detriment. Among those at the forefront of combating the ATPA-expansion initiative are the U.S. textile, asparagus, and tuna industries. As demonstrated below in greater detail, each of these groups undoubtedly has legitimate concerns about the potential impact of Andean imports on their economic well-

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31. Rossella Brevetti, *Commerce Secretary Announces Working Group on Textiles in Wake of TPA*, 19 INT'L TRADE REP. (BNA) 176 (2002); see also Rossella Brevetti, *ATMI Calls on Congress and White House to Help Industry*, 19 INT'L TRADE REP. (BNA) 67 (2002). Predictably, the American Textile Manufacturers Institute also urged the Bush administration to uphold its end of the Textile Compromise, especially in light of the alleged “crisis” in the U.S. textile industry. See *id.*

32. See Rossella Brevetti, *Textile Task Force Holds Organizational Meeting*, 19 INT'L TRADE REP. (BNA) 228-229 (2002).

33. See *Bush Letter Offers Support to Renewed, Expanded Andean Trade Act*, 20 INSIDE U.S. TRADE 17 (2002). According to trade insiders in Washington, the letter from President Bush to Colombian President Andrés Pastrana simply “continues a pattern in which the [Bush] administration has avoided taking a specific, public stance on how ATPA should be expanded.” *Id.* This ambiguity, it is argued, is attributable to the administration’s fear of not obtaining approval of ATPA in the Senate. See *id.*

34. See *Customs to Defer Collection of Tariffs on Andean Goods*, 29 INSIDE U.S. TRADE 1-2 (2002).

being. Once one surpasses the rhetoric, however, the extent of such trepidation seems questionable.

### A. *Textile Industry*

It is widely understood that the cost of labor is less in places like the Andean region than it is in the United States. It is also common knowledge that companies, which are fundamentally driven by profit, will adopt measures to reduce labor costs in order to maximize returns. In the case of the ATPA, this means that U.S. companies may consider relocating textile or apparel operations to the Andean region or establishing production-sharing arrangements with other entities situated within the beneficiary countries. For this reason the U.S. textile industry, led largely by the American Textile Manufacturers Institute (ATMI), vehemently opposes the renewal and expansion of the ATPA. For example, the ATMI has stated that it is "deeply dismayed" by the possibility of expanding the ATPA to provide duty-free treatment to textiles because doing so would generate economic losses to the domestic textile industry, a sizable loss of jobs in this area, and a negative impact for the entire United States since this industry contributes approximately \$75 billion annually to the national economy.<sup>35</sup> According to recent publications by the ATMI, the ATPA "is not an economic partnership, [it] is a unilateral giveaway of the U.S. market at the expense of U.S. textile jobs."<sup>36</sup>

During congressional debate, members of the Textile Caucus argued that the ATPA will, in effect, prove to be the coup de grace to the domestic textile industry, which has already been significantly weakened by other trade agreements containing preferential treatment for textiles such as the North American Free Trade Agreement (NAFTA) and the Caribbean Basin Initiative. In the words of one state representative, "[i]f we look at this bill in single focus, it does not have the gigantic impact, but when we couple it with NAFTA and other free-trade agreements that have taken place, the totality gets us to a point where textiles and apparel in

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35. Press Release, American Textile Manufacturers Institute (Nov. 16, 2001), *available at* <http://www.atmi.org/Newsroom/releases/PR2001-11-16.asp> (statement by ATMI President Charles Hayes on House Passage of Andean Trade Bill); *see also* Rossella Brevetti & Chris Rugaber, *Eligible Goods From Andean Nations Receive Deferral of Duties for 90 Days*, 19 INT'L TRADE REP. (BNA) 327 (2002); Andean Trade Preference Act, 67 Fed. Reg. 7070 (temporary rule proposed Feb. 15, 2002) (providing for 90 day deferral of payment of estimated Customs duties for articles that would have been entitled to duty-free treatment had the ATPA not expired.).

36. American Textile Manufacturers Institute, *supra* note 35.

this country simply cannot exist.”<sup>37</sup> Agreeing with this prediction of doom, other lawmakers have harshly criticized the proposed expansion of the ATPA, calling such a measure a “turkey” to the 10,000 textile workers in Virginia who recently lost their jobs<sup>38</sup> and a “slap in the face” to those 20,000 persons in North Carolina who lost their textile positions in 2000.<sup>39</sup>

Like its supporters in Congress, the ATMI has repeatedly pled its case through various channels. In a recent letter to President Bush, for instance, the ATMI claimed that the domestic textile industry finds itself in a “state of crisis,” which has caused a loss of approximately 700,000 jobs since 1994.<sup>40</sup> According to this correspondence, several factors triggered the crisis, including (1) closed foreign markets at a time when certain U.S. trade policies have substantially liberalized the domestic textile market; (2) the high incidence of customs fraud and transshipment that has not been duly enforced; and (3) drastic currency devaluations in several textile-producing foreign states, particularly in Asia, which has placed companies situated in these countries at an economic advantage.<sup>41</sup> Attempting to ensure that President Bush heeds their situation, the ATMI unambiguously states that attention to this matter will directly impact the ability to obtain TPA. To this effect, the letter states that “[s]ome of us are undecided as to whether we will support TPA, while some of us feel compelled to oppose it. All of us, however, believe your administration must take substantive steps to address the crisis in the textile industry before we can even consider lending our support to TPA.”<sup>42</sup>

In addition to written communications, the ATMI has also expressed its opinions during congressional hearings. In this

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37. 147 CONG. REC. H8292 (2001) (comments by Rep. Watt); *see also* 147 CONG. REC. H8258 (2001) (Representative Spratt concurring with the opinion that the continual liberalization of trade has gradually deteriorated the U.S. textile industry: “This struggling industry will be dealt a death blow by this particular bill.”).

38. *See* 147 CONG. REC. H8258 (comments by Rep. Goode).

39. *Id.*

40. Letter from 31 State Representatives of the Textile Caucus, to President George W. Bush (Aug. 2, 2001), *available at* <http://www.atmi.org/newsroom/caucus8201.pdf>.

41. *See id.*

42. *Id.*; *see also* Scott Lindlaw, *Bush Calls Trade a ‘Jobs Issue’*, at <http://www.mtshastalive.com/story.asp?HDR=15&FragID=17197> (Jan. 15, 2002); Joseph Curl, *Bush Hits Senate on Trade, Energy Bills*, WASH. TIMES, at A4. The Bush administration thoroughly understands the inextricable link between domestic jobs and trade. In a recent speech, President Bush acknowledged his fears about unemployment which, in December 2001, reached a six-year high. To cure this, Bush advocates free trade: “I’m worried about jobs and I believe if you trade more, there are more jobs available for hard-working Americans. This isn’t a Republican issue, this isn’t a Democratic issue. Trade is a jobs issue.” *See* Lindlaw, *supra*.

venue, along with reiterating the arguments made in its letter to President Bush, the ATMI argued that it was premature to offer duty-free treatment for textiles under the ATPA since U.S. textile producers have lacked adequate time to develop business relationships in the Caribbean under the Caribbean Basin Initiative. As the ATMI sees it, “[a] rush to expand [production] to the Andean countries will lead to delays, disappointments and unrealized expectations.”<sup>43</sup> The ATMI argued, moreover, that offering preferential treatment to textiles under the ATPA would serve as a disincentive to the Andean region for joining the FTAA since it would, in effect, receive duty-free access to the U.S. market without being required to make similar concessions.<sup>44</sup>

While the recent economic hardships incurred by the U.S. textile industry are both undisputable and troubling, the ATMI should not use them to disingenuously undermine an established preferential trade program that has yielded positive results thus far. The aforementioned claims by the ATMI regarding the potential effects of the ATPA are questionable for several reasons. First, it appears that the focus of the ATMI, albeit understandably so, is excessively myopic. As explained earlier, the objectives of the ATPA are extensive and include diminishing the production and trafficking of drugs, encouraging political and economic stability, building democratic institutions, fostering market-based reforms, generating economic growth, and creating decent employment opportunities.<sup>45</sup> For this reason, one must view the ATPA from a broader perspective, rather than solely as a unilateral trade preferences program or a textile and apparel trade initiative. Nature dictates that everyone is acutely concerned with matters that affect them directly, but in the case of the ATPA “[b]igger issues are at stake.”<sup>46</sup>

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43. *Andean Trade Preference Act: Hearing Before the Subcomm. on Int'l Trade of the Senate Comm. on Finance*, 107th Cong. 17 (2001), available at 2001 WL 26186026 (statement of Carlos Moore, Executive Vice President, American Textile Manufacturers Institute).

44. *See id.* This why-buy-the-cow-when-you-already-get-the-milk-for-free argument was stated in the following manner: “If they were to be granted this extraordinary benefit, it seems clear that their interest in joining into the [FTAA] would be greatly diminished. They would have gotten full duty-free and quota-free access to the U.S. market for textiles and apparel immediately and without making any similar concessions on their part. It would be a free ride that could only add to the crisis our industry is experiencing.” *Id.*

45. *See Outcome on the Summit of the Americas and Prospects for Free Trade in the Hemisphere: Hearing Before Subcomm. on Trade of the House Comm. on Ways and Means*, 107th Cong. 138 (2001) (statement of Erik Autor, Vice President and International Trade Counsel, National Retail Federation) [hereinafter *Hearings on the Outcome of the Summit of the Americas*].

46. *Id.*

Second, even if some American textile workers unfortunately do lose their jobs as a result of expanding the ATPA, these persons will likely receive temporary financial assistance from the U.S. government to facilitate their transition into other jobs. Due to the difficulty in passing the ATPA as a separate bill, it will probably be part of a legislative package that will include an expansion of the trade adjustment assistance program designed to cover persons whose companies shift production to a foreign country as a result of the United States entering into a trade agreement.<sup>47</sup>

Third, establishing a causal nexus between an increase in textile imports and the recent downfall of the U.S. textile industry is quite difficult because a myriad of factors played a role in this situation. Among the contributing factors are unwise business decisions made by certain U.S. textile entities;<sup>48</sup> increased technology and mechanization that has decreased the need for employees; the overall weakened economy recently experienced in the United States;<sup>49</sup> the failure of U.S. firms to prepare for stiffer foreign competition by developing production-sharing arrangements in Latin America;<sup>50</sup> the Asian currency devaluations and strong U.S. dollar that have caused artificially low-priced textiles to flood the U.S. market; and the increasing incidence of customs fraud, whereby Asian textiles and apparel goods are shipped through Mexico to receive fraudulent preferential treatment under NAFTA.<sup>51</sup>

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47. See *Democrats Seek Business Support for TAA to Draw Out White House*, 20 INSIDE U.S. TRADE 15 (2002); see also Deborah Billings, *DOL Proposes New Program to Help Workers Who Lose Their Jobs to Trade*, 19 INT'L TRADE REP. (BNA) 97 (2002).

48. See 147 CONG. REC. H8298 (daily ed. Nov. 16, 2001) (Representative Thomas arguing that the cause of Burlington Industries' (a major textile company located in North Carolina that recently declared bankruptcy) demise was not an influx of foreign imports. Rather, its troubles resulted mainly from a focus on protecting itself against a hostile takeover bid and, ironically enough, a large investment in Mexico to build a new plant to take advantage of preferential textile treatment under NAFTA.).

49. See Will Pinkston, *Burlington Industries Plans to Lay Off an Additional 4,000 in the U.S., Mexico*, WALL ST. J., Jan. 11, 2002, at B6. Instead of taking personal responsibility for the events that forced Burlington to recently lay off approximately 4,000 workers amid its corporate reorganization, the company's Chief Executive Officer argued that the cuts were due mainly to U.S. trade policy since "the U.S. government unfairly allows into the country a flood of imports subsidized by foreign governments while not doing enough to police goods entering illegally." *Id.*

50. See Dan Morse, *U.S. Textile Makers Unravel Under Debt, Import Pressures*, WALL ST. J., Dec. 27, 2001, at A2 (arguing that although U.S. textile firms say they are facing the worst economic crisis since the Great Depression, they have failed to prepare themselves by solidifying duty-free partnerships with factories in Latin America. Instead, companies are focused on surviving by fending off creditors, closing factories and simply waiting until the U.S. economy improves.).

51. See THE AMERICAN TEXTILE MANUFACTURERS INSTITUTE, CRISIS IN U.S. TEXTILES: THE IMPACT OF THE ASIAN CURRENCY DEVALUATIONS AND THE U.S. GOVERNMENT ACTIONS

Fourth, recent reports prepared by the U.S. International Trade Commission clearly indicate that textile imports from the Andean region historically have had a negligible effect on the U.S. market, constituting merely 1.4 percent of total U.S. textile imports in 2000.<sup>52</sup> Based on these statistics, experts in this field espouse the view that:

for the foreseeable future, it is evident that the Andean region is likely to be a comparatively small, niche player in supplying apparel to the United States and that any sourcing shifts created as a result of increased trade with the Andean countries will come at the expense of other foreign producers, most likely Asia.<sup>53</sup>

Finally, instead of damaging the U.S. textile industry, expansion of the ATPA to include textiles may actually prove economically beneficial to domestic firms that sell materials to overseas manufacturers. Upon amending the Caribbean Basin Initiative in 2000 to extend duty-free treatment to certain textiles and apparel, reports by the U.S. International Trade Commission estimated that U.S. textile producers would experience increases of up to \$8.5 billion from the sale of domestic cottons, yarns and fabrics to companies located in the Caribbean.<sup>54</sup> A similar situation would likely occur under the ATPA.<sup>55</sup>

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URGENTLY NEEDED TO REBALANCE THE COMPETITIVE SITUATION, (2001); *See also* Chuck Hayes, President of the American Textiles Manufacturers Institute, Remarks Before the Congressional Textile Caucus (June 6, 2001), *available at* <http://www.atmi.org/newsroom/caucus6061.pdf>.

52. *See* Laura V. Rodriguez, *Apparel: Andean Countries Seek Parity with Caribbean Basin Countries to Remain Competitive in the U.S. Market*, [U.S. Int'l Trade Comm. Publ'n 3413] INDUS. TRADE & TECH. REV. 2 (2001). The smallness of this figure becomes even more apparent when one realizes that imports from the Andean region have increased 157 percent during the existence of the ATPA.

53. *Hearings on the Outcome on the Summit of the Americas*, *supra* note 45, at 139 (statement of Erik Autor, Vice President and International Trade Counsel, National Retail Federation); *see also Andean Preference Trade Act: Hearing Before the Subcomm. on Int'l Trade of the Senate Comm. on Finance*, 107th Cong. 5 (2001) (statement of Rep. Crane) (explaining that textile and apparel imports from the Andean region "pose absolutely no threat to our domestic industry."); Letter from the Andean Foreign Ministers, to United States Secretary of State Colin Powell (Sept. 10, 2001), *available at* <http://www.comunidadandina.org/ingles/common/united1.htm>. The Andean nations have also used these statistics to label the claims of the U.S. textile industry as "groundless." *Id.* Moreover, they argue, expansion of the ATPA will actually benefit the U.S. textile producers since they will be able to form strategic alliances "in order to further their interests effectively and thereby obtain mutual benefits." *Id.*

54. *See* Rodriguez, *supra* note 52.

55. *See Andean Preference Trade Act: Hearing Before the Subcomm. on Int'l Trade of the Senate Comm. on Finance*, *supra* note 43, at 46 (statement of Rep. Crane). According to this testimony, while the U.S. exports of cotton worldwide have declined during the last five years, exports to the Andean countries have grown 107 percent. *See id.* These statistics, it is

### B. *Asparagus Industry*

Unlike textiles and apparel, asparagus has been an eligible article since 1991, thereby allowing a less speculative analysis of this industry's arguments in opposition to expansion of the ATPA. The U.S. asparagus industry, represented chiefly by the American Farm Bureau, has demanded that this vegetable not be considered an eligible article arguing that, while the objectives of the ATPA are laudable, the program should not injure domestic agriculturalists.<sup>56</sup> With regard to the degree of harm suffered in the United States, the American Farm Bureau contends that under the ATPA, asparagus imports from Peru alone have increased ten times, thereby displacing U.S. asparagus production "at an alarming rate."<sup>57</sup> Further, this group argues that the increase in Peruvian agricultural imports has generated a questionable degree of positive impact on the eradication of illicit drugs in that state, given that farmers grow asparagus in the desert region near the coast, whereas coca cultivation occurs predominantly in the mountains and foothills.<sup>58</sup> For these reasons, the American Farm Bureau argues that asparagus should not be an eligible article. In the alternative, the organization suggests that if asparagus does achieve beneficiary status, quotas must be imposed that serve to revoke duty-free treatment of asparagus from the Andean region once they reach fifty percent of total U.S. annual imports.<sup>59</sup>

Like those espoused by the domestic textile industry, the claims of the U.S. asparagus industry are understandable. Upon examining the available evidence, however, it appears that the injury (or threat thereof) to the American market is substantially less severe than that claimed. According to a recent Congressional report, although asparagus imports from the Andean region have increased by over 215 percent during the existence of the ATPA, this program has displaced a mere two to eight percent of the total value of U.S. fresh asparagus production.<sup>60</sup> U.S. consumers, on the

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argued "suggest that the incentives to diversify Andean economies are taking hold and that the ATPA can provide a win-win situation for U.S. cotton growers, as well as Andean apparel producers." *Id.* at 5.

56. See *Hearings on the Outcome of Summit of the Americas*, *supra* note 45, at 144-145 (statement of American Farm Bureau Federation).

57. *Id.*

58. See *id.*

59. See *id.*

60. See U.S. GENERAL ACCOUNTING OFFICE, AGRICULTURAL TRADE: IMPACTS OF THE ANDEAN TRADE PREFERENCE ACT ON ASPARAGUS PRODUCERS AND CONSUMERS, REP. TO CONGRESSIONAL SUBCOMMITTEES, DOC. NO. GAO-01-315, at 2 (2001).

other hand, have benefited from year-round availability of fresh asparagus, since the Peruvian agricultural season is precisely the opposite of that in the United States.<sup>61</sup> As a result of the preference by U.S. consumers for fresh (as opposed to frozen) asparagus, the report indicates that the displacement of two to eight percent would have occurred even without the ATPA program.<sup>62</sup> Simply put, U.S. consumers prefer fresh over frozen so much that they would be willing to purchase the fresh Peruvian vegetables, even if higher duty rates applied, rather than settle for frozen items grown domestically.<sup>63</sup>

The alleged negative impact of the ATPA on the U.S. asparagus market is also suspect, based on the lack of formal complaints submitted by this industry to date. Under the ATPA and other national trade laws, the American asparagus producers have the right to seek relief from the government if they believe that foreign imports of asparagus have injured or threaten to injure their industry.<sup>64</sup> In spite of the existence of such relief measures, there have been no instances of suspension of duty-free treatment of asparagus imports. In fact, alleging that such legal procedures would prove to be too expensive, the domestic industry has never even submitted a formal request for such a suspension.<sup>65</sup> Furthermore, as was the case with the textile industry, attributing any injury to the U.S. asparagus market to the ATPA is difficult because the domestic market faces, and will continue to face, increased competition from many fronts. In particular, (1) under NAFTA, duty rates are continually decreasing for Mexican producers, who enjoy the advantages of lower costs of production and transportation as compared to Peru; (2) the FTAA will likely include asparagus as an eligible product in this forthcoming duty-free hemispheric trade area; and (3) China, the world's largest producer of asparagus, has recently been granted normal trade relation status, formerly known as "most favored nation" status, resulting in lower tariff rates to the U.S. market.<sup>66</sup> Finally, while U.S. asparagus producers

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61. *See id.* The growing season in the United States runs from January to July, whereas August through December are the optimal months for asparagus cultivation in the Andean region.

62. *See id.*

63. *See id.*

64. *See id.*

65. *See* U.S. DEP'T OF LABOR, TRADE AND EMPLOYMENT EFFECTS OF THE ANDEAN TRADE PREFERENCE ACT: EIGHTH ANNUAL REPORT TO THE CONGRESS, app. a (2001), *available at* <http://www.dol.gov/ilab/programs/oiea/at00conx.htm> (last visited July 5, 2002) [hereinafter *Department of Labor Report*].

66. *See* U.S. GEN. ACCOUNTING OFFICE, *supra* note 60.



may lose some profit because of the ATPA, it is clear that American jobs have not suffered in turn. A recent report prepared by the U.S. Department of Labor indicates that U.S. production output and price of processed asparagus has remained fairly stable over the last several years. In light of this prolonged stability, the report concludes that it does not appear that "the duty-free benefits provided by the ATPA have produced any adjustment problem for workers producing asparagus."<sup>67</sup>

### C. *Tuna Industry*

Similar to textiles and apparel, the original ATPA explicitly excluded tuna from being an eligible article.<sup>68</sup> The House Bill's inclusion of this product as a potential eligible article, however, has caused the U.S. tuna industry to voice opposition. During congressional debate, representatives of American Samoa argued vehemently against the inclusion of tuna in the ATPA since doing so could conceivably generate sizable job losses in Puerto Rico, California, and American Samoa. Citing that tuna-processing factories in the Andean region have increased by some 230 percent under the ATPA, opponents of this law argue that "[e]xtending this agreement by providing duty-free treatment to canned tuna from Andean countries, especially Ecuador, will . . . destroy the U.S. tuna industry."<sup>69</sup> In justifying this statement, the Samoan representative explained that the largest tuna cannery in the world is located in his territory, which employs some 5,100 persons, or nearly seventy-five percent of the local workforce. Compared to the ATPA nations, American Samoa is at a disadvantage because it must respect U.S. minimum-wage laws, provide Social Security and medical benefits, and comply with U.S. regulations regarding the environment and animal safety, among other requirements.<sup>70</sup>

While these claims are utterly legitimate and merit due consideration, the true impact of including tuna as an eligible article under the ATPA must be evaluated in context. To begin with, given that tuna has never been an eligible article all apocalyptic predictions by American Samoa are based solely on speculation. Additionally, the proper weight to be granted to the opposition arguments may be determined only after considering the other side of the coin. Specifically, H.J. Heinz, the parent company of StarKist Foods, Inc.,

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67. *Department of Labor Report*, *supra* note 65, at 3-4.

68. *See* 19 U.S.C. § 3203(b)(3).

69. 147 CONG. REC. H6417-6419 (2001) (comments of Mr. Faleomavaega).

70. *See id.*

operates an enormous tuna-processing facility in Ecuador solely because of the preferential treatment granted to tuna under the ATPA. As representatives of Heinz state in unequivocal terms, “[i]t is important to note that to remain an attractive source of tuna products, Ecuador must maintain its competitive position in the global marketplace. Failure to include processed tuna in the [ATPA] could put Ecuador’s position at risk.”<sup>71</sup> This tuna giant has also indicated, albeit in a more oblique manner, that its continued presence in Ecuador is wholly contingent upon the continued inclusion of tuna as an eligible article.<sup>72</sup> Heinz representatives explained that “[o]ur preference would be to put that investment in Ecuador, however, economics will drive this decision.”<sup>73</sup> They further argue that revoking preferential treatment for tuna, thereby forcing Heinz to withdraw its operations from Ecuador “would seem to be clearly contrary to the intent of the [ATPA] to encourage employment and investment in the Andean region.”<sup>74</sup> Based on the significant economic and employment losses that a departure from Ecuador by Heinz would inevitably cause, not to mention the social and political problems that would likely ensue, the comparative credibility of the claims made by American Samoa should be closely scrutinized.

## V. BENEFITS OF RENEWING AND EXPANDING THE ATPA

To truly understand the policy reasons for advocating the renewal and expansion of the ATPA, one must first compare the supposed negative impact on certain domestic industries (e.g., textiles, asparagus, tuna, etc.) with the multitude of positive ramifications derived from such legislative action. In this spirit, the benefits for both the United States and the Andean region that will result from enacting a broad ATPA are examined below.

### A. *An Expanded ATPA Will Serve As a “Bridge” to the FTAA*

From the outset, the Bush administration has identified the negotiation and completion of the FTAA by 2005 as one of its pri-

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71. *Andean Trade Preference Act: Hearing Before the Subcomm. on Int'l Trade of the Comm. on Finance*, 107th Cong. 19 (2001), at <http://finance.senate.gov/hearings/76172.pdf> (Aug. 3, 2001) (statement of K. Ward Rogers) [hereinafter *Hearings on the ATPA*].

72. *See id.*

73. *Id.*

74. *Id.*

mary goals on the international trade agenda.<sup>75</sup> Concerning the effects of the FTAA on the Andean region, the Deputy U.S. Trade Representative has explained that the Andean nations will benefit as (1) the elimination of trade barriers expands the markets available to exporters in the Andean region, thereby facilitating economic diversification; (2) the eradication of impediments to trade in services fortifies the Andean nations by promoting transparency, competition, and impartial regulation of sectors such as telecommunications, insurance, and financial services; (3) the creation of the world's largest trade area composed of some 800 million people fosters foreign investment (both direct and indirect) in the Andean economies; and (4) the regime reinforces the values of openness, accountability, democracy and rule-of-law that are critical to any real effort to combat narco-trafficking.<sup>76</sup> In order to facilitate the transition to the FTAA and thus achieve a foremost goal of the Bush administration, the economies in the Andean region must first diversify and strengthen. The renewal and expansion of the ATPA would serve not as a long-term solution to the need to fortify the legitimate economies of the Andean nations as an alternative to narcotics production, but rather as a "bridge" to a successful FTAA.<sup>77</sup> The Andean states, for their part, also view a renewed and expanded ATPA as a conduit toward a prosperous FTAA emphasizing at the recent Summit of the Americas that expanding the ATPA was a "key demand" in the process.<sup>78</sup>

B. *The ATPA Should Avoid Capital and Production Shifts to the Caribbean or Mexico*

The panorama of international trade has changed dramatically since the enactment of the ATPA in 1991. The passage of NAFTA in 1993 and expansion of the Caribbean Basin Initiative in 2000 are of particular relevance to this analysis, as both of which allow textiles and apparel manufactured in their respective regions to

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75. See OFFICE OF THE PRESS SECRETARY, THE PRESIDENT'S 2001 INTERNATIONAL TRADE AGENDA (2001), at <http://www.whitehouse.gov/news/releases/2001/05/20010511.html> (May 10, 2001).

76. See *Hearings on the ATPA*, *supra* note 71, at 30 (statement of Deputy U.S. Trade Representative Peter Allgeier).

77. See Gary G. Yerkey, *U.S. Wants to Extend Andean Trade Law to 2005 and Extend Product Coverage*, 18 INT'L TRADE REP. (BNA) 751 (2001); see also Rossella Brevetti, *Rep. Crane Signals Readiness to Advance Andean Renewal Measure*, 18 INT'L TRADE REP. (BNA) 1268 (2001).

78. See Thomas Catan, *Cavallo May Break Ranks with MERCOSUR*, FIN. TIMES, Apr. 19, 2001, at 10.

enter the U.S. market at special duty rates.<sup>79</sup> As a result of these economic realities, many companies situated in the Andean region already have relocated, or have threatened to relocate, to Mexico or the Caribbean in order to avail themselves of lower duty rates.<sup>80</sup> Simply stated, “[j]obs in the region’s existing apparel industry are threatened as companies have begun moving production to Mexico and countries in the Caribbean Basin, which are more competitive than the Andean region, have closer proximity to the U.S. market, and can take advantage of existing trade preferences.”<sup>81</sup>

This massive exodus could prove terribly damaging to countries like Peru and Colombia whose economies depend in no small part on the textile and apparel industry. With regard to the latter, a desertion *en masse* will cause Colombia to lose an estimated 100,000 jobs, with no substitute employment opportunities on the horizon.<sup>82</sup> Worse still, the departure of textile and apparel companies will trigger a chain reaction that could prove devastating to the Andean region. For example, based on the benefits granted under the ATPA, Dole Food Company, which produces, among other things, fresh-cut flowers, purchased and operates twenty-three flower farms in Colombia and Ecuador. Together these operations created some 12,000 jobs in the Andean region, as well as thousands of positions in the company’s multi-million dollar processing plant located in Florida. When confronted with the possibility that the ATPA would expire, the company threatened, albeit in diplomatic terms, to withdraw from the Andean region. Company representatives stated that “[w]ithout ATPA benefits . . . the commercial rationale for investing in Colombia and Ecuador would be significantly reduced, and, at a minimum, Dole would be

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79. See *Hearings on the ATPA*, *supra* note 71, at 36 (statement of Sen. Max Baucus).

80. See Rodriguez, *supra* note 52, at 4 (2001).

81. *Hearings on the of Summit of the Americas*, *supra* note 53, at 139 (statement of Erik Autor, Vice President and International Trade Counsel, National Retail Federation).

82. See 147 CONG. REC. S2226 (2001) (comments by Sen. Graham); see also Press Release, Office of Senator Chuck Hagel, Andean Trade Preferences Important to U.S. Neighbors – Bipartisan Colleagues Join in Introducing Legislation, (Mar. 13, 2001); see also *Hearings on the ATPA*, *supra* note 71, at 12 (statement by Paul Arcia, president of A.R.C. International, an apparel company with operations in Florida and Colombia). Mr. Arcia explained that the negative impact on the Andean regions caused by the expansion of the Caribbean Basin Initiative was immediate. See *id.* In particular, orders by A.R.C.’s major clients such as Target, Wal-Mart, Costco and Fruit of the Loom were instantly canceled, thus forcing the company to lay off approximately one-third of its workforce. See *id.* This shift to the Caribbean nations was, however, no surprise to this executive: “It is a miserable penny-pinching business. With the advent of the super-retailer and the consolidation of many customers, cutting costs is a paramount objective. Deals have been lost over a nickel.” *Id.*

forced to reevaluate its exposure in the Andean cut-flower industry.”<sup>83</sup> Removal of such a significant U.S. investment in the region would lead to a series of interrelated negative effects, including the production of illicit narcotics on the former flower farms, the abandonment of all the programs introduced by Dole (that exceeded local governmental requirements) in terms of healthcare, childcare, nutrition, education, and the environment, and the suffering of 220,000 U.S. workers who depend on a robust Andean flower market for their jobs.<sup>84</sup> The renewal and expansion of the ATPA is, in the words of the lawmakers who introduced the Senate Bill, “absolutely, totally [and] immediately necessary” to prevent this scenario from becoming a reality.<sup>85</sup>

### C. *The ATPA Designation Criteria Will Protect Various U.S. Interests*

The adherence to international labor standards, enforcement of intellectual property rights, and recognition of arbitral awards in the Andean region constitute concerns of various U.S. companies and organizations. The renewal and expansion of the ATPA would serve to improve the situation in all three areas by effectively enforcing the “designation criteria” used in determining which Andean nations, if any, should be eligible to receive preferential duty treatment.

#### 1. International Labor Standards

Regarding workers’ rights, the entire Andean region is plagued with grave problems, including child labor, involuntary servitude, employment discrimination, violence, and restrictions on organized labor.<sup>86</sup> The situation is particularly troubling in Colombia, where nearly 1,500 union members and leaders have been murdered since the ATPA was enacted in 1991.<sup>87</sup> These deaths have

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83. *Hearings on the ATPA*, *supra* note 71, at 14 (statement of Rick Harrah, President, Dole Fresh Fruit International).

84. *Id.*

85. Rossella Brevetti, *Senators Introduce Bill to Renew and Expand Andean Trade Preferences*, 18 INT’L TRADE REP. (BNA) 438 (2001).

86. See OFFICE OF THE U.S. TRADE REPRESENTATIVE, *supra* note 1, at 21-23, 29-30, 37-38, 44-46.

87. See AFL-CIO, TESTIMONY OF JOHN J. SWEENEY, PRESIDENT AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, BEFORE THE SUBCOMMITTEE ON TRADE OF THE HOUSE COMMITTEE ON WAYS AND MEANS ON THE SUMMIT OF THE AMERICAS AND PROSPECTS FOR FREE TRADE IN THE HEMISPHERE MAY 8, 2001, at <http://www.aflcio.org/publ/test2001/tn0508.htm> (May 8, 2001) (arguing that the ATPA should require an annual report to the U.S. Congress regarding the progress made in workers’ rights and stating that he did not believe “that simply extending the ATPA will eliminate these egregious abuses.

been attributed to the strongly anti-communist Colombian military that perceives union members as subversives and to large corporations that benefit economically from the workers' inability to unite in their demands.<sup>88</sup> The reason for concern by U.S. organizations and companies for labor rights in the Andean region is two-fold: humanitarian magnanimity and economic self-interest. With respect to the latter, lawmakers point out that the oppressed wages in the Andean nations made possible by violations of internationally-recognized core labor standards will "siphon off good-paying U.S. jobs to these lower-wage regions [and] will hurt workers in the U.S., as well as workers in the various regions around the world."<sup>89</sup> Attempts to force the Andean nations to radically change their labor standards will be ineffective though, and possibly categorized as a "new form of colonialism or imperialism."<sup>90</sup> This obstinate resistance to the imposition of foreign labor standards is well established.<sup>91</sup> Therefore, the active enforcement of the workers' rights provision in the designation criteria of the ATPA appears to be an effective method for advancement in this area.

## 2. Intellectual Property Rights

With respect to the protection of U.S. intellectual property, recent reports indicate that despite considerable efforts by the Andean nations to improve in this area, violations are widespread. In Ecuador, for instance, studies show that the "[p]irating of recorded material, textbooks and software programs is rampant."<sup>92</sup> These infractions throughout the region are quite costly to many U.S. companies, generating estimated losses of up to \$160 million

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We believe any new ATPA legislation must ensure effective prosecution of persons responsible for physical attacks and other illegal acts perpetrated against trade unionists and others seeking to exercise their rights to freedom of association and assembly.").

88. See David Bacon, *The Coca-Cola Killings: Is Plan Colombia Funding a Bloodbath of Union Activists?* 13 AM. PROSPECT 1315 (2002); see also Gary G. Yerkey, *supra* note 77 (president of the AFL-CIO stating that U.S. labor unions would not support an extension of the ATPA unless it contains improved protection for workers' rights).

89. 147 CONG. REC. H8297 (2001) (statement by Rep. Stark).

90. Jon Sawyer, *At Summit, Bush Links Trade with Democracy*, ST. LOUIS POST-DISPATCH, Apr. 22, 2001, at A1 (noting that the key to advancement in areas such as the protection of the environment and workers' rights is to make it a win-win proposition for the countries involved, as opposed to an imposition that will logically result in resentment).

91. See INTER-AMERICAN DIALOGUE & CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, *BREAKING THE LABOR-TRADE DEADLOCK I* (Working Paper No. 17, 2001) (explaining that, despite efforts by the United States and other developed countries to include labor standards as a part of trade agreements, developing countries like those in the Andean region have steadfastly opposed them; "neither side appears prepared to cede ground.").

92. OFFICE OF THE U.S. TRADE REPRESENTATIVE, *supra* note 1, at 37.

annually.<sup>93</sup> Renewing and expanding the ATPA will ensure that efforts to institute adequate and effective protection of intellectual property rights will be a designation criteria upon which President Bush may determine which nations enjoy duty-free access to the United States. Used effectively, this requirement could significantly protect various U.S. companies.

In addition to protecting the economic interests of U.S. companies, effective enforcement of the intellectual property rights provisions of the ATPA could also assist with the war on terrorism, as terrorism is directly related to money laundering and illicit drugs in Latin America. While not as initially apparent, terrorism also has a strong relationship with counterfeit products sold in the United States and other developed nations. As one expert explained, “[i]t’s highly likely that some of the funds used to finance terrorist networks are being derived from the sale of products ripping off iconic American companies, such as Microsoft or Nike.”<sup>94</sup> Others are more resolute in their understanding of the logical link between international terrorism and the sale of imitation merchandise, stating that “[i]t’s natural for [terrorists] because of the high profits and low risks.”<sup>95</sup> Recent studies by the U.S. Department of Justice identify at least two incidents where intellectual property crimes financed terrorist actions—the 1993 bombing of the World Trade Center, funded by a counterfeit T-shirt ring, and the 2001 aerial attack of the World Trade Center and the Pentagon, financed by sales of fake computer software in the “notorious piracy haven” of Ciudad del Este, Paraguay.<sup>96</sup> With regard to Latin America, music industry reports indicate that syndicates are dealing pirated optical media products from the Far East (e.g., compact discs and DVDs) through Brazil, Paraguay, and other states. Money generated from these illegal sales flows to terrorist organizations.<sup>97</sup> Accordingly, efforts to combat violations of U.S. intellectual property laws throughout Latin America will likely intensify in the near future, and use of the designation criteria of the ATPA in these efforts could prove fruitful. As a former Clinton administra-

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93. *See id.* at 20, 29, 37, 43-44 (stating that in Colombia alone, violations cost U.S. companies \$163 million in losses in 1999).

94. Roslyn A. Mazer, *From T-Shirts to Terrorism: That Fake Nike Swoosh May Be Helping to Fund Bin Laden’s Network*, WASH. POST, Sept. 30, 2001, at B2.

95. Julian E. Barnes, *Fake Goods Are Flowing Under the New Radar*, at <http://www.query.nytimes.com/search/abstract?res=F30F14FA395B0C778DDDA90994D9404482> (Oct. 14, 2001).

96. *See Mazer, supra* note 94.

97. *See id.*

tion official explained, "there are criminal organizations, including those of terrorists, that use counterfeit goods to finance their activities. That means that the effort to cut off the money flow to terrorists could include fighting counterfeiting."<sup>98</sup>

### 3. Arbitral Awards

Similar to the case of workers' rights and intellectual property protection, complaints are commonplace regarding the enforcement of arbitral awards in favor of U.S. companies in the Andean region, particularly in Colombia and Ecuador. Regarding the former, congressional debate revealed that several U.S. entities that received favorable awards from internationally recognized arbitration associations encountered tremendous difficulties in enforcing those judgments in Colombia. Alluding to incidents with Nortel Networks, congressional reports acknowledged awareness of the Colombian government's refusal to support enforcement of arbitral awards in favor of U.S. companies in clear violation of the ATPA. The House report urged the Colombian government to immediately resolve all outstanding disputes with U.S. corporations.<sup>99</sup> With respect to Peru, other congressional reports identified at least three recent occasions in which U.S. companies received unjust treatment. For example, these incidents have involved conflicts of interest on the arbitral panels, discriminatory confiscation of property, and withdrawal of contracts despite local court orders to the contrary.<sup>100</sup> As a result, the Senate Finance Committee urged the U.S. Trade Representative "to closely examine these matters in determining whether Peru should be designated as a . . . beneficiary country."<sup>101</sup> The committee further recommended that the designation criteria be intensified under a renewed and expanded ATPA. After suggesting several additional mandatory designation criteria, the group justified increasingly stringent eligibility standards based on the following *quid pro quo*: "[I]n enhancing the benefits available to beneficiary countries, it is

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98. Barnes, *supra* note 95.

99. See H.R. REP. NO. 107-290, at 17 (2001); see also 147 CONG. REC. H8295 (2001) (statement of Rep. Crane). Failure by the Colombian government and courts to uphold contractual obligations was another issue aired during Congressional debate. Citing a recent dispute involving Kal Kan Foods Representative Crane stated, "it is essential for ATPA beneficiary countries to follow established WTO rules and adopt, implement and apply transparent, nondiscriminatory regulatory procedures and enforce their arbitration and court awards." *Id.*

100. See S. REP. NO. 107-126, at 31 (2001).

101. *Id.*



reasonable to enhance the eligibility criteria that must be met in order to receive the new benefits.”<sup>102</sup>

D. *Expanding the ATPA Comports With the War on Terrorism*

In response to the terrorist attacks on the World Trade Center and the Pentagon on September 11, 2001, President Bush declared a war on terrorism that was designed primarily to deprive all terrorists of financial resources. Upon signing Executive Order 13,224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten or Support Terrorism (Executive Order), Bush was unambiguous regarding the effects of this mandate on persons and entities that fail to collaborate with the United States, including those in Latin America.<sup>103</sup> Bush specifically stated that “[i]f you do business with the terrorists, if you support them, you will not do business with the United States of America.”<sup>104</sup> Likewise, while unveiling the Executive Order, U.S. Treasury Secretary Paul O’Neill emphasized that it constitutes notice to foreign and domestic financial institutions that those with any involvement with terrorist organizations must “cooperate in this fight or we will freeze your U.S. assets [in order to] punish you for providing the resources that make these evil acts possible.”<sup>105</sup>

Section I of the Executive Order provides, among other things, that the U.S. government will seize and hold all property and interests in property of certain persons involved with terrorism that are in the United States now or in the future. Such persons include (1) any foreign person or entity identified in the Annex of the Executive Order (i.e., terrorists or terrorist organizations); (2) any foreign person that has committed or poses a significant risk of committing an act of terrorism; (3) all persons that assist, sponsor, or provide financial, material, or technological support for terrorism or the terrorists; and (4) those persons that are “otherwise associated” with terrorist organizations or terrorists.<sup>106</sup>

Although there are no persons or entities from the Andean region listed on the Annex to the Executive Order, this area is

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102. *Id.* at 30.

103. *See* Exec. Order No. 13,224, 66 Fed. Reg. 186 (Sept. 25, 2001).

104. President George W. Bush, Remarks on Executive Order 13,224 at Press Conference in the White House Rose Garden (Sept. 24, 2001), *available at* <http://www.whitehouse.gov/news/releases/2001/09/2001109244-4.html>.

105. Secretary of the Treasury Paul O’Neill, Remarks on Executive Order 13,224 at Press Conference in the White House Rose Garden (Sept. 24, 2001), *available at* <http://www.whitehouse.gov/news/releases/2001/09/2001109244-4.html>.

106. *See* Exec. Order No. 13,224 *supra* note 103.

extremely important in the war on terrorism for several reasons. First, there is a high incidence of drug trafficking and money laundering, which is inextricably linked to terrorism. As one lawmaker explained, “[w]e now know that the link between terrorism and illegal drugs is undeniable. This link exists not only in Afghanistan, but also in our own hemisphere. The profits from illegal drug sales are the financial engines that fuel terror worldwide.”<sup>107</sup> Concurring with this assessment, other experts explain that in Latin America the two basic facts of life consist of drug trafficking and terrorism, which share a symbiotic relationship.<sup>108</sup> In terms of the Andean region, Congressional testimony on this point has been unambiguous, emphasizing that “[t]he Andean region is not only the world’s primary source of coca, it is also a haven for terrorism and terrorist groups that thrive on funding derived from the drug trade.”<sup>109</sup> Other testimony furthering this argument explains that the United States is now facing a new enemy—wealthy terrorists deriving their financial wherewithal from the illegal drug trade. In light of this new reality, certain lawmakers have maintained that “[i]f we are to win this battle, we are going to use the [Andean] Trade Preference Act to help the democratic governments of the region to offer their people a new way, based on trade with America.”<sup>110</sup>

Second, not only is the Andean region a haven for illicit drugs and money laundering activities, it also serves as home to diverse terrorist groups such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army in Colombia, the United Self-Defense Forces of Colombia, and the Shining Path in Peru. Thanks in part to these groups’ actions, the U.S. State Department recorded over 190 terrorist attacks in Latin America in

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107. Press Release, Speaker of the U.S. House of Representatives, J. Dennis Hastert, Speaker Hastert Meets with Bolivian President (Dec. 6, 2001); see also Mark Grossman, *The Drug-Terror Connection*, WASH. POST, Dec. 24, 2001, at A16. The U.S. State Department is so clear on the link between drug trafficking and terrorism that it simply refers to certain persons as “narco-terrorists”. *Id.*

108. See *The Western Hemisphere’s Response to the September 11, 2001 Terrorist Attack on the United States: Hearing Before the Subcomm. on the Western Hemisphere, of the House Comm. on International Relations*, 107th Cong. 2 (2001) (statement of Rep. Ballenger) [hereinafter *Hearings on September 11*].

109. 147 CONG. REC. S12461 (2001)(comments by Sen. McCain); see also Karen DeYoung, *U.S., Colombia Smash Money-Laundering Ring*, WASH. POST, Jan. 17, 2002, at A11. Corroboration of the incidence of money-laundering in Colombia is provided by the recent arrest of a 40-person drug money group that used the Black Market Peso Exchange to convert money from cocaine sales into U.S. dollars. *Id.*

110. 147 CONG. REC. H8296 (Nov. 16, 2001)(comments by Rep. Kirk).

2000.<sup>111</sup> To aggravate matters further, several members of the terrorist group the Irish Republican Army were recently arrested in Colombia for training members of FARC in methods of terrorism.<sup>112</sup>

Third, the Andean region has offered its complete support for the war on terrorism championed thus far by the United States. As members of the Organization of American States (OAS), the Andean nations pledged their solidarity with the United States when the Inter-American Treaty of Reciprocal Assistance, or Rio Treaty, was invoked in response to the terrorist attacks on the Pentagon and the World Trade Center.<sup>113</sup> Additionally, unlike in other Latin American states where the public-at-large opposed the OAS resolution, the Andean population seemed relatively supportive of the U.S.-led war on terrorism and the participation of their nations in it.<sup>114</sup>

Fourth, the Bush administration has repeatedly argued that increased trade will assist in overcoming the economic recession and eradicating terrorism.<sup>115</sup> This sentiment is shared by Andean leaders such as Bolivian President Jorge Quiroga, who stated that “[t]errorists target not only our freedom of democracy, but also freedom of trade . . . . The more products, the more freedom of trade, the more globalization, the better.”<sup>116</sup>

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111. See Antonio Garrastazu & Jerry Haar, *International Terrorism: The Western Hemisphere Connection*, NORTH-SOUTH CTR. UPDATE, <http://www.miami.edu/nsc/pages/newsupdates/update48.html> (Oct. 10, 2001).

112. See *Hearings on September 11*, *supra* note 108, at 2 (statement of Rep. Ballenger) (“The involvement of well-known international terrorists like the IRA, combined with recent threats made by the FARC’s leader . . . suggesting that he will hit American targets in response to our nation’s support of the drug war, raise real questions about the FARC’s role in support of international terrorism.”).

113. See *id.* at 17 (statement of Ambassador Roger F. Noriega, U.S. Permanent Representative to the Organization of American States). The pertinent OAS resolution states that the “terrorist attacks against the United States of America are attacks against all American states and that in accordance with all relevant provisions of the . . . Rio Treaty and the principle of continental solidarity, all states party to the Rio Treaty shall provide effective reciprocal assistance to address such attacks and the threat of any similar attacks.” *Id.*

114. See Tim Johnson, *Latins Differ From Leaders on Backing the Military*, at <http://miami.com/herald/content/news/world/digdocs/095461.htm> (Sept. 26, 2001). According to a poll by Gallup International, citizens of Peru (forty-six percent), Colombia (forty percent) and Ecuador (thirty-six percent) were receptive to allowing their national military to join soldiers in a multinational coalition to destroy terrorist havens. *Id.*

115. See Scott Lindlaw, *Bush Pushes for Expanded Trade*, at <http://www.washingtonpost.com/wp-dyn/articles/A43055-2002Jan14.html> (Jan. 14, 2002).

116. Nora Boustany, *Bolivian President Says Free Trade is Best Answer to Terrorism*, WASH. POST, Dec. 5, 2001, at A23.

The United States has channeled a tremendous amount of resources toward fighting the war on terrorism, which heavily involves the Andean region. Accordingly, logic dictates the immediate enhancement of a program such as the ATPA that would serve as a powerful tool in the battle against terrorism.

E. *Stabilizing the Andean Region During an Increasingly Precarious Period*

ATPA is of utmost importance now due to the precarious situation in which the Andean region, and particularly Colombia, finds itself. In January 2002, after nearly three years of peace negotiations between the rebel group the FARC and the Colombian government, the two groups arrived at an impasse.<sup>117</sup> In reaction to the stalemate, Colombian President Andrés Pastrana ordered the FARC to vacate the demilitarized zone formerly provided to the rebels in exchange for their participation in the peace process within forty-eight hours.<sup>118</sup> Undaunted by the presidential ultimatum, the FARC initially rejected any further negotiations, opting instead to withdraw from the demilitarized zone within the given timeframe.<sup>119</sup> Despite the FARC's pledge to leave peaceably, many analysts predicted that increasingly vicious and open warfare, kidnappings, destruction of vital national infrastructure, and other terrorist activities would immediately ensue.<sup>120</sup> With the intervention and assistance of several international groups, the FARC and Colombian government reached a last-minute agreement to resume peace negotiations.<sup>121</sup> The peace talks had no discernible effect, and the FARC immediately violated the agreement by destroying military vehicles and forcing down a helicopter engaged

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117. See *End of the Road?*, (Jan. 10, 2002), at [http://www.economist.com/World/la/PrinterFriendly.cfm?Story\\_ID=930425](http://www.economist.com/World/la/PrinterFriendly.cfm?Story_ID=930425). FARC leaders decided to cease participating in the peace negotiations because the rebels opposed the patrols of government airplanes over the demilitarized zone, as well as the governmental restriction on visits to the demilitarized zone by foreigners. See *id.*

118. See Martin Hodgson, *Colombia's Peace Process Falters*, CHRISTIAN SCI. MONITOR, Jan. 11, 2002, at 7; see also, Jaun Forero, *Colombian Troops Move on Rebel Zone as Talks Fail*, at <http://www.nytimes.com/2002/01/11/international/americas/11COLO.html?pagewanted=printer> (Jan. 11, 2002).

119. See Laurie Goering, *Colombia Rebels: Talks Dead*, CHI. TRIB., Jan. 14, 2002, at 3.

120. See *id.*; see also Forero, *supra* note 118; Associated Press, *Colombia Rebels Condemn New U.S. Aid for Pipeline Security* (Jan. 14, 2002), available at <http://www.nytimes.com/aponline/international/AP-Colombia-Rebels-US.html>.

121. See Juan Forero, *Peace Talks in Colombia are Revived by an Accord*, at <http://www.nytimes.com/2002/01/15/international/15COLO.html?pagewanted=printer> (Jan. 15, 2002).

in a drug-destroying mission, among other actions.<sup>122</sup> According to experts, irrespective of what occurs at the so-called peace negotiations, the violence and lawlessness in Colombia would increase in the coming months.<sup>123</sup> True to this prediction, FARC rebels began to destroy valuable infrastructure by toppling electrical towers, blocking major roads, and demolishing a water reservoir.<sup>124</sup> In addition, the rebels have threatened to sabotage principal pipelines that transport oil from Colombia, the tenth-largest supplier of petroleum to the United States, to several California-based oil companies.<sup>125</sup>

In light of the escalating violence, the possibility of decreased oil availability, and the formal request by President Pastrana, the United States is considering increased involvement in Colombia. In particular, the Bush administration seeks to include \$98 million in its 2003 budget to train Colombian troops and provide helicopters to protect national infrastructure.<sup>126</sup> Commentators suggest that such additional involvement constitutes “a dramatic departure” from previous U.S. policy toward Colombia, which has been limited to preparing Colombians to more effectively eradicate illegal drug production and distribution.<sup>127</sup> In reaction to the potential for enhanced participation, FARC leaders demanded that the United States completely and immediately withdraw from Colombia.<sup>128</sup> In addition to challenging the U.S. presence, FARC rebels continue the violence, recently conducting a mortar attack that killed ten Colombian soldiers while wounding at least thirty

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122. See Nancy San Martin & Sibylla Brodzinsky, *Continuing Peace Talks Key to Colombia's Future*, MIAMI HERALD, Jan. 20, 2002, at 16A. In the words of one observer, “I believe there will be a spiral down to deeper warfare over the next few months *no matter what happens*.” *Id.* (emphasis added).

123. See *id.*

124. See Susannah Nesmith, *Colombian Rebels Wage Terror Campaign*, ASSOCIATED PRESS NEWSWIRES, Jan. 29, 2002.

125. See Andrew Selsky, *U.S. Officials Unveil Colombia Plans*, at <http://www.washingtonpost.com/ac2/wp-dyn/A30754-2002Feb6?language=printer> (Feb. 6, 2002).

126. See Karen DeYoung, *Wider U.S. Role in Colombia Sought*, WASH. POST, Feb. 6, 2002, at A15; see also Juan Forero, *administration Shifts Focus on Colombia Aid*, at <http://www.nytimes.com/2002/02/06/international/americas/06COLO.html> (Feb. 6, 2002).

127. Selsky, *supra* note 125.

128. See Associated Press, *supra* note 120. According to the indignant rebels, the proposed initiative simply evidences the fact that U.S. involvement is, and always has been, simply a pretext to eliminate the FARC. Rebel Commander Simon Trinidad said that “[f]rom the beginning we said that Plan Colombia was a counterinsurgency plan. No one believed the story that it was a plan against drug trafficking. Now the mask has been taken off.” *Id.*

others.<sup>129</sup> At the same time, it appears that the FARC rebels have managed to develop a strategic relationship with the Venezuelan military.<sup>130</sup> This could intensify the violence in the region.

To make matters worse, the geographical proximity to the unrest in Colombia has negatively impacted the other states in the Andean region. Known as the "spillover effect," this phenomenon dictates that as efforts to eradicate drugs or violence in Colombia increase, those responsible for such activities simply gravitate toward other nearby states where they resume their activities. For example, Ecuador has experienced a flood of refugees as well as increased drug trafficking and kidnappings.<sup>131</sup> Likewise, Peru has seen a substantial increase in narcotics production as drug producers abandon Colombia.<sup>132</sup> As one commentator explained, this "trend does not mean that anti-narcotics efforts in the Andes are failing . . . but it does underscore how fleeting victories can be in a drug war where national boundaries mean nothing to traffickers who can shift their crop across remote and poorly policed regions."<sup>133</sup> Similarly, Bolivia has recently fallen victim to the spillover effect as well. After managing to eradicate nearly eighty-five percent of its coca production under the "Dignity Plan" introduced a few years ago, additional steps by the Bolivian government to eliminate cocaine production have met with protests, parliamentary scuffles, and road blockades.<sup>134</sup> In short, although Bolivia has exerted considerable effort to make its country known for its natu-

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129. See Associated Press, *Rebel Attack Kills 10 Colombian Troops* (Feb. 13, 2002), available at <http://www.nytimes.com/2002/02/13/international/americas/13COLO.html?pagewanted=printer>.

130. See Juan Forero, *Colombia Fears Ties Between Its Rebels and Venezuela Military*, at <http://www.nytimes.com/2002/02/01/international/americas/01COLO.html?pagewanted=printer> (Feb. 1, 2002). A group of journalists recently revealed a videotape showing Colombian rebels warmly receiving a delegation of Venezuelan military officers in the Colombian demilitarized zone. *Id.* Although Venezuelan officials have attempted to portray this encounter as a "humanitarian mission" designed to secure the release of a Venezuelan hostage, such contact increased the international community's concern that Hugo Chavez's government has strong ties to the FARC rebels. *Id.*

131. See Damian Whitworth & David Adams, *Americas Free Trade Pact Seals Summit*, *TIMES* (London), Apr. 23, 2001, at 12.

132. See Juan Forero, *Farmers in Peru are Turning Again to Coca Crop*, at <http://www.nytimes.com/2002/02/14/international/americas/14PERU.html?pagewanted=printer> (Feb. 14, 2002).

133. *Id.*; see also *Spectres Stir in Peru*, *ECONOMIST*, Feb. 16, 2002, at [http://www.economist.com/world/la/displaystory.cfm?story\\_id=988725](http://www.economist.com/world/la/displaystory.cfm?story_id=988725) (noting that in addition to the increased production of narcotics, Peru has experienced an increase in guerilla activity since the military recently withdrew from many drug areas as a result of budget reductions and allegations of corruption and human-rights abuses).

134. See *Leaves of Discord*, *ECONOMIST*, Feb. 16, 2002, [http://www.economist.com/World/la/displayStory.cfm?story\\_id=988742](http://www.economist.com/World/la/displayStory.cfm?story_id=988742).

ral gas instead of its drugs, it appears that “the coca refuses to die.”<sup>135</sup> The spillover effect will likely lead to even further regional problems in the near future, due to Venezuela’s decision in February 2002 to abandon its exchange controls in an effort to stop capital flight and restore investor confidence in the economy.<sup>136</sup> While it may prove beneficial for Venezuela in the long run, other states in the region will undoubtedly suffer. Colombia, for instance, will lose competitiveness against Venezuelan products as the value of the national currency falls. Experts predict that in 2002 alone Colombia’s exports to Venezuela will decrease by \$152 million or 8.2 percent, which will further impair Colombia’s economic growth.<sup>137</sup>

F. *Broadening the ATPA Will Facilitate a Trade Pact with Central America*

The Bush administration recently announced that the United States plans to negotiate a free trade agreement with the countries of Central America (i.e., Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua), many of which already enjoy preferential duty treatment under the Caribbean Basin Initiative. According to official sources, the purpose of forming such a trade arrangement is three-fold: to promote U.S. exports to the region, to support democracy and economic reform, and to make progress toward finalizing the FTAA by “increasing the momentum in the hemisphere toward lowering barriers, opening markets, and achieving greater prosperity.”<sup>138</sup> More importantly perhaps, representatives of the Bush administration explain that announcing the potential trade pact at this precise moment is paramount to reassuring the Central American countries that the United States has not forsaken them.<sup>139</sup> In other words, President Bush desires to clarify that although the war on terrorism has recently become the central

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135. *Id.*

136. See Associated Press, *Venezuela Currency Falls 19 Percent* (Feb. 13, 2002), <http://www.nytimes.com/aponline/business/AP-Venezuela-Economy.html>.

137. See Mary Morrison, *Colombia To Suffer Most Within Region From Bolivar Fall*, at [http://www.online.wsj.com/article\\_print/0,4287,DI\\_CO\\_20020214\\_003621,00.html](http://www.online.wsj.com/article_print/0,4287,DI_CO_20020214_003621,00.html) (Feb. 14, 2002).

138. OFFICE OF THE PRESS SECRETARY, U.S. WHITE HOUSE, FACT SHEET: U.S.-CENTRAL AMERICA FREE TRADE AGREEMENT, Jan. 16, 2002, at <http://www.whitehouse.gov/news/releases/2002/01/20020116-11.html> (Jan. 16, 2002); see also Rossella Brevetti, *United States to Explore FTA with Central America, Bush Says*, 19 INT’L TRADE REP. (BNA) 127 (2002).

139. See David Sanger, *Bush Declares Free Markets Are Essential for Americas*, at <http://www.nytimes.com/2002/01/17/international/17PREX.html?pagewanted=printer> (Jan. 17, 2002).

point of U.S. foreign policy, he has not forgotten the foreign policy commitment he made last year—a renewed focus on the Western Hemisphere.<sup>140</sup>

Along with allaying Central America's anxiety regarding the Bush administration's recent shift in foreign policy focus, announcing the proposed deal with the region also sends a signal to other Latin American states, principally Brazil, that have recently manifested their reluctance toward advancing the FTAA process. By negotiating with Central America, the Bush administration intends to deliver the message that if Latin American states are reticent to make concessions to create the FTAA, the United States will make deals with those states that seem truly eager for free trade.<sup>141</sup>

True to the wishes of the Bush administration, the initial reaction from Central America upon learning of imminent free trade negotiations was unbridled enthusiasm. Only hours after the announcement, the president of El Salvador appeared on national television, declaring that the potential trade pact with the United States represented the dawning of a new era.<sup>142</sup> Following suit, other regional leaders openly supported the initiative, and local newspaper headlines alluded to increased exports, job opportunities, and foreign investment. Preliminary work also began to arrange a regional presidential summit designed to identify a common negotiating strategy.<sup>143</sup> When asked the reasons for such early excitement, the Salvadoran ambassador to the United States explained that “[i]t is the first time a U.S. president has announced anything like this. *We are taking him at his word and we are ready.*”<sup>144</sup>

As mentioned above, the Central American states contemplated by such a free trade pact with the United States already benefit from preferential duty treatment (for certain textiles and apparel) under the Caribbean Basin Initiative. Pursuant to the Textile Compromise, these countries are in jeopardy of having many existing benefits retracted just two years after they were granted. It seems irrefutable that many in these Central American countries will consider this unexpected revocation of benefits a blatant betrayal by the United States severely diminishing, if not altogether destroying, the trust upon which the free trade negotiations with Central

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140. *See id.*

141. *See* Paul Blustein, *Bush Defends Free-Market Path*, WASH. POST, Jan. 17, 2002, at A2.

142. *See* Marcela Sanchez, *The Power of a President's Word*, at <http://www.washingtonpost.com/wp-dyn/articles/A36938-2002Jan25.html> (Jan. 25, 2002).

143. *See id.*

144. *Id.* (emphasis added).



America are based. Stated more explicitly, the Central American leaders will surely not be “taking President Bush at his word” if the United States fails to renew and expand the ATPA in such a way that it is beneficial to both Central America and the Andean region.<sup>145</sup>

G. *Safeguard Existing U.S. Investments in the Andean Region*

In July 2000 the United States agreed to participate in Plan Colombia, which was designed chiefly to enhance counternarcotics and economic development activities in this country. In doing so, the United States appropriated approximately \$1.3 billion to this five-year program.<sup>146</sup> Realizing soon thereafter that the problems were endemic to the entire region instead of simply to Colombia, the Bush administration introduced the Andean Regional Initiative in May 2001, which substantially broadened U.S. efforts. With such enhanced participation came a higher price tag; the United States directed nearly \$800 million more to the project.<sup>147</sup> In justifying the need to expand the program throughout the entire Andean region and to invest the additional funds, representatives of the U.S. State Department identified several major regional problems, including (1) precarious democracies; (2) judicial institutions that are weak, ineffective, inefficient, and corrupt; (3) political infighting and corruption in legislatures; (4) rampant human rights violations; (5) violence and illegal drug production; (6) insufficient alternative development opportunities; and (7) environments and natural resources threatened by encroaching development.<sup>148</sup>

Like the ATPA, one of the major goals of the Andean Regional Initiative is to eradicate the production of illegal drugs in the region, and to provide alternative opportunities for economic development. Thus, the failure to renew and expand the ATPA, which is considered a “key component” of the Andean Regional Initiative, seems not only counterproductive, but also an unwise

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145. *Id.* Sentiments to this effect have already started. Based on the mere possibility of revoking benefits granted under the CBI, the author of this article calls the initial enthusiasm of the Central American leaders “premature” and “misplaced.” *Id.*

146. See U.S. DEP’T OF STATE, TEXT: SENIOR OFFICIALS URGE ANDEAN TRADE PREFERENCES RENEWAL (2001), at <http://usinfo.state.gov/regional/ar/colombia/andean.2htm> (Aug. 3, 2001) (statement of Alan Larson, Under Secretary of State for Economic, Business and Agricultural Affairs, before the Subcomm. on Trade of the Senate Comm. on Finance).

147. See Stephen Johnson, *Helping Colombia Fix Its Plan to Curb Drug Trafficking, Violence and Insurgency*, 1435 HERITAGE FOUND. BACKGROUNDER 1 (2001).

148. See U.S. DEP’T OF STATE, FACT SHEET: U.S. POLICY TOWARD THE ANDEAN REGION (2001), available at <http://usinfo.state.gov/regional/ar/colombia/arifactsheet.htm> (May, 16, 2001).

manner to protect the enormous investment of some \$2 billion that the United States has recently made in this region.<sup>149</sup> Several lawmakers with expertise in this area have noted this inconsistency and confusion. One congressman, for instance, stated the following:

In the Andean Initiative, we are trying to do alternative development. We are trying to rebuild their legal systems. But we are going to stop and repeal the trade initiatives at the very time this Congress has put \$1 billion into Plan Colombia, we are putting another half a billion into the Andean Initiative, and now we want to yank out the essential follow-through [provided by the ATPA] that gives something for these people to do to make a living to feed their families at a time when they most need it? I just do not understand it.<sup>150</sup>

Furthering this position, others have pointed out that the United States "cannot expect Colombians to fumigate themselves into starvation. Rather, if we are going to eradicate drugs, we must replace them with jobs."<sup>151</sup>

With respect to safeguarding recent U.S. investment in the region, others pose the most un-asked question in the war on drugs: What if the plan actually succeeds? Estimates show that annual cocaine exports from the Andean region total some \$12 billion, while the total gross domestic product for the area is \$200 billion. If Plan Colombia, the Andean Regional Initiative, and the ATPA achieve their common goal of eradicating illegal drug production, the not-so-obvious result will be economies suffering from a six percent drop in Gross Domestic Product, which is a dramatic amount. If the legislature does not renew and expand the ATPA to facilitate economic diversification, the money and effort from the United States so far will essentially go to waste. Accordingly, the United States needs to protect its gamble of \$2 billion.<sup>152</sup>

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149. See U.S. DEP'T OF STATE, *supra* note 146. Mr. Larson categorized the ATPA as an "integral part" of the Andean Regional Initiative. *Id.* He testified, furthermore, that, "[w]hile the ATPA is non-reciprocal in trade terms, it is not charity. It is a program specifically designed to bolster our critical counternarcotics interests in the region by strengthening the economies of our strategic partners. ATPA is a key component of a strategic approach that helps guarantee the continued cooperation of our partners." *Id.*

150. 147 CONG. REC. H.8257 (2001) (comments of Rep. Souder).

151. Bob Graham, *Trade Plus Aid; To Eradicate Drugs, Foster Legitimate Job Opportunities*, SUN-SENTINEL, Mar. 24, 2001, at 17A. With regard to protection of the U.S. investment to date, alluding to the enormous amount spent by the United States for Plan Colombia, Senator Graham argues that "[i]f those apparel-industry jobs are lost, that will be \$1.3 billion wasted." *Id.*

152. See *Hearings on the Outcome of Summit of the Americas*, *supra* note 53; see also EDWARD GRESSER, *supra* note 3, at 3. Along with lawmakers, several policy experts also contend that, in light of the lofty goals of Plan Colombia and the Andean Regional Initiative, the current

#### H. *Advance the Progress Already Achieved Under the ATPA*

As discussed previously, the chief goals of the ATPA include eradicating illegal drug production in the Andean region and creating economic alternatives that will lead to sustainable development. To date all evidence indicates that these aims have been met, albeit to a small degree. Perhaps more importantly, it is clear that these accomplishments for the Andean countries have not come at the expense of the United States. According to a recent study by the U.S. International Trade Commission, the ATPA has had “a slight but positive effect on drug-crop eradication and crop substitution.”<sup>153</sup> Furthermore, this report indicates that alternative development efforts to introduce new products in the region “are continuing to show promising results.”<sup>154</sup> Bolivia, in particular, has made laudable advances under the ATPA in terms of coca eradication managing to eliminate nearly eighty-five percent of its illegal coca crops.<sup>155</sup> A more recent report by the office of the U.S. Trade Representative corroborates these findings concluding that, with regard to illegal drug production and trafficking, the ATPA “is proving [to be] an important component of efforts to contain the spread of these illicit activities.”<sup>156</sup> The report also found that the ATPA has created significant employment opportunities in the Andean region in various sectors including cut flowers, non-traditional fruits and vegetables, jewelry, and electronic inputs.<sup>157</sup>

Perhaps somewhat unexpectedly, with respect to implications for the United States, studies indicate that although the ATPA is a uni-

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ATPA is simply inadequate. *See id.* Rapid renewal and expansion, therefore, constitutes the only logical solution. Gresser believes that “[w]ithout a program that provides a viable alternative to these exports, any successful anti-drug program is likely to cause a regional depression, which in turn will heighten political tensions and unrest. And the ATPA at present is simply not enough: it now covers about \$1.9 billion worth of exports to the U.S., or about a sixth of the total needed to replace cocaine exports.” *Id.*

153. 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 (SEVENTH REPORT 1999), U.S. Int’l Trade Comm’n Publ’n 3358, Investigation No. 332-352 (2000), available at <http://www.usitc.gov/wais/reports/arc/w3358.htm> (last visited July 5, 2002).

154. *Id.*

155. *See Bolivia; U.S. Should Reward Its Drug-Fighting President*, DAL. MORN. NEWS, Nov. 11, 2000, at 22A (discussing the danger of regression in Bolivia due to the loss of \$700 million annually in illegal drug revenue. Thus, if legal economic alternatives are not facilitated soon under the ATPA, then “[u]nless Bolivians begin to see fruits of Mr. Banzer’s anti-drug policies, the next president might reverse course. The United States should do everything in its power to ensure that Mr. Banzer succeeds, that he survives and that his anti-drug policies live after him.”).

156. OFFICE OF THE U.S. TRADE REPRESENTATIVE, *supra* note 1, at 3.

157. *See id.*

lateral preferential treatment program, and was not designed to provide U.S. industry direct benefits, the arrangement has had a positive impact on U.S. trade. In particular, during the ten years that the ATPA has been in effect, total two-way trade nearly doubled with U.S. exports increasing by sixty-five percent and U.S. imports rising by ninety-eight percent.<sup>158</sup> In terms of the domestic workforce, despite innumerable claims to the contrary, a U.S. Department of Labor report reveals that “[p]referential tariff treatment under the ATPA does not appear to have had an adverse impact on, or have constituted a significant threat to, U.S. employment.”<sup>159</sup> Indeed, in some regions of the United States such as Florida, the ATPA has created thousands of employment opportunities. According to representatives of Enterprise Florida, the trade arrangement has created 5,000 jobs at seaports for service providers, stevedores, handlers, transport companies, and law firms specializing in international trade, customs, and finance.<sup>160</sup> Similar employment-creation scenarios have occurred in the U.S. cotton industry, which has seen exports to the Andean region increase by 107 percent, while worldwide cotton exports have continually declined during the last 5 years. On the basis of these statistics, lawmakers argue that “the incentives to diversify Andean economies are taking hold and that the ATPA can provide a win-win situation for U.S. cotton growers, as well as Andean apparel producers.”<sup>161</sup>

Based on these various studies, it is clear that the ATPA has proven mutually beneficial to the Andean region and the United States. Lamentably, the extent of these positive effects has been limited by, among other things, the narrowness of the ATPA’s coverage thus far. Pertinent statistics reveal that exports from the entire Andean region constitute only one percent of total U.S.

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158. *See id.*

159. *Department of Labor Report, supra* note 65, at 14 (acknowledging that assessing the definitive effect of the ATPA on domestic employment is somewhat complicated since many of the products imported into the United States from the Andean region could have also received preferential duty treatment under the Generalized System of Preferences. Nevertheless, the report clearly indicates that “[a]lthough a definitive evaluation of the domestic employment impact of the ATPA cannot be made since the effects of duty-free provisions of the ATPA on U.S. imports cannot be completely isolated from the effects of other trade preference programs . . . it is unlikely that the ATPA has had a significant effect on overall U.S. employment.”).

160. *See* William E. Gibson, *Colombia Makes a Pitch for Trade; Florida Would Likely Benefit*, SUN-SENTINEL, Feb. 27, 2001, at 18A; *see also* Tim Johnson, MIAMI HERALD, Nov. 10, 2001, at 1C.

161. *Hearings on the ATPA, supra* note 71, at 5 (statement of Rep. Crane).

annual imports, and of that amount less than ten percent entered duty-free into the United States thanks exclusively to the ATPA.<sup>162</sup> Even these diminutive figures are deceptively large, however, since the overwhelming majority of Andean exports that enter the United States duty-free exclusively under the ATPA consist of just two products: copper cathodes and pigments.<sup>163</sup> In light of these irrefutable numbers, it is evident that the key to yielding additional positive outcomes is to expand the ATPA considerably. Stated more directly, “[i]t follows that major alternatives to the illegal drug trade will only occur with an expansion of product coverage.”<sup>164</sup>

### I. *Garner Support for the FTAA Throughout Latin America*

One of the Bush administration’s primary goals in terms of international trade is the negotiation of the FTAA by 2005.<sup>165</sup> Hoping to ensure its ability to successfully complete the treaty in a timely manner, the Bush administration has avidly sought TPA. As explained previously, winning approval of TPA in the U.S. House of Representatives required the creation of the Bush-supported Textile Compromise, which instantly incensed U.S. lawmakers and Andean nations alike. The question becomes, then, what actions must the United States now take to allay the concerns of these groups and ensure that the FTAA becomes a reality?

With regard to the reactions of U.S. lawmakers to the Textile Compromise, Representative Charles Rangel sent a letter to President Bush in which he called the possibility of limiting or revoking textile preferences “cynical and hypocritical attempts to undermine critical existing trade liberalization commitments in the name of securing passage of the most partisan trade bill in modern history.”<sup>166</sup> Through other mediums Representative Rangel warned that renegeing on concessions granted to the Caribbean states under the Caribbean Basin Initiative and excluding textiles and apparel as goods eligible for duty-free treatment under the

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162. See Kornis, *supra* note 4, at 1 (arguing that while the Andean nations “account for a very small portion of U.S. trade,” the ATPA is important because of its potential to generate alternative income and employment opportunities).

163. See Walker Pollard, *Renewal and Expansion of ATPA Could Enhance Effectiveness of Program*, [U.S. INT’L TRADE PUBL’N 3442] INT’L ECONOMIC REV. 17 (2001), available at <http://www.usitc.gov/ier.htm>.

164. *Id.* at 17 (strongly urging urges the inclusion of textiles and apparels as Eligible Articles under the ATPA).

165. See OFFICE OF THE PRESS SECRETARY, *supra* note 75.

166. Letter from Representative Charles B. Rangel to George W. Bush (Dec. 20, 2001), reprinted in 20 INSIDE U.S. TRADE 8-9 (2002).

ATPA would amount to an utter betrayal in the eyes of those states. Representative Rangel argued that “[i]t comes at the expense of hundreds of thousands of Caribbean workers, as well as their governments, who *trusted that when the United States gives its word in trade matters, that word means something.*”<sup>167</sup> Moreover, he warned that the United States “*will have no credibility in international trade negotiations*” if the United States demonstrates that in order to pass TPA it is willing to undo existing trade commitments.<sup>168</sup> According to Rangel “[t]hat’s like the Republican leaders trying to save your soul by signing a deal with the devil.”<sup>169</sup> Agreeing with this position and further emphasizing that obtaining TPA alone is meaningless unless it can actually facilitate future trade agreements, other Congressmen have explained that “[i]f the Bush administration wants to pass trade acts, it needs to build a record of trust.”<sup>170</sup> In addition to politicians, various other commentators have criticized the potential negative effects of the Textile Compromise. One respected columnist classified it as a “shaky victory on trade” since the TPA vote was obtained in a manner that will likely make future trade pacts like the FTAA “hard to sell.”<sup>171</sup> Other trade policy analysts likewise argue that the TPA vote should have demonstrated that the United States is prepared to deal on trade. Alas, “many observers around the world were left skeptical about the reliability of American promises.”<sup>172</sup>

Attempting to minimize the gravity of the current situation, certain U.S. politicians suggest that the lapse of the ATPA is really a disguised blessing, given that additional Congressional debate may lead to granting duty-free access to new types of merchandise.<sup>173</sup> Andean states, which have manifested increasing anger, have expressly rejected this position. For example, on a recent visit to

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167. Press Release, Office of Representative Charles B. Rangel, Rep. Rangel Blasts Republican Leaders Reported Commitment to Undo Past Trade Bill in Order to Pass Fast Track Bill By One Vote, (Dec. 6, 2001) (emphasis added), available at [http://www.house.gov/apps/list/speech/ny15\\_rangel/pr.wm.fasttrack12devil.html](http://www.house.gov/apps/list/speech/ny15_rangel/pr.wm.fasttrack12devil.html).

168. *Id.* (emphasis added).

169. *Id.*

170. Rossella Brevetti, & Fawn H. Johnson, *Baucus Sees TPA Trade Package Moving to Senate Floor in March*, 19 INT’L TRADE REP. 268 (2002).

171. David S. Broder, *A Shaky Victory on Trade*, WASH. POST, Dec. 12, 2001, at A35; see also Christopher Farrell, *Globalism, the Cure for War and Misery*, at [http://www.businessweek.com/bwdaily/dnflash/dec2001/nf20011214\\_3105.htm](http://www.businessweek.com/bwdaily/dnflash/dec2001/nf20011214_3105.htm) (Dec. 14, 2001) (declaring that the passing of the TPA vote in exchange for increasing protectionist barriers against the textile makers in Africa and the Caribbean is, “a step in the wrong direction.”).

172. Lael Brainard, *Textiles and Terrorism*, N.Y. TIMES, Dec. 27, 2001, at A19.

173. See Ken Guggenheim, *Andean Countries to Urge US on Trade*, at <http://www.latimes.com/news/nationwide/wire/sns-ap-us-andean-trade0210feb10.story> (Feb. 10, 2002).

Washington, D.C., to plead their case for renewal and expansion of the ATPA, the Andean nations clarified that they have grown weary of mere “pats on the back” from the United States for all of the progress in drug eradication thus far.<sup>174</sup> Not only do the Andean states want expanded ATPA coverage immediately, they believe that they deserve it after expending enormous efforts to fulfill the goals of the ATPA since 1991. According to the Bolivian Foreign Minister, “[w]e’ve done everything we are supposed to do. Frankly, we believe the United States is in debt to our countries.”<sup>175</sup> In many cases, these efforts to eliminate drugs have been conducted to the detriment of the Andean economies. For example, Bolivia, which has destroyed approximately eighty-five percent of its illegal coca under the ATPA, has lost \$600 million in annual revenue and reached an unemployment rate of twenty-five percent. This shift has caused “an economic downturn and very serious social unrest.”<sup>176</sup> The Caribbean countries have also expressed similar complaints.<sup>177</sup>

In light of these circumstances, since renegeing on the Textile Compromise is politically unadvisable, the renewal and expansion of the ATPA may suffice to safeguard the political goodwill necessary to advance the Bush administration’s goal of negotiating the FTAA by 2005. The degree to which the Textile Compromise and the expiration of the ATPA have impacted or will impact the FTAA process is mere speculation. It is clear though that how the United States treats the Andean nations will be keenly observed now by its brethren throughout the hemisphere, whose support is pivotal to the advancement of the FTAA. Put another way, “failure to renew

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174. See Jorge A. Bañales, *Andean Nations Call on U.S. for Preferential Trade Terms*, TRADE COMPASS, at [http://www.tradecompass.com/daily\\_brief/index.asp?briefdate=20020213&page=today](http://www.tradecompass.com/daily_brief/index.asp?briefdate=20020213&page=today) (Feb. 13, 2002); see also Karen DeYoung, *4 Andean Ministers Plead for Trade Pact*, WASH. POST, Feb. 13, 2002, at A10. The Foreign Minister of Ecuador stated that the “pats on the back are starting to hurt.” *Id.*

175. DeYoung, *supra* note 174. In addition to this overt indignation, during their recent visit to Washington the Andean leaders warned that U.S.-Andean political relations may be in jeopardy. They argue, specifically, that the higher duty rates imposed as a result of the expiration of the ATPA imperil their economies “and risk political stability as well as relations with Washington.” *Id.*

176. *Hearing on the Outcome of the Summit of the Americas*, *supra* note 53, at 124 (statement of Ana Maria Solares); see also 147 CONG. REC. H8289 (2001) (comments of Rep. Crane).

177. See Letter from the Ambassadors of the Caribbean Basin Nations to Speaker of the U.S. House of Representatives, Dennis Hastert (Dec. 17, 2001), *reprinted in* 20 INSIDE U.S. TRADE 9 (2002). In this letter, the Ambassadors state that seven years of efforts were undermined by the Textile Compromise. They argue, further, that revocation of textile preferences at this moment would be extremely untimely because this region has recently been damaged by (i) world economic slowdown, (ii) natural disasters, and (iii) increased competition from Asian textile competitors. See *id.*

the uncontroversial benefits would *signal to the rest of Latin America* that the United States is not serious about pursuing a more ambitious hemispheric trade pact [i.e., FTAA] in the future.”<sup>178</sup>

J. *An Expanded ATPA Upholds U.S. Foreign Policy  
Toward Latin America*

Since day one of assuming the presidency, the Bush administration has espoused a foreign policy that includes, inter alia, promotion of free trade, unequivocal support for the renewal and expansion of the ATPA, and increased attention toward Latin America.<sup>179</sup> Good intentions and unforeseeable circumstances notwithstanding, the Bush administration has not consistently adhered to its pledges. Straying from the course at this juncture, however, seems unadvisable for several reasons. First, recent U.S. relations with Mexico, one of the most recognizable and influential nations in Latin America, have been troublesome. Despite the Bush administration's repeated pledge to make U.S.-Mexican relations a top priority, the administration has virtually ignored Mexico since the terrorist attacks on September 11, 2001. Prior to these incidents, continental integration and forging new ground with Mexico constituted high priorities for the United States. After the attacks, though, it appeared that U.S. foreign policy simply did not

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178. *Renewing a Latin Trade Pact*, N.Y. TIMES, Feb. 14, 2002, at A30 (emphasis added); see generally Naím Moisés, *Anti-Americanisms: A Guide to Hating Uncle Sam*, FOREIGN POL'Y, Jan./Feb. 2002, at 103-104 (describing the root causes of anti-American sentiment and suggesting that it derives partly from dashed expectations that economic liberalization, political reform and globalization would eventually allow others to achieve parity with the United States). Many Latin American nations, such as those in the Andean region, continue to struggle, whereas the United States is relatively prosperous. Thus, perhaps before adopting a policy decision concerning whether to uphold the Textile Compromise or not expand the ATPA, Mr. Moises' question should be answered: "Is the ill will generated by such behavior worth it?" See *id.*; see also *Hearings on the ATPA*, *supra* note 71, at 5 (statement of Rep. Crane) ("Our prompt renewal of the ATPA will also signal to our other Latin American trading partners that we are committed to negotiating and concluding the Free Trade Area of the Americas on schedule in 2005."); see also EDWARD GRESSER, *supra* note 3, at 2 ("with each Andean nation struggling, failure to renew it would not only come as an economic blow, but as a sign of political abandonment in difficult times. To let the program expire would be a major policy setback not only for trade but for wider American goals in the region.").

179. See e.g., Robert B. Zoellick, *American Trade Leadership: What is at Stake*, Sept. 24, 2001, [http://www.ustr.gov/speech-test/zoellick/zoellick\\_10.pdf](http://www.ustr.gov/speech-test/zoellick/zoellick_10.pdf) ("The eyes of the world are now on America. It is the moment to affirm our commitment to trade and openness."); OFFICE OF THE PRESS SECRETARY, *supra* note 75 (among other items on President Bush's recent trade agenda is his support of expanding the ATPA); Karen DeYoung, *Bush Backs Colombia on Trade; President Says He'll Push Andean Pact's Expansion*, WASH. POST, Feb. 28, 2001, at A18. When asked if he planned to support the renewal and expansion of the ATPA, Bush announced affirmatively, repeating his motto: "I'm a free trader." See *id.*



encompass Mexico. In the opinion of various political columnists, the neglect of Mexico was so absolute that (1) the United States subordinated Mexico to the status of “a sideshow”; (2) the countries’ supposedly tight friendship “suddenly seems like nostalgia”; (3) the United States relegated Mexico “to the junior league of American foreign policy”; (4) Mexico earned the dubious distinction of becoming the “most conspicuous loser” in the shift in U.S. policy; and (5) Mexico transformed from “a darling of [U.S.] politicians left and right” into “a bride left standing at the altar.”<sup>180</sup> Second, disappointment with recent U.S. foreign policy is not limited to Mexico. Indeed, senior U.S. diplomats to Latin America confirm that there is “widespread disappointment” with the Bush administration because of the “scant attention” that it has given to the region lately.<sup>181</sup> Third, in the midst of Washington’s seeming inattention to Latin America, the region has been experiencing tremendous problems in recent months. For instance, Argentina’s economy is a veritable disaster and the country has had more than five different presidents since December 2001; Colombia finds itself on the brink of a civil war; and Central America is “stuck in

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180. See e.g., *Let Us Be Your Frontier Post*, *ECONOMIST*, Oct. 13, 2001, available at 2001 WL 7320551 (indicating that Mexico used to “top the bill on George Bush’s foreign-policy agenda,” but after the terrorist attacks it “became a sideshow.”); Kevin Sullivan, *US Relations Change Suddenly for Mexico*, *WASH. POST*, Sept. 21, 2001. Two weeks before the attacks, Fox and Bush were effusive regarding their friendship and bilateral relations. Now that Bush is occupied with security matters, though, “the ringing friendship with Mexico suddenly seemed like nostalgia.” John Ross, *Some Mexicans Have Mixed Emotions About Black Tuesday*, *BORDERLINES*, Sept. 19, 2001 (arguing that, despite Bush’s previous praise of Mexico as the “most important foreign relation” of the United States, after the terrorist attacks, “Bush is going to forget Fox fast.”). See also “Fair Weather Friends?” *ECONOMIST*, Sept. 22, 2001 (discussing how Mexico and the United States used to consider themselves “the biggest of buddies,” but now Mexico fears that it will be inevitably relegated to the “junior league of American foreign policy.”); Mary Jordan, *Fox Walks Fine Line in Support for US – Response to Terrorist Attacks is Rekindling Debate Over Mexican Nationalism*, *WASH. POST*, Sept. 27, 2001, at A15 (explaining that notwithstanding President Fox’s repeated declarations regarding the importance of Mexico’s increased role in foreign affairs, after the terrorist attacks Bush neglected to invite Fox to the rubble of the World Trade Center and there was certainly no “photo-op of the dos amigos at the White House.”); Jackson Diehl, *Flights of Foreign Policy*, *WASH. POST*, Nov. 26, 2001, at A25 (discussing that, in reference to the recent visit by Senators Daschle and Gephardt to discuss immigration issues, the most conspicuous loser (i.e., Mexico), “has been so neglected that he now depends on Democrats in Congress to revive his long-lost immigration agenda.”); Tim Weiner & Ginger Thompson, *Mexico Lower on Bush’s List Since Sept. 11*, *N.Y. TIMES*, Dec. 29, 2001, at A4 (discussing former National Security Council member Robert Pastor’s statement that “[t]here is no country in the world that suffered more from the eclipse of Sept. 11 and the later focus of the Bush administration on bin Laden than Mexico.”).

181. Tim Johnson, *Powell: Latin America Important to U.S.*, *MIAMI HERALD*, Sept. 10, 2001, at 1A.

poverty, corruption and an uphill experiment in democracy.”<sup>182</sup> Fourth, along with representatives of Latin America expressing their irritation, respected U.S. trade experts have recently started pointing out the inconsistencies in the Bush administration’s behavior. In the opinion of a former U.S. Trade Representative, while the Bush administration’s rhetoric on free trade is loud, its corresponding actions are inconsistent. In other words, “the walk doesn’t always follow the talk.”<sup>183</sup>

Although it may not remedy all of the disgruntlement discussed above, fully supporting the renewal and expansion of the ATPA may be evidence of the Bush administration’s desire to adhere to its professed foreign policy and trade agendas. On the other hand, doing anything to the contrary would undoubtedly exacerbate the alarming situation with Latin America that currently exists.

#### K. *An Expanded ATPA Strengthens U.S. National Security*

The principal goals of the ATPA include eradicating illegal drugs and developing alternative methods to economic growth in the Andean nations. Implicit in the program, however, is the United States’ very personal interest in fortifying its national security by ensuring that the Andean region remain as stable as possible. Although it may escape the minds of many American citizens and lawmakers alike, the steadiness of the Andean states is critical to the United States due to their geographical proximity, and a certain degree of U.S. involvement in the region is therefore inevitable.<sup>184</sup> In other words, “[a] collapse in Colombia’s civil society would destabilize the region and invite *more rather than less* U.S. intervention.”<sup>185</sup> From this perspective, renewal and expansion of

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182. Alfredo Corchado, *As Latin American Simmers, Bush Says U.S. to Renew Focus*, DALLAS MORNING NEWS, Jan. 17, 2002, at 6A (quoting experts on the region, “Do we need a meteorite to hit the continent before we pay attention? Do we need the Chinese to invade? Any of these countries are powder kegs that can explode at any moment.”).

183. David R. Francis, *Why Some U.S. Industries Don’t Welcome Freer Trade*, CHRISTIAN SCI. MONITOR 21 (2002).

184. See 147 CONG. REC. H8254 (2001) (comments of Rep. Slaughter). Based on a review of the Congressional record, it is apparent that some lawmakers fail to understand the relationship between the Andean region and U.S. security. For example, in a recent debate concerning the renewal and expansion of the ATPA, one Congressman asked, “[w]hy is the leadership prioritizing this measure when other, pressing needs affecting our constituents at a time of war are never allowed to see the light of day? I do not mean to disparage our friends to the south, but ensuring the duty-free treatment of 6,000 products from the Andean countries of Bolivia, Colombia, Ecuador and Peru surely should not take precedence over legislation impacting our homeland security. . . .” *Id.*

185. *Abide by the Law of Supply, Demand; President’s Candor Refreshing*, SUN-SENTINEL, Mar. 1, 2001, at 18A (emphasis added).

the ATPA is by no means a gesture of good will; rather, it is a self-interested policy decision designed to protect U.S. national security. Champions of the ATPA describe the benefits of the program for the United States in broad terms, explaining that

[u]ltimately, we—as a nation—stand to lose or gain, depending on the economic health of our hemispheric neighbors. A more aggressive trade policy in the hemisphere is not only important for increasing markets for U.S. companies, but it also enhances stability and promotes security in the hemisphere. It is important to remember that a strong, and free, and prosperous hemisphere means a strong, and free, and prosperous United States. It is in our national interest to pursue an aggressive trade agenda in the Western Hemisphere to combat growing threats and promote prosperity.<sup>186</sup>

Memories of the precarious situation in the Andean region a few years ago further support the security rationale for expanding the ATPA. In Colombia, narcotics organizations launched a campaign of violence against the national government in an attempt to disenfranchise the rightful authorities. Although this scheme proved unsuccessful, “one can imagine the threat to *U.S. national security* that would have been posed by a narco-trafficking state used as a springboard for international terrorist groups.”<sup>187</sup> To exacerbate things, the violence originating in Colombia has spread throughout the region, reminiscent of the widespread civil disorder in Central America that seriously imperiled U.S. national security in the 1980s.<sup>188</sup> Thus, in addition to economically aiding the Andean region, renewing and expanding the ATPA would generate the collateral benefit of safeguarding U.S. national security.

#### L. *Satisfying a Unified but Unique Region*

The Andean region remained relatively dormant for many years, taking few joint actions to create cohesion within the group. In light of the FTAA negotiations and the controversy surrounding the renewal and expansion of the ATPA, however, the Andean states recently united in a significant manner announcing that the Andean region has adopted a common foreign policy and will establish a customs union by December 2002. Justifying this renewed interest in group action, the Andean states asserted that

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186. 147 CONG. REC. S2227 (2001) (comments by Sen. DeWine).

187. *Hearings on September 11, supra* note 108, at 16 (statement of James Mack, Deputy Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, U.S. Dep’t of State) (emphasis added).

188. See Brent Scowcroft & Bob Graham, *Quick Aid to Colombia For Our Sake*, L.A. TIMES, Apr. 26, 2000, at B9.

achieving a comprehensive strategy and speaking with “a single voice” are pivotal to their success in trade negotiations.<sup>189</sup> Despite this professed solidarity, the Andean nations have unique needs under the ATPA due to their distinct geographic and economic realities. For example, the status of tuna as a duty-free item under the ATPA necessarily impacts Ecuador’s economy, which has one of the largest tuna-processing capacities in the world.<sup>190</sup> For its part, Peru derives a sizable portion of its revenue from the export of fresh asparagus to the United States under the ATPA. As Peru’s second largest export it has created over 20,000 jobs offering many people legitimate employment alternatives to harvesting illegal drugs.<sup>191</sup> With regard to textiles, the situation varies substantially for each country. Colombia, for instance, acts primarily as a “maquila” operation, its factories limiting themselves to assembling garments from the fabrics and components of U.S. companies.<sup>192</sup> Peru and Bolivia, by contrast, are more vertically integrated because they produce large quantities of quality cotton. Instead of importing raw materials from abroad and simply assembling garments, these countries are capable of handling the entire operation, from growing raw materials (cotton), to creating the intermediate textiles (yarns and fabrics), to manufacturing the finished goods (apparel).<sup>193</sup> Due to these disparities, each Andean nation has concerns about duty-free access under the ATPA for particular items.

As discussed previously, the American asparagus industry has lobbied against making asparagus an eligible article under the ATPA.<sup>194</sup> Of course, such an exclusion would seriously undermine the effectiveness of the ATPA for Peru. Likewise, the U.S. tuna industry has vehemently opposed granting duty-free access to tuna from the Andean region.<sup>195</sup> Granting such a ban would significantly hinder the economic development of Ecuador thought. The U.S. industry has made numerous proposals with regard to

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189. *Andean Community Presidents Sign Santa Cruz de la Sierra Declaration in Bolivia*, FIN. TIMES, Feb. 1, 2002; see also Vanessa Arrington, *Andean Leaders Aim to Toughen Area*, Associated Press, Jan. 30, 2002.

190. See *Hearings on the ATPA*, *supra* note 71, at (statement of K. Ward Rogers).

191. See *Department of Labor Report*, *supra* note 65.

192. See Rodriguez, *supra* note 52, at 4.

193. See *id.* at 6; see also *Hearings on the Outcome of Summit of the Americas*, *supra* note 45, at 121-24 (statement of Ana Maria Solares, Vice-Minister of Trade and Economics, Ministry of Foreign Affairs, Bolivia).

194. See *Hearings on the Outcome of Summit of the Americas*, *supra* note 45, at 144-45 (statement of the American Farm Bureau Federation).

195. See 147 CONG. REC. H6417-6419 (2001) (comments by Mr. Faleomavaega).

textiles and apparel, including the outright exclusion of duty-free treatment, allowing preferences only to those goods made from U.S. inputs (yarns and fabrics), and forcing apparel to undergo finishing and dyeing operations in the United States to secure duty-free eligibility pursuant to the Textile Compromise.<sup>196</sup> While the American textile industry may be protected to a certain degree, acceptance of these proposals would make the ATPA essentially worthless, particularly for those countries like Peru and Bolivia with vertically integrated apparel operations. Arguing in favor of providing duty-free access to apparel from the ATPA nations that is composed of textiles made from cotton grown in the Andean region, lawmakers have emphasized that “[i]t is not economically feasible for these countries to be required to use U.S. raw materials. If we do not provide an opportunity for the Andean countries to use their own regionally-produced fabric, the benefits [of the ATPA] will be meaningless.”<sup>197</sup> Echoing this sentiment, the House Committee on Ways and Means, Subcommittee on Trade, recognized that expanding the ATPA to offer duty-free treatment only to apparel composed of U.S. fabric and yarn “would not provide any meaningful benefits to Andean economies.”<sup>198</sup>

In light of the newly reinvigorated Andean solidarity, as well as each nation’s distinct needs under the ATPA, the most rational solution is to expand the ATPA to grant duty-free access to as many items as possible.

## VI. CONCLUSION

Albeit to a lesser degree than initially hoped, the ATPA has achieved its goals of reducing illegal drug production in the Andean region by creating economic alternatives, fostering export diversification as a means of preparing the Andean nations for hemispheric integration, protecting U.S. national security by ensuring stability in the area, and fortifying the national anti-drug campaign. Despite claims to the contrary, these accomplishments

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196. See *Hearing on the ATPA*, *supra* note 53, at 16-18 (statement of Carlos Moore, Executive Vice President of the American Textile Manufacturers Institute).

197. *Hearing on the ATPA*, *supra* note 53, at 5 (statement of Rep. Crane).

198. H. REP. NO. 107-290, at 13 (2001); see also S. REP. NO. 107-126, 25-26 (2001). The Senate Finance Committee also acknowledged the importance of textiles, stating that “one of the most important enhancements of the current ATPA program is to extend duty-free treatment to textile and apparel products from the beneficiary countries.” *Id.* It does qualify this support, though, by indicating that certain quotas should restrict the extent of duty-free treatment. See *id.*; see also Craig Mauro, *Peru Officials See ATPA Renewal with Ceiling for Apparel Imports Made from Local Inputs*, 18 INT’L TRADE REP. (BNA) 1347 (2001).

were obtained without causing any significant negative impact on the United States.

Due to changed circumstances such as the expansion of the Caribbean Basin Initiative to grant preferential duty treatment to certain textiles and apparel, the escalating threat of war in Colombia and the ensuing "spillover effect" in the neighboring countries, the multi-million dollar investment made by the United States in Plan Colombia and the Andean Regional Initiative, and the war on terrorism, renewing and expanding the ATPA seems more imperative than ever. Nevertheless, lobbying efforts by special-interest groups have managed to frustrate the enhancement of this trade arrangement. What's more, in its eagerness to obtain TPA, the Bush administration has fully supported the Textile Compromise, which has incensed those nations in Central America, the Caribbean, and the Andean region.

Ideally the Textile Compromise would never have been concocted, and the profound indignation of many of the United States' trading partners in Latin America would thus have been avoided altogether. Any effort to retract this legislative deal now, however, would surely trigger additional delays or perhaps completely eliminate the possibility of enhancing the ATPA. In light of this possibility, the best strategy would be to expand the ATPA sufficiently to uphold the Textile Compromise while simultaneously fulfilling the objectives of the ATPA, both for the Andean region and the United States. Certain U.S. industries may suffer minor setbacks as a result, but when evaluated from a broader perspective, such sacrifices seem wholly justifiable.