INTERNATIONAL TRADE DEVELOPMENTS

The Andean Trade Preference Act: An Update

Joanne Guth and Magda Kornis[1]
jguth@usitc.gov
202-205-3264

The Andean Trade Preference Act (ATPA) expired on December 4, 2001, and was renewed retroactively on August 6, 2002 under the Andean Trade Promotion and Drug Eradication Act, which also amended ATPA to cover additional products. During the first 7 months of 2002, the loss of duty-free status under ATPA apparently contributed to the decline of U.S. imports from the four beneficiaries. The economic slowdown in the United States also was a major cause.

For 10 years, the Andean Trade Preference Act (ATPA) provided duty-free and reduced-duty treatment to qualifying imports from four Andean countries–Bolivia, Colombia, Ecuador, and Peru.[2] The purpose of the program was to promote broad-based economic development and viable economic alternatives to coca cultivation and cocaine production by offering Andean products broader access to the U.S. market. ATPA expired on December 4, 2001. Eight months later–on August 6, 2002–President Bush signed into law the Andean Trade Promotion and Drug Eradication Act (ATPDEA), which renewed ATPA preferences and amended ATPA to cover additional products subject to a two-step implementation procedure.

During the period when ATPA was not in effect, all imports of goods that had been eligible to claim the ATPA tariff preference were subject to general or normal trade relations (NTR) duty rates, formerly known as most-favored-nation rates.[3] The U.S. Generalized System of Preferences (GSP) program, which offers preferential access to the U.S. market for some products of the four Andean countries (which are designated beneficiaries of both programs), had also lapsed during this period; thus, GSP duty-free entry was not available for goods designated under that program. On February 15, 2002, the U.S. Customs Service published a temporary rule that granted importers of articles that formerly qualified for duty-free treatment under ATPA the option to defer the payment of estimated duties and fees after entry of these products until May 16, 2002. However, because ATPA was not renewed prior to that date, importers were required to pay all applicable duties and fees by May 16, 2002.[4]

According to interested parties, the expiration of ATPA tariff preferences had serious consequences for some Andean exporters. For example, both Colombian and Ecuadoran flower growers warned that because profit margins are so slim in the highly competitive flower business, the cost of the duty, typically 6.4 or 6.8 percent ad valorem, imposed on flower imports after ATPA expired was causing serious cash-flow problems and threatened the viability of some of the flower farms. According to the Colombian Flower Exporters Association (Asocolflores), the tariffs cost the floral industry about $2.5 million per month, and affected shipments for Valentine's Day and Mother's Day, which represent the major portion of total annual shipments. Companies in Colombia began to take

[1] The views expressed in this article are those of the authors. They are not the views of the U.S. International Trade Commission (USITC) as a whole or of any individual Commissioner.

[2] General note 11 to the Harmonized Tariff Schedule of the United States (HTS).

[3] ATPA-eligible product categories in the HTS contain a duty rate and the symbol "J" or "J*" in the special rates of duty subcolumn, while any rate lines in chapters 1-97 covering products that are eventually designated under the ATPDEA will have a special duty rate and a "J+" symbol; GSP-eligible products are designated by the symbol "A" or "A*" (see general notes 11 and 4, respectively, for more information).

[4] 67 F.R. 7070.

various measures to control expenses, such as curtailing investment, market development, and training, social, and environmental programs. Asocolflores noted that profit margins average 2 to 4 percent in the industry, less than the tariff preference granted by ATPA.[5] The Association of Floral Importers of Florida claimed that the expiration of ATPA jeopardized the continued viability of the association's members and its 6,100 employees, as well as 220,000 other U.S. jobs dependent on imported flowers from ATPA countries.[6] Flowers ranked second among U.S. imports under ATPA in 2000 and 2001. Reportedly, other Andean imports seriously affected by the imposition of NTR rates were asparagus, mangoes, and jewelry.

Table 1 shows the trends in U.S. imports of the top ATPA-eligible products during January-July 2002, when ATPA was not in effect. During January-July 2002, imports were lower for all but one of the items shown than they had been in January-July 2001. The rate of decline ranged from 2.9 percent (cut flowers and buds, suitable for bouquets) to 91.2 percent (pigments). The exception was cigarettes, which surfaced only in 2001 as a major import item under ATPA; thus in January-July 2002, cigarette imports from ATPA countries were still new. For this reason, even though their duties at 9.9 percent are relatively high, cigarette imports soared at a rate of 236.7 percent during January-July 2002 from their low 2001 base.

The table also shows a low correlation between the rates of duty and the decline of imports. Nonetheless, for some leading ATPA imports such as flowers, the reimposition of duties (6.4 to 6.8 percent) may have been critical if industry profit margins were already low. For the most part, the expiration of ATPA may have only exacerbated the decline in imports of former ATPA items, which was caused principally by the economic slowdown in the United States. Shrinking U.S. demand depressed all U.S. imports from ATPA countries, regardless whether they entered under ATPA or outside the program. Imports from ATPA countries declined by 13.2 percent in January-July 2002 compared with the same period of 2001. U.S. imports from all countries of the world were down by 3.9 percent. The 23.5-percent average decline in the imports of the twelve leading ATPA items that lost their duty-free status was steeper than these broader import trends, suggesting that the expiration of ATPA aggravated the decline of trade involved.

On August 6, 2002, the President signed into law the Trade Act of 2002.[7] Title XXXI of the Act contains the ATPDEA, which renews and enhances ATPA through December 31, 2006. The renewal is retroactive to December 4, 2001, when ATPA expired; thus, duties paid on eligible articles when ATPA was not in effect can now be refunded.

ATPDEA authorizes the extension of duty-free treatment to certain products previously excluded from ATPA preferences, including certain textiles and apparel, footwear, petroleum and petroleum derivatives, watches and watch parts (including cases, bracelets, and straps), and certain tuna in smaller foil or other flexible airtight packages (not cans). However, ATPDEA did not renew the reduced-duty provisions on certain handbags, luggage, flat goods, work gloves, and leather wearing apparel.

With respect to textiles and apparel, ATPDEA grants apparel duty-free and quota-free treatment provided that it is assembled in designated countries and is made wholly from U.S. fabric or fabric components or components knit-to-shape in the United States. Also eligible for duty-free entry is apparel assembled from Andean regional fabric or components knit-to-shape in the region, subject to a quantitative limit. The statute sets the cap at 2 percent by volume (in square meter equivalents) of all U.S. apparel imports in 2001 for the 1-year period beginning October 1, 2002, increasing annually in equal increments to a total of 5 percent for the period beginning October 1, 2006.[8] Currently, U.S. imports of all textiles and apparel from the four Andean countries account for about 1 percent by value of total U.S. textile and apparel imports.

On October 31, 2002, the ATPDEA amendments were implemented by Presidential proclamation[9] following a two-step implementation procedure. As originally enacted, the ATPA established criteria for determining whether the four eligible Andean countries could be designated as beneficiaries, and all four had so qualified. The ATPDEA required the four countries to meet eight additional criteria in order to qualify for

[5] Submission to the Commission by Susan M. Schmidt, Counsel for Colombian Flower Exporters Association, received July 2, 2002, in connection with USITC, *Andean Trade Preference Act: Impact on U.S. Industries and Consumers and on Drug Crop Eradication and Crop Substitution, Eighth Report 2001*, Inv. No. 332-352, September 2002.

[6] Submission to the Commission by Lin Watts, Executive Vice President of Association of Floral Importers of Florida, received June 28, 2002, in connection with USITC, *Andean Trade Preference Act: Impact on U.S. Industries and Consumers and on Drug Crop Eradication and Crop Substitution, Eighth Report 2001*, Inv. No. 332-352, September 2002.

[7] Public Law 107-210.

[8] These new benefits will be reflected in chapter 98 of the HTS along with additional qualifying criteria provided in the ATPDEA.

[9] Proclamation 7616–To Implement the Andean Trade Promotion and Drug Eradication Act, Oct. 31, 2002.

Table 1
Twelve major U.S. products under ATPA: Imports from ATPA Countries in January-July 2001 and January-July 2002

HTS No.	Product Description and Estimated Ad-Valorem Duty Equivalent	U.S. Imports in Jan.-July 2001 (thousand dollars)	U.S. Imports in Jan.-July 2002 (thousand dollars)	Percent Change
7403.11.00	Refined copper cathodes and sections thereof (1.0 percent)	275,854	246,842	-10.5
0603.10.60	Fresh-cut roses (6.8 percent)	133,884	125,172	-6.5
3212.90.00	Pigments (3.1 percent)	120,752	10,672	-91.2
0603.10.70	Chrysanthemums, etc. (6.4 percent)	61,639	52,736	-14.4
1604.14.40	Tunas and skipjack, not canned (0.4 percent)	19,482	16,126	-17.2
0709.20.90	Fresh or chilled asparagus (21.3 percent)	12,847	10,492	-18.3
0603.10.80	Cut flowers and buds, suitable for bouquets (6.4 percent)	59,295	57,552	-2.9
7113.19.10	Gold rope and chain for jewelry (7.0 percent)	17,205	13,355	-22.4
7113.19.50	Gold jewelry articles and parts (5.5 percent)	44,736	32,447	-27.5
7306.20.60	Iron or non-alloyed steel (0.4 percent)	9,479	2,503	-73.6
7901.11.00	Zinc, not alloyed, unwrought, cont. 99.99 or more by weight of zinc (1.5 percent)	21,043	14,253	-32.3
2402.20.80	Cigarettes, paper-wrapped (9.9 percent)[1]	4,416	14,872	236.7
	Total of above	780,632	597,022	-23.5
	Total imports from ATPA countries	5,821,118	5,055,605	-13.2
	U.S. imports from all countries	674,961,474	648,533,066	-3.9

[1] An atypical item; imports under ATPA were first recorded in 2001.

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

designation for the enhanced trade benefits under the ATPDEA. The criteria covered such topics as the extent to which a country provides protection of intellectual property rights and internationally recognized worker rights.[10] On October 31, Bolivia, Colombia, Ecuador, and Peru were designated eligible for ATPDEA benefits.

For all of the products for which new preferences were made available by ATPDEA (except for textiles and apparel and for tuna in pouches), a second step had to be completed before designated countries could benefit from the ATPDEA's enhanced trade benefits. The President had to determine that the product was not import-sensitive before it could be granted duty-free treatment. While the President extended ATPDEA benefits to most eligible products, he did not include 17 footwear rate lines on the basis of their import sensitivity in the context of imports from ATPDEA countries. On October 31, the HTS was modified to reflect the new duty-free benefits. Nearly 6,300 rate lines or products are now covered by the Andean trade preference program.

[10] Section 204(b)(6)(B).