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The Andean Trade Preference Act: Drug Suppressant or Economic Stimulant?

Diane L. Haagenson

The United States has been fighting the importation of drugs since the nineteenth century.¹ The international narcotics trade, however, has been a major United States foreign policy concern only for the last fifteen to twenty years.² The United States' current emphasis on international drug control appears to be a result of the perceived threat that domestic increases in drug consumption and drug-related crime pose to national security.³ In recent decades, the United States' international drug

1. The first federal attempt to control drug abuse was the Act of February 23, 1887, ch. 210, 24 Stat. 409, which banned the importation of opium into the United States by Chinese subjects and criminalized participation of United States citizens in opium traffic in China. Harry Hogan & Charles Doyle, *The Federal Response: A Growing Role*, CONG. RES. SERV. REV., Nov.-Dec. 1989, at 11. In 1914, Congress passed the Harrison Narcotics Act of 1914, Pub. L. No. 63-223, 38 Stat. 785, which continued as the primary drug control statute until 1970. Hogan & Doyle, *supra*, at 11. This Act required registration with the IRS by anyone dealing with narcotics and taxed all transactions involving a controlled drug, except those administered by a physician. *Id.* In 1970, Congress enacted the Controlled Substances Act, Pub. L. No. 91-513, 84 Stat. 1242 (1970) and the Controlled Substances Import and Export Act, Pub. L. No. 91-513, 84 Stat. 1285 (1970), which made significant changes in the system of punishment for drug violations and increased regulation of the pharmaceutical industry. Hogan & Doyle, *supra*, at 12.

2. In 1984, enactment of the Comprehensive Crime Control Act of 1984, Pub. L. 98-473, 98 Stat. 2168, marked the first serious attempt by the United States to combat international drug trafficking through penal legislation. See Hogan & Doyle, *supra* note 1, at 12. This Act increased the level of penalties for drug trafficking offenses and attempted to restrict the international flow of currency, which is an indication of the operation of international drug cartels. *Id.* In 1986, the U.S. Congress enacted the Anti-Drug Abuse Act, Pub. L. No. 99-570, 100 Stat. 3207 (1986), the most wide ranging narcotics control legislation since the Controlled Substances Act. *Id.* The Act introduced criminal penalties for money laundering and authorized the use of United States armed forces to enforce U.S. anti-drug criminal laws extraterritorially. The Act also increased funding for United States treatment and rehabilitation programs and established grants to state and local enforcement agencies for local drug enforcement. *Id.*

3. See generally STAFF OF SENATE SUBCOMM. ON TERRORISM, NARCOTICS AND INT'L OPERATIONS, 100TH CONG., 2D SESS., REPORT ON DRUGS, LAW ENFORCEMENT AND FOREIGN POLICY 11 (S. Print No. 165 (1988)).

control policy has emphasized increased criminal penalties and military aid to fight drug traffickers,⁴ rather than addressing some of the pressures U.S. practices place on developing countries to produce narcotics, such as tariffs and subsidies on various cash crops.⁵

In January 1990, President George Bush issued a national drug control strategy that calls for increased international cooperation against drug production, trafficking and abuse.⁶ This ap-

4. See *supra* note 2 and accompanying text.

5. For example, on September 27, 1991, U.S. Trade Representative Carla A. Hills limited the level of lower duty or duty-free sugar imports to 1,385,000 metric tons, raw value, announcing that any amount above that quota would be subject to the higher duty of 16 cents per pound. *USDA, USTR Announce Sugar Import Quotas, Allocations for 1991-1992*, 8 Int'l Trade Rep. (BNA) 1434 (Oct. 2, 1991). The United States currently maintains similar import restrictions on other Andean products including cut flowers, zinc, seafood, and fruits and vegetables. Bernard W. Aronson, *Andean Trade Preference Act: Essential to Combating Narcotics Traffic*, U.S. DEP'T OF STATE DISPATCH, Aug. 5, 1991. All of these products are primary commodities (i.e., they have not undergone manufacturing). More than 90% of Bolivian and Ecuadorian exports and 75% of Colombian and Peruvian exports are primary commodities. *Id.* These restrictive tariffs thus prevent most Andean exports from entry into the United States. As a result, Andean farmers are forced to grow illegitimate, tariff-free products. Colombian Minister of Foreign Commerce Juan Manuel Santos complained about continuing United States tariffs on flower imports, some leather products, oil and its derivatives, and print and poplin cotton fabrics, stating, "[i]t is worrisome to us that while developing countries, especially in Latin America, have taken all kinds of measures to liberalize trade and leave behind protectionism, the industrialized countries seem to be more and more entrenched in programs of subsidies and tariff restrictions. To us this situation is like the reverend who doesn't practice what he preaches." *Latin America: Private Sector Group Focuses on Expanding U.S.-Colombia Trade*, 9 Int'l Trade Rep. (BNA) 284 (Feb. 12, 1992). Similarly, Colombian Foreign Commerce Minister Juan Camilo Santos commented on the United States setting quotas for poplin-type cotton cloth and cotton print imports stating, "[w]e think the U.S. call to establish quotas is restrictive and belies the notion of establishing free market politics between Colombia and the United States." *Textiles: Colombia to Continue Talks with U.S. on Quotas for Cotton Textile Imports*, 9 Int'l Trade Rep. (BNA) 393 (Mar. 4, 1992).

6. *International Narcotics Control*, U.S. DEP'T OF STATE DISPATCH, July 15, 1991. President Bush's National Drug Control Strategy provides for:

[i]ncreased economic, military, and law enforcement assistance to Colombia, Peru, and Bolivia; [e]xpanded US-Mexican cooperation in drug enforcement, 'money laundering' disruption, and demand reduction programs; [c]ontinued U.S. support for law enforcement and judicial programs in South American producer and transit countries, including Ecuador, Venezuela, Paraguay, Argentina, and Chile; [c]ontinued law enforcement and intelligence programs with Central American and Caribbean nations; [d]evelopment of an international strategy focused on opium and heroin; [b]roadened domestic and foreign efforts to counter international money laundering activities; [e]xpanded efforts to reduce the illegal manufacture and shipment of chemicals essential

proach marks the first attempt by the United States to use economic aid in addition to military aid to fight the war on drugs.⁷

A crucial part of President Bush's strategy is its increased emphasis on cooperative efforts with the Andean nations, which produce virtually all of the cocaine sold in the United States.⁸ On November 1, 1989, President Bush announced the Andean Trade Initiative I, his first package of trade measures designed to help the Andean countries through both bilateral and multilateral measures.⁹ The bilateral measures enhanced the benefits the Andean countries enjoy under the Generalized System of Preferences (GSP)¹⁰ and provided technical assistance to these nations.¹¹ Multilateral efforts consisted of a July 1990 meeting

to illicit drug production; [p]romotion of international law enforcement cooperation through mutual legal assistance treaties and the pursuit of anti-drug initiatives at international forums; and [u]se of economic assistance to foster crop substitution and developmental programs.

Id.

7. See *supra* notes 1 and 2.

8. Richard L. Berke, *U.S. Drug Strategy is Attacked at House Hearing*, N.Y. TIMES, Oct. 19, 1989, at A18. The Andean countries covered by the Andean Trade Preference Act are Colombia, Bolivia, Ecuador and Peru. *President Bush Transmits Proposal to Grant Duty-Free Status to Certain Andean Imports*, 7 Int'l Trade Rep. (BNA) 1538 (Oct. 10, 1990) [hereinafter *Bush Transmits Proposal*].

9. *The Andean Trade Preference Act of 1990: Hearings on H.R. 661 Before the Subcomm. on Trade of the House of Representatives Comm. on Ways and Means*, 102d Cong., 1st Sess. 2 (1991) (statement of Carla A. Hills, United States Trade Representative) [hereinafter *Statement of Carla Hills*].

10. The GSP program is a temporary program designed to offer duty-free entry to certain products that are shipped directly from beneficiary countries which add at least 35% to the value of the entering products. U.S. INT'L TRADE COMM'N, PUB. NO. 2432, ANNUAL REPORT ON THE IMPACT OF THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT ON U.S. INDUSTRIES AND CONSUMERS, 6TH REPORT, 1990, at 1-5 (Sept. 1991). The current GSP program has been in effect since January 4, 1985, and is scheduled to expire on July 4, 1993. *Id.* at 1-5 n.31.

The Andean Trade Initiative I enhanced the benefits the Andean countries enjoy under the GSP by accelerating the implementation of their 1989 Annual Review, commencing the first-ever Special Review, and including more Andean products in the 1990 Annual Review. *Statement of Carla Hills, supra* note 9, at 3. Those countries that are beneficiaries under the GSP must have an annual product review. *Trade Policy: U.S. to Send Delegation to Czechoslovakia to Begin Trade, Investment Talks, Hills Says*, 7 Int'l Trade Rep. (BNA) 297 (Feb. 28, 1990). The special review considers GSP benefits on a product-by-product basis on a separate track from the annual review. *Id.* These enhancements have added to the GSP program over 120 products from the Andean countries valued at approximately \$100 million in annual exports to the United States. *Statement of Carla Hills, supra* note 9, at 3. "Now that these countries have GSP benefits for these products, the value of trade could expand beyond the \$100 million figure." *Id.*

11. *Statement of Carla Hills, supra* note 9, at 4. During the period from

of senior officials from the European Community, Canada and Japan to discuss ways to help the Andean countries improve their trade performance.¹²

On July 23, 1990, President Bush announced the Andean Trade Initiative II, a second package of trade measures for the Andean nations.¹³ This package builds on the Enterprise for the Americas Initiative, which President Bush presented on June 27, 1990.¹⁴ Its purpose is to fulfill the commitment the president made at the Cartagena Summit¹⁵ to expand economic alternatives for the Andean countries in order to combat drug production.¹⁶ The Andean Trade Initiative II included two major components: expanded agricultural development assistance¹⁷ and a special access preference regime.¹⁸

President Bush submitted the special access provision to Congress on October 5, 1990¹⁹ and signed into law this proposal, the Andean Trade Preference Act, on December 4, 1991.²⁰ The

February 5 through February 23, 1990, each of the Andean capitals held technical seminars to explain to private sector and government officials the climate and conditions for conducting business with the United States. *Id.* Additionally, the USTR organized and hosted a trade and investment workshop from July 9 through July 13, 1990, in response to requests from Andean governments for continued assistance to Andean industries seeking to conduct business in the United States. *Id.*

12. *Id.* at 5. Since that meeting, the EC has enhanced access under its GSP program for a variety of products from the Andean region. *Id.*

13. *Id.*

14. *Id.* at 5-6. The purpose of the Enterprise for Americas Initiative is to improve the lives of the people of Latin America and the Caribbean by promoting market-oriented reforms, economic growth, debt reduction, investment reforms, community-based conservation and sustainable use of the environment. Enterprise for the Americas Initiative, Pub. L. No. 101-624, 104 Stat. 3658 (1990), codified at 7 U.S.C. § 1738(a)-(m) (Supp. II 1990).

15. In February 1990, leaders of the four Andean nations and the United States met in Cartagena, Colombia to discuss ways of eradicating the cocaine economy in the Andean nations. *Latin America: USTR Hills Calls on Congress to Approve Measure Aimed at Boosting Andean Trade*, 8 Int'l Trade Rep. (BNA) 1153 (July 31, 1991).

16. Statement of Carla Hills, *supra* note 9, at 5-6.

17. *Id.* at 6-7. The goal of the agricultural development assistance program is to promote trade in those products that can be grown in the Andean countries and have a potential market in the United States. *Id.* at 7. Between September and December 1990, an interagency team headed by Ambassador Edwin Corr visited the Andean nations in an attempt to identify the obstacles facing the region's agricultural production and the barriers constraining its exports to the United States. *Id.* at 6-7.

18. *Id.* at 6.

19. *Bush Transmits Proposal*, *supra* note 8, at 1538.

20. Andean Trade Preference Act, Pub. L. No. 102-182, 105 Stat. 1244, codified at 19 U.S.C.A. §§ 3201-06 (Supp. 1992).

Act provides duty-free treatment to imports into the United States of eligible articles from designated Andean countries.²¹ The purpose of the Act is to give Andean countries trade benefits comparable to those that Caribbean countries receive under the Caribbean Basin Initiative (CBI),²² which President Ronald Reagan introduced in 1982 to address the economic and political instability facing Caribbean countries.²³ Congress enacted the Caribbean Basin Economic Recovery Act (CBERA) to achieve the goals of the CBI.²⁴

This article contends that the CBERA is not a proper model for the Andean Trade Preference Act. Part I provides a brief background on the structures of the two Acts. Part II argues that the CBERA is a poor model for the Andean Trade Preference Act because the CBERA was designed to achieve different goals and has contravened, rather than achieved, its objectives. Part III suggests modifications to the Andean Trade Preference Act that would make it an effective weapon in the war on drugs.

I. THE STRUCTURES OF THE ANDEAN TRADE PREFERENCE ACT AND THE CBERA

The Andean Trade Preference Act is virtually identical to the Caribbean Basin Economic Recovery Act. Both Acts authorize the President to grant duty-free treatment to eligible products from beneficiary countries.²⁵

The two Acts limit the countries eligible for tariff preferences by geography²⁶ and by provision of nearly identical guidelines the President must follow in determining whether to

21. *Id.* See specifically 19 U.S.C.A. § 3203 (Supp. 1992) (discussing qualifications for eligible articles).

22. Statement of Carla Hills, *supra* note 9, at 7.

23. H.R. REP. NO. 266, 98th Cong., 1st Sess. 3 (1983).

24. Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, 97 Stat. 384 (1983) (codified as amended at 19 U.S.C. §§ 2701-06 (Supp. II 1990)).

25. 19 U.S.C.A. § 3201 (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2701 (Supp. II 1990) (CBERA).

26. Bolivia, Ecuador, Colombia and Peru are eligible for designation as a beneficiary country under the Andean Trade Preference Act. 19 U.S.C.A. § 3202(b) (Supp. 1992). The CBERA limits the countries eligible for designation as a beneficiary country to the following: Anguilla, Antigua and Barbuda, the Bahamas, Barbados, Belize, Costa Rica, Dominica, the Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Saint Lucia, Saint Vincent and the Grenadines, Surinam, Trinidad and Tobago, the Cayman Islands, Montserrat, the Netherland Antilles, Saint Christopher-Nevis, the Turks and Caicos Islands, and the British Virgin Islands. 19 U.S.C. § 2702(b) (Supp. II 1990).

designate a country as a beneficiary under the respective Act.²⁷ Both Acts authorize the President to withdraw or suspend a country's beneficiary designation or duty-free treatment of a particular product if warranted by changed circumstances.²⁸

27. Under the Andean Trade Preference Act and CBERA, a country or territory cannot be designated a beneficiary country if that country: (1) is a communist country; (2) has nationalized or expropriated U.S. property, including any patent, trademark, or other intellectual property without compensation or submission to arbitration; (3) fails to recognize arbitral awards in favor of U.S. citizens; (4) affords preferential tariff treatment to products of other developed countries that has or is likely to have a significantly adverse effect on U.S. commerce; (5) broadcasts U.S. copyrighted material without the owner's consent; (6) has not signed an extradition agreement with the United States; or (7) has not or is not taking steps to afford internationally recognized workers rights. 19 U.S.C.A. § 3202(c) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2702(b) (Supp. II 1990) (CBERA).

Failure of a country to meet the first, second, third, fifth, or seventh criteria will not, however, "prevent the designation of any country as a beneficiary country under [either] Act if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor." 19 U.S.C.A. § 3202(c) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2702(b) (Supp. II 1990) (CBERA).

Both Acts also enumerate several factors that the president must consider in determining whether to designate a particular country as a beneficiary country. 19 U.S.C.A. § 3202(d) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2702(c) (Supp. II 1990) (CBERA). These factors are: (1) the country's desire to be designated; (2) economic conditions and living standards in the country; (3) the extent to which the country assures that it will provide the United States reasonable access to its markets and basic commodity resources; (4) the degree to which the country follows the generally accepted rules of international trade established under the GATT, as well as applicable trade agreements approved under section 2(a) of the Trade Agreements Act of 1979; (5) the degree to which the country uses export subsidies or imposes other forms of export performance requirements or local content requirements which distort international trade; (6) the degree to which the country's trade policies contribute to the revitalization of the region; (7) the degree to which the country is undertaking self-help measures to promote its own economic development; (8) the degree to which the country is taking steps to afford to workers in that country internationally recognized worker rights; (9) the extent to which the country provides adequate and effective means for foreign nationals to secure and enforce intellectual property rights; (10) the extent to which the country prohibits its nationals from broadcasting copyrighted material including films or other television materials belonging to U.S. copyright owners without their express consent; and (11) the extent to which the country is prepared to cooperate with the United States in the administration of the provisions of each Act. 19 U.S.C.A. § 3202(d) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2702(c) (Supp. II 1990) (CBERA). The Andean Trade Preference also lists an additional requirement: the degree to which the country has met the narcotics cooperation certification criteria set forth in section 2291(h)(2)(A) of Title 22. 19 U.S.C.A. § 3202(d) (Supp. 1992).

28. 19 U.S.C.A. § 3202(e) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2702(e) (Supp. II 1990) (CBERA).

The sole difference in the criteria for designation under the two Acts is that the Andean Trade Preference Act alone requires the President to consider the degree to which the country has met the narcotics cooperation certification criteria set forth in the Foreign Assistance Act.²⁹

Each Act limits the products eligible for duty-free treatment to articles which are the growth, product or manufacture of a beneficiary country,³⁰ with the following requirements:³¹ first, the article must be imported directly from a beneficiary country into the customs territory of the United States;³² second, the sum of cost or value of materials produced in a beneficiary country or countries plus the direct costs of processing operations performed in a beneficiary country or countries must constitute at least thirty-five percent of the article's value at the time of its entry into the United States.³³ Under either Act, up to fifteen percent of the total value of the article that is attributable to Puerto Rico or the United States Virgin Islands, may count toward this thirty-five percent requirement.³⁴ The CBERA also includes two minor provisions relating to Puerto Rico, which are not listed in the Andean Trade Preference Act.³⁵

29. See *supra* note 27.

30. An article is not the growth, product, or manufacture of a beneficiary country by virtue of mere combining or packaging operations, or dilution with water or any other substance that does not materially alter the characteristic of the article. 19 U.S.C.A. § 3203(a)(2) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(a)(2) (Supp. II 1990) (CBERA).

31. 19 U.S.C.A. § 3203(a) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(a) (Supp. II 1990) (CBERA).

32. 19 U.S.C.A. § 3203(a)(1)(A) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(a)(1)(A) (Supp. II 1990) (CBERA).

33. 19 U.S.C.A. § 3203(a)(1)(B) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(a)(1)(B) (Supp. II 1990) (CBERA). The Andean Trade Preference Act also considers the direct costs incurred in a beneficiary country under the CBERA in determining whether the 35% requirement has been met. 19 U.S.C.A. § 3203(a)(1) (Supp. 1992).

34. 19 U.S.C.A. § 3203(a)(1) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(a)(1) (Supp. II 1990) (CBERA).

35. 19 U.S.C. § 2703(a)(4)-(5) (Supp. II 1990). Section 2703(a)(4) provides that the products of a beneficiary that are imported directly from any beneficiary country into Puerto Rico may be entered under bond for processing or use in manufacturing in Puerto Rico. A duty will not be imposed on the withdrawal from warehouse of the product of such processing or manufacturing if, at the time of withdrawal, the product meets the requirements of § 2703(a)(1)(B) (*see supra* text accompanying note 33). Section 2703(a)(5) provides that duty-free treatment shall apply to an article (other than an article listed under § 2703(b)) which is the growth, product, or manufacture of the Commonwealth of Puerto Rico if (1) the article is imported directly from the beneficiary country into the customs territory of the United States, (2) the article was in any way improved in value or condition in a beneficiary country, and (3) if any materials are added

The Andean Trade Preference Act and CBERA each preclude certain product categories from duty-free treatment. Specifically, both Acts exclude: (1) textile and apparel articles subject to textile agreements;³⁶ (2) footwear not designated as eligible under the Generalized System of Preferences;³⁷ (3) tuna, prepared or preserved in any manner, in airtight containers;³⁸ (4) certain petroleum or petroleum products;³⁹ (5) certain watches;⁴⁰ (6) certain articles which are subject to reduced rates of duty;⁴¹ and (7) certain sugars, syrups, and molasses.⁴² The Andean Trade Preference Act, unlike the CBERA, excludes rum and tafia⁴³ from duty-free treatment.⁴⁴

to the article in a beneficiary country, such materials are a product of a beneficiary country or the United States.

36. 19 U.S.C.A. § 3203(b)(1) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(b)(1) (Supp. II 1990) (CBERA).

37. 19 U.S.C.A. § 3203(b)(2) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(b)(2) (Supp. II 1990) (CBERA).

38. 19 U.S.C.A. § 3203(b)(3) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(b)(3) (Supp. II 1990) (CBERA).

39. The duty-free treatment provided under either Act does not apply to petroleum, or any product derived from petroleum in headings 2709 or 2710 of the Harmonized Tariff Schedule (HTS) of the United States. 19 U.S.C.A. § 3203(b)(4) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(b)(4) (Supp. II 1990) (CBERA).

40. The duty-free treatment provided under each Act does not apply to "watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply." 19 U.S.C.A. § 3203(b)(5) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(b)(5) (Supp. II 1990) (CBERA).

41. 19 U.S.C.A. § 3203(b)(6) (Supp. 1992) (Andean Trade Preference Act) and 19 U.S.C. § 2703(b)(6) (Supp. II 1990) (CBERA) apply to articles to which reduced rates of duty apply under § 3203(c) (Andean Trade Preference Act) and § 2703(h) (CBERA). See *infra* note 45 for an explanation of 19 U.S.C.A. § 3203(c) (Supp. 1992) and 19 U.S.C. § 2703(h) (Supp. II 1990).

42. The duty-free treatment provided for under the Andean Trade Preference Act does not apply to sugars, syrups, and molasses classified in subheadings 1701.11.03, 1701.12.02, 1701.99.02, 1702.90.32, 1806.10.42, and 2106.90.12 of the HTS. 19 U.S.C.A. § 3203(b)(7) (Supp. 1992). Special monitoring and suspension provisions pertain to imports of sugar, syrup and molasses from beneficiary countries under the CBERA. 19 U.S.C. § 2703(c)-(d) (Supp. II 1990). While the Andean Trade Preference Act and the CBERA place sugar, syrup and molasses in different provisions, the two Acts actually prescribe identical duty treatment for these products. H.R. REP. NO. 337, 102d Cong., 1st Sess. 13 (1991).

43. Tafia is a low quality alcohol made from impure molasses or other sugar cane residue, and is not considered a true rum. 10 THE NEW ENCYCLOPEDIA BRITANNICA 238 (15th ed. 1989).

44. The duty-free treatment provided for under the Andean Trade Preference Act does not apply to rum and tafia classified in subheading 2208.40.00 of the HTS. 19 U.S.C.A. § 3203(b)(8) (Supp. 1992).

Each Act mandates reduced rates of duty on certain articles excluded from duty-free treatment. The Andean Trade Preference Act and CBERA require the president to reduce duty rates on handbags, luggage, flat goods, work gloves, and leather wearing apparel that are produced by beneficiary countries and not designated on August 5, 1983, as eligible articles under the Generalized System of Preferences.⁴⁵

Each Act includes two provisions that grant import relief from the duty-free treatment accorded products under the respective Act. Both the Andean Trade Preference Act and CBERA authorize the President to suspend duty-free treatment and declare a duty rate on any eligible article if the action is proclaimed as import relief under the Trade Act of 1974 or for national security reasons under section 232 of the Trade Expansion Act of 1962.⁴⁶ Additionally, both Acts permit a U.S. industry claiming to suffer injuries from the imports of a beneficiary country's perishable products⁴⁷ to file a petition with the Secretary of Agriculture requesting emergency relief if the petition has already been filed with the International Trade Commission

45. 19 U.S.C.A. § 3203(c) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(h) (Supp. II 1990) (CBERA). Each Act reduces the tariffs on certain leather-related products by 80%, implemented over a five-year period with the maximum cut limited to 2.5% ad valorem. 19 U.S.C.A. § 3203(c)(2) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(h)(2) (Supp. II 1990) (CBERA). This reduction is in addition to any reduction that may be proclaimed by the President in order to implement trade agreements entered into under the Uruguay Round. 19 U.S.C.A. § 3203(c)(3) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(h)(3) (Supp. II 1990) (CBERA). If, however, the proclaimed reduction is less than 1.5% ad valorem, the total reduction cannot exceed 3.5% ad valorem. 19 U.S.C.A. § 3203(c)(3) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(h)(3) (Supp. II 1990) (CBERA). If, on the other hand, the proclaimed reduction is 1.5% ad valorem or greater, the total reduction cannot exceed the proclaimed reduction plus 1% ad valorem. *Id.*

46. 19 U.S.C.A. § 3203(d) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(e) (Supp. II 1990) (CBERA).

47. The term "perishable product" means (A) live plants and fresh cut flowers provided for in chapter 6 of the HTS; (B) fresh or chilled vegetables provided for in headings 0701 through 0709 (except subheading 0709.52.00) and heading 0714 of the HTS; (C) fresh fruit provided for in subheadings 0804.20 through 0810.90 (except citrons of subheadings 0805.90.00, tamarinds and kiwi fruit of subheading 0810.90.20, and cashew apples, mameyes colorados, sapodillas, soursops and sweetsops of subheading 0810.90.40) of the HTS; or (D) concentrated citrus fruit juice provided for in subheadings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS. 19 U.S.C.A. § 3203(e)(5) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(f)(5) (Supp. II 1990) (CBERA).

(ITC).⁴⁸ Each Act authorizes the President to withdraw duty-free treatment of such products if the Secretary recommends that emergency action is necessary.⁴⁹

Finally, the Andean Trade Preference Act and CBERA include provisions designed to monitor their impact. Each Act requires the ITC to report to Congress its economic impact on United States industries and consumers.⁵⁰ The Andean Trade Preference Act, however, additionally requires that the ITC's report include an assessment of the Act's effectiveness in promoting drug-related crop eradication and crop substitution in beneficiary countries.⁵¹ Furthermore, both Acts require the Secretary of Labor to review and analyze the impact of the respective Act on United States labor.⁵²

II. THE CBERA AS A MODEL FOR THE ANDEAN TRADE PREFERENCE ACT

The CBERA is not a proper model for the Andean Trade Preference Act. The goals underlying the CBERA are distinct from those of the Andean Trade Preference Act. Furthermore, the CBERA has failed to achieve its objective of stabilizing the Caribbean Basin nations' economies. Instead, the CBERA has helped the United States economy at the expense of the intended beneficiary countries.

A. THE PURPOSES OF THE ACTS ARE DIFFERENT

The most notable difference between the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act is their dissimilar objectives. This disparity suggests that the two Acts should not share a common structure.

Congress enacted the CBERA in response to the economic crisis in the Caribbean Basin nations. President Reagan had called attention to the crisis by announcing the Caribbean Basin

48. 19 U.S.C.A. § 3203(e)(1) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(f)(1) (Supp. II 1990) (CBERA).

49. The President must make a determination whether or not to take such action within seven days after receiving a recommendation from the Secretary of Agriculture to take emergency action. 19 U.S.C.A. § 3203(e)(3) (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2703(f)(3) (Supp. II 1990) (CBERA).

50. 19 U.S.C.A. § 3204 (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2704 (Supp. II 1990) (CBERA).

51. 19 U.S.C.A. § 3204 (Supp. 1992).

52. 19 U.S.C.A. § 3205 (Supp. 1992) (Andean Trade Preference Act); 19 U.S.C. § 2705 (Supp. II 1990) (CBERA).

Initiative in February of 1982⁵³ and Congress responded by passing the CBERA.⁵⁴ Congress cited deeply rooted structural problems, huge balance-of-payments deficits, high unemployment, and declining growth as some of the causes of this economic crisis.⁵⁵

The CBERA was designed as a general tool to safeguard the political, social and economic stability of the Caribbean Basin nations.⁵⁶ The Act does not focus on aiding one specific area of the economy, but attempts to treat the problem comprehensively. Economic growth in the Caribbean Basin nations was intended to improve their political and social stability.⁵⁷

Although the Andean Trade Preference Act also provides trade advantages, its primary purpose is quite different from that of the CBERA. The Andean Trade Preference Act was designed to provide Andean farmers with economic alternatives to growing illegal drugs.⁵⁸ To achieve this goal, the Act seeks to expand economic alternatives for Colombia, Bolivia, Peru, and Ecuador by granting special tariff preferences to products from those countries for a limited period of time.⁵⁹

Representative Philip Crane stated that he introduced the Andean Trade Preference Act on behalf of the administration because he believed the best way to solve the narcotics problems facing Latin America was to place the emphasis on "trade rather than aid."⁶⁰ Crane argued that eliminating duties on a number of products from the Andean region would encourage the devel-

53. H.R. REP. NO. 266, 98th Cong., 2d Sess. 2 (1983).

54. On August 20, 1990, President George Bush extended the CBI program indefinitely when he signed into law the Caribbean Basin Economic Recovery Act of 1990, 19 U.S.C. §§ 2701-06 (Supp. II 1990).

55. H.R. REP. NO. 266, 98th Cong., 2d Sess. 3 (1983).

56. *Id.*

57. *Id.*

58. *Bush Transmits Proposal, supra* note 8, at 1538. In this respect, the Andean Trade Preference Act represents U.S. enlightened self-interest; a decrease in drugs grown in the Andes translates into a decrease in drugs available for sale in the United States.

59. Section 3206 of the Andean Trade Preference Act states that this duty-free treatment shall not remain in effect more than 10 years after December 4, 1991. 19 U.S.C.A. § 3206 (Supp. 1992).

60. 137 CONG. REC. H10,650 (daily ed. Nov. 20, 1991) (statement of Rep. Crane). Likewise, Bernard W. Aronson, Assistant Secretary for Inter-American Affairs stated that "[t]he issue in this legislation, then, goes far beyond trade." Bernard W. Aronson, *Andean Trade Preference Act: Essential to Combating Narcotics Traffic*, U.S. DEP'T OF STATE DISPATCH, Aug. 5, 1991. "Passing the Andean Trade Preference Act means keeping our end of a bargain with our partners in the war on drugs — partners on the front lines who have sacrificed a great deal and who face tremendous social and economic difficulties." *Id.*

opment of legitimate crops, allowing Andean farmers to escape their dependence on the cocaine economy.⁶¹ Crane stressed that, "despite excessive violence, massive poverty, and spreading disease, Colombia, Bolivia, Peru, and Ecuador have devoted precious financial and human resources to their efforts to rid their region of the drug scourge."⁶² Expanding trade opportunities for the Andean region demonstrates the United States' commitment to the Andean nations in the war on drugs and serves as a formal recognition of their many sacrifices.⁶³

The comprehensive approach of the CBERA makes it a poor model for the Andean Trade Preference Act, which must be more focused. The Andean Trade Preference Act must ensure that Andean farmers have alternatives to growing drugs, and cannot simply hope that a general improvement in the economies of Andean nations will produce legitimate farming alternatives. The objectives of the Andean Trade Preference Act require that the Act address the root of the problem, rather than following the CBERA's lead in addressing a problem generally.

B. THE CBERA HAS FAILED TO ACHIEVE ITS OBJECTIVES

Observers hold differing opinions on whether the Caribbean Basin Initiative has been successful in accomplishing its goal of political and economic stability in the Caribbean Basin nations. Within the U.S. Administration, support for the CBI has been high. President Bush stated that "[s]ince its inception in 1983, the [Caribbean Basin Initiative] has promoted stability, security, and the movement to democracy and free markets that we now celebrate not only in this hemisphere but around the world."⁶⁴ He explained that the success of the CBI prompted his efforts to seek legislation for limited-duration CBI-like trade preferences for the Andean countries of Bolivia, Colombia, Ecuador and Peru.⁶⁵

61. 137 CONG. REC. H10,650 (daily ed. Nov. 20, 1991) (statement of Rep. Crane).

62. *Id.*

63. *Id.* In transmitting the proposal to Congress, President Bush noted that the Andean nations are engaged in a "serious struggle" to combat illegal narcotics trafficking and that it is "incumbent" on the United States to aid Andean nations in developing legitimate trading opportunities for their people. *Bush Transmits Proposal, supra* note 8, at 1538.

64. Statement by President George Bush on Signing the Customs and Trade Act of 1990, 26 WEEKLY COMP. PRES. DOCS. 1266, 1267 (Aug. 20, 1990).

65. *Id.* Various other officials have commented on the effectiveness of the Caribbean Basin Initiative. For example, according to Commerce Deputy Under Secretary for International Trade Administration Roger Wallace, "duty-

Other observers hold a different viewpoint. Gonzal Biggs of the Inter-American Development Bank called the results of the CBI "disappointing," pointing out that "United States exports to the [Caribbean Basin] area increased 51 percent, while Caribbean exports declined 30 percent from 1983 to 1989."⁶⁶ Myles Frechette, Assistant United States Trade Representative for Latin America, the Caribbean, and Africa, disputed this characterization, attributing the decline in exports to a fall in oil prices during that period.⁶⁷

Notwithstanding the differing opinions on the success of the Caribbean Basin Initiative, recent economic statistics demonstrate that the economic conditions in Caribbean Basin countries have not improved and that those countries remain in uncertain economic and political conditions.⁶⁸ The stability and security of the entire region remain in jeopardy.

Despite claims of the U.S. government, the CBERA has helped few products enter the United States duty-free. A United States Department of State report on the CBERA emphasized that "the fundamental purpose of the CBI — broadening and diversifying the production and export base of the region — is being met, despite [the] decline in overall export earnings."⁶⁹ The report cited a forty-eight percent increase in United States non-petroleum imports from designated CBERA countries between 1983 and 1989, including a 342% increase in textiles and clothing.⁷⁰ This report drew its erroneous conclusion

free access under the CBI has stimulated both U.S. and Caribbean entrepreneurship . . . [and] has lead [sic] to 'significant diversification' of Caribbean exports from traditional items to non-traditional products." *Official Predicts That Andean Trade Bill Will Pass This Year with Little Opposition*, Int'l Trade Daily (BNA), Apr. 9, 1991, available in LEXIS, NEXIS Library Intl File. Additionally, Wallace stated that since the implementation of the CBI program, the United States has gone from a trade deficit with the Caribbean region to a trade surplus. *Id.*

66. *Chile, U.S. May be Ready to Negotiate FTA Within Next Two Years*, USTR Official Says, 8 Int'l Trade Rep. (BNA) 576 (Apr. 17, 1991).

67. *Id.*

68. See *infra* notes 69-86 and accompanying text.

69. *CBI Fails to Boost Regional Exports; Central American Exporters Fare Better Than Caribbean*, LATIN AMERICA REGIONAL REPORTS: CARIBBEAN, June 20, 1991, at 7, (quoting a report from the United States Department of State).

70. *Id.* The Caribbean region reported a 106% increase in United States imports of textiles, clothing and non-traditional products since 1983, while Central America reported an increase of 155%. *Id.* The actual (customs) value of such imports from the Caribbean increased US \$1.4 billion since 1983, totalling US \$2.8 billion for the period October 1989-September 1990. *Id.* Specifically, Jamaica reported a 228% increase in United States imports, the Bahamas a 198% increase, Belize a 133% increase, and Trinidad and Tobago a 42.7% in-

by ignoring the fact that major Caribbean industries such as textiles and apparel are specifically excluded from benefits under the CBERA.⁷¹ Thus, the increase in U.S. imports of these products cannot be attributed to the CBERA.⁷²

The steady increase in textile and apparel exports is⁷³ due mainly to other duty-free and duty-reduction programs such as the Generalized System of Preferences (GSP) and bilateral agreements upon which many Caribbean Basin exporters rely to export their textile and apparel products.⁷⁴ This is not a discrete phenomenon. In 1990 less than one-tenth of all of the duty-free imports from the Caribbean Basin benefited from the CBERA.⁷⁵ Rather, most of these goods benefited from the most-favored-nation⁷⁶ or GSP duty-free provisions.⁷⁷ In short, the CBERA is not responsible for the benefits Caribbean Basin nations receive for most of their products designated as eligible articles under the CBERA.

crease. *Id.* Barbados and Guyana, however, reported declines in United States imports of 84.9% and 24%, respectively. *Id.* In addition, "St. Lucia, recently the most active of the Eastern Caribbean beneficiaries in the textile and clothing and non-traditional categories, recorded an increase of 476.5% . . . in the twelve months to September 1990." *Id.* St. Lucia's exports of textile and clothing in non-traditional categories increased from US \$5 million in 1983 to US \$27 million in the twelve months ending September 1990. *Id.*

71. 19 U.S.C. § 2703(b)(1) (Supp. II 1990).

72. The United States could significantly increase the impact of the CBERA by granting duty-free treatment to textiles and petroleum products. In 1990, textiles and apparel imports were the leading United States import category from CBERA countries, totaling \$2.0 billion, while imports of petroleum products, the second largest import category totaled \$1.3 billion. U.S. INT'L TRADE COMM'N, PUB. NO. 2432, ANNUAL REPORT ON THE IMPACT OF THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT ON U.S. INDUSTRIES AND CONSUMERS, 6TH REPORT, 1990, at 2-9 (Sept. 1991) [hereinafter 1990 CBERA ANNUAL REPORT]. Like textiles and apparel, petroleum products are not eligible for duty-free treatment under the CBERA. 19 U.S.C. § 2703(b)(4) (Supp. II 1990). Between these two categories of ineligible imports, textiles and apparel carry the higher duties. 1990 CBERA ANNUAL REPORT, *supra*, at 2-9. The exclusion of textiles and apparel, therefore, limits the impact of duty-free treatment under the CBERA more than the exclusion of petroleum and petroleum products.

73. 1990 CBERA ANNUAL REPORT, *supra* note 72, at 2-9.

74. *Id.* at viii, 2-9.

75. *Id.* at 3-1 to 3-2. Although items entered duty-free were valued at almost \$5 billion, only \$422 million worth of these imports actually benefited from the CBERA's duty-free treatment provisions. *Id.* at 2-8, 3-2.

76. *Id.* Article I of the General Agreement on Tariffs and Trade (GATT) requires most-favored-nation (MFN) treatment, providing that any advantage accorded by a member of GATT "to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties." GATT art. I:1.

77. 1990 CBERA ANNUAL REPORT, *supra* note 72, at 2-8, 3-2.

There have been, however, five products — beef, pineapple, frozen concentrated orange juice, rum, and raw cane sugar — that consistently have been among the leading items actually benefiting from the CBERA's duty-free provisions.⁷⁸ These products are traditional products of the Caribbean Basin nations.⁷⁹ The value of United States imports from these products that benefited from the CBERA totaled approximately \$240 million in 1990⁸⁰ — significantly less than the \$3.3 billion value of textile and petroleum products imported from Caribbean nations in 1990.⁸¹ The CBERA's duty-free treatment provisions thus affect only a small percentage of the total value of products imported by the United States from the Caribbean Basin.

Furthermore, the CBERA has had a more positive effect on the United States than on the Caribbean Basin nations. The United States registered an overall trade surplus of \$2.1 billion with countries designated for Caribbean Basin Initiative benefits in 1990, the fifth consecutive year the United States has registered a surplus in trade with the Caribbean Basin countries.⁸² The consistently positive United States trade balance with the Caribbean reflected a 15.6% decline in United States imports since the CBI program began and a 64.7% surge in United States exports.⁸³

This decline in the Caribbean Basin nations trade balance reflects a corresponding negative effect on the Caribbean nations' economies. The United States trade surplus with the Caribbean Basin nations is not attributable to increased capital investment in these nations.⁸⁴ The Caribbean Basin Economic Recovery Act has not, in general, encouraged economic growth and development in the region.⁸⁵ Indeed, the basic problems that the CBERA was designed to remedy have precluded capital investment in the Caribbean Basin region. These impediments include: inadequate infrastructure, political instability, restric-

78. *Id.* at 3-1 to 3-6. Raw cane sugar did not benefit from the CBI in 1989, a year when it also was eligible for GSP duty-free entry. *Id.* at 3-1.

79. *Id.* at 2-5.

80. *Id.* at 3-3.

81. *See supra* note 72.

82. 1990 CBERA ANNUAL REPORT, *supra* note 72, at 2-1 to 2-2. In 1990, United States exports to the Caribbean Basin countries totaled a record high of \$9.7 billion (an increase of 5.6% over 1989), whereas United States imports from Caribbean Basin nations in 1990 amounted to \$7.6 billion (an increase of 8.3% over 1989). *Id.* at 2-1.

83. *Id.* at 2-1.

84. *Id.* at 4-1.

85. *Id.*

tions on foreign exchange and profit repatriation, insufficient investment incentives, and the limited amount of products produced in the region eligible for duty-free treatment under the CBERA.⁸⁶

The CBERA has failed to achieve its objective of remedying the economic crisis in the Caribbean Basin nations. The products entitled to duty-free treatment under the Act make up only a small proportion of all U.S. imports from these nations, and consist primarily of traditional products. Caribbean economies have not improved since enactment of the CBERA, and indeed the Caribbean nations' trade deficit with the United States has increased. The failure of the CBERA to improve Caribbean economies casts doubt upon the value of the Act as a model for the Andean Trade Preference Act, which seeks to aid specific sectors of the Andean economies.

III. IMPROVING THE ANDEAN TRADE PREFERENCE ACT'S ABILITY TO FIGHT THE DRUG WAR

Like the CBERA, the Andean Trade Preference Act will be ineffective in promoting economic opportunities and will benefit the United States at the expense of those it purports to aid. Most products imported from the Andean nations will enter under other duty-free programs;⁸⁷ the Act will affect only about six percent of U.S. imports from Andean nations.⁸⁸ Additionally, the Act seeks a closer but more exclusive trading relationship with the Andean nations,⁸⁹ creating an unhealthy dependency on U.S. legal and economic stability. If Congress believes that economic progress in drug-growing regions will reduce the narcotics problem, it must modify the Andean Trade Preference Act's provisions relating to beneficiary countries, duty-free trade, and termination of benefits.

A. BENEFICIARY COUNTRIES

While the Andean Trade Preference Act as a whole purports to aid segments of the Andean economies, the provisions governing eligibility for beneficiary country status restrict which

86. *Id.* at 4-1 to 4-2.

87. H.R. REP. NO. 337, 102d Cong., 1st Sess. 8 (1991). Total United States imports from the Andean nations in 1990 were \$5.4 billion, of which about \$2.3 billion or 43% already enter duty-free (either under most-favored-nation or GSP treatment). *Id.*

88. *Id.*

89. See *infra* text accompanying notes 92-93.

nations may receive trade benefits. To qualify, Andean nations must submit to conditions designed to benefit U.S. investors. These conditions are not only unrelated to the Act's objectives, but in some cases actually contravene those objectives.

Only those countries which the President designates as beneficiary countries qualify for duty-free treatment under the Act.⁹⁰ The Act sets out certain conditions for designation as a beneficiary country.⁹¹ These conditions make it plain that only those countries which convince the Administration that they are prepared to provide a risk-free environment for United States businesses will receive beneficiary status.

For example, a provision of the Act precludes the President from granting beneficiary status to a country that provides preferential treatment to the products of a developed country other than the United States.⁹² This provision directly contravenes the Act's purpose of encouraging the Andean nations to grow legitimate rather than drug-related crops.⁹³ It precludes an Andean nation from negotiating a bilateral treaty with another developed nation that would help it to export its legitimate crops and thus further the Andean Trade Preference Act's goal. Furthermore, this provision coerces the Andean countries into favoring the United States as a trading partner, rather than allowing the Andean countries to negotiate conditions of trade with all of their trading partners. Congress should remove this self-defeating provision from the Act.

Another provision of the Act precludes the President from granting beneficiary status to a communist country.⁹⁴ This requirement should not appear in the Andean Trade Preference Act, an Act that purports to fight the drug war. If the United States government believes that trade with drug producing nations will help combat the narcotics problem, it should not discriminate against a country on the basis of its political orientation. Congress should eliminate this provision from the

90. See *supra* note 26. On July 6, 1992, the Office of the U.S. Trade Representative announced that Bolivia and Colombia were granted beneficiary country status under the Andean Trade Preference Act. *Latin America: Bolivia, Colombia Will Receive Trade Benefits Under Andean Act*, 9 Int'l Trade Rep. (BNA) 1173 (July 8, 1992). Ecuador and Peru have not yet been designated as beneficiary countries under the Act. *Id.*

91. See *supra* note 27.

92. *Id.*

93. See *supra* notes 58-63 and accompanying text.

94. See *supra* note 27.

Act to avoid limiting the class of countries eligible for beneficiary country status.

Moreover, several of the factors that the President must consider in determining whether to designate a country as a beneficiary under the Act hinder the Act's purported goal of fighting the war on drugs. The President must consider: (1) the extent to which the country has assured that it will provide the United States reasonable access to its markets and basic commodity resources, (2) the extent to which the country's laws provide adequate and effective means for foreign nationals to enforce exclusive rights in intellectual property, and (3) the extent to which the country prohibits its nationals from engaging in unauthorized broadcast of copyrighted material.⁹⁵ These factors unnecessarily narrow the class of countries whose economies will benefit from the Andean Trade Preference Act. Only those countries that consent to aiding U.S. private investors in gaining access to Andean markets and in protecting their products will receive beneficiary status. The Andean Trade Preference Act was designed to aid Andean farmers in growing legitimate crops,⁹⁶ and not to aid United States private investors. These factors are not in any way related to the Act's goal of eradicating drug production. Congress should remove these guidelines from the Act so that the Andean countries seeking beneficiary status are not required to aid United States private investment at the expense of their own economy in order to gain beneficiary status.

The provisions of the current Andean Trade Preference Act governing eligibility for beneficiary country status are an attempt to cajole Andean nations into favoring foreign private investment by denying free trade benefits to those who refuse to do so. To further the Act's goals of reducing drug production, Congress should remove the coercive elements from the Act.

B. DUTY-FREE TRADE

The categories of products eligible for duty-free treatment under the Andean Trade Preference Act are too narrow. Only a small proportion of the United States' total imports from Andean nations would be newly eligible for duty-free treatment under the Andean Trade Preference Act.⁹⁷ The primary reason that the Andean Trade Preference Act will have such a minimal

95. See *supra* note 27.

96. See *supra* notes 58-63 and accompanying text.

97. See *supra* note 88 and accompanying text.

effect is that the Act excludes from duty-free treatment goods the Administration feels need protection from import competition.⁹⁸ In order for the Andean Trade Preference Act to be an effective tool in reducing narcotics trafficking, Congress must extend duty-free treatment to these products.

In particular, the Act should grant duty-free treatment to sugar originating from Andean countries. Although sugar is a main export of the Andean nations,⁹⁹ the Andean Trade Preference Act does nothing to improve the dutiable status of sugar imported from that region.¹⁰⁰ Imported sugar currently is subject to a two-tier tariff-quota system.¹⁰¹ After sugar imports surpass a threshold quantity, further sugar imports are subject to the higher duty.¹⁰² The higher rate effectively denies entry of any sugar above the lower duty threshold.¹⁰³ Duty-free treatment of sugar would allow Andean farmers to export a much greater amount of sugar than currently is possible and would subsequently provide a significant alternative for Andean farmers who produce drug-related crops.¹⁰⁴

Congress should also eliminate the restrictions against according duty-free treatment to rum. Congress excluded rum from duty-free treatment under the Andean Trade Preference

98. On January 29, 1991, the date of the introduction of the Andean Trade Preference Act into the Senate, Senator Dole stated that "[p]roducts which are particularly import sensitive and are excluded under the CBI are also excluded under this initiative. These include textiles and apparel, footwear, petroleum and petroleum products, canned tuna, watches and watch parts." 137 CONG. REC. S1,222 (daily ed. Jan. 29, 1991) (statement of Sen. Dole). See also *supra* notes 36-44 and accompanying text for a list of items excluded under the Act.

99. See *supra* note 5.

100. See *supra* note 42.

101. H.R. REP. NO. 337, 102d Cong., 1st Sess. 13 (1991). The United States Trade Representative currently allows the Andean nations to import the following amounts of sugar at the lower-tier rate: Bolivia, 10,571 metric tons, or 0.8% of the lower-tariff allocation; Colombia, 31,712 metric tons, 2.4%; Ecuador, 14,535 metric tons, 1.1%; Peru, 54,175 metric tons, 4.1%. *Agriculture: USDA, USTR Announce Sugar Import Quotas, Allocations for 1991-1992*, 8 Int'l Trade Rep. (BNA) 1434 (Oct. 2, 1991). Additionally, since the Andean nations are beneficiaries of the GSP, the quantity of sugar permitted to enter at the lower-tier tariff rate is eligible for duty-free treatment under the GSP. H.R. REP. NO. 337, 102d Cong., 1st Sess. 13 (1991). High-tariff sugar imported from the Andean nations remains subject to the same duty that existed before the passage of the Andean Trade Preference Act, 16 cents per pound. *Id.*

102. H.R. REP. NO. 337, 102d Cong., 1st Sess. 13 (1991).

103. *Id.*

104. Senator Bill Bradley has stated that the domestic sugar program "counters American foreign policy goals, and undermines our attempts to eradicate the drug trade." *Senate and House Debate Farm Bill, Reject Efforts to Cut Support Price for U.S. Sugar*, 7 Int'l Trade Rep. (BNA) 1191 (Aug. 1, 1990).

Act to protect the benefits that Puerto Rico, the Virgin Islands, and the Caribbean Basin countries receive from Congress with respect to this product.¹⁰⁵ CBERA countries account for ninety percent of total United States rum imports.¹⁰⁶ Puerto Rico and the Virgin Islands also depend heavily on revenues from the rum industry and rebates of federal excise taxes on United States rum imports,¹⁰⁷ and are concerned that Andean rum producers have cost advantages over Puerto Rican and Virgin Island rum producers because of their superior natural resources and excess production capacity.¹⁰⁸ Representatives of Puerto Rico and the Virgin Islands have lobbied against granting duty-free treatment to Andean rum.¹⁰⁹ In light of this pressure, it is not surprising that the Administration has denied Andean nations' petitions for duty-free treatment of rum under the GSP program.¹¹⁰ Duty-free treatment of rum under the Andean Trade Preference Act would provide another alternative to Andean farmers currently producing drug crops.

Furthermore, the Act excludes a certain class of leather articles from duty-free treatment, but reduces the duties assigned to those articles.¹¹¹ Duty-free treatment of these products would encourage the building of manufacturing facilities in the Andean region and contribute to the diversification of Andean exports. Andean farmers would gain job opportunities. Andean farmers who want to grow legitimate crops may be unable to earn enough money to survive because of tariffs applied to exports to the United States. The elimination of those tariffs may provide those farmers a meaningful alternative to illegal drug production.

C. TERMINATION OF BENEFITS

The sections of the Andean Trade Preference Act that need the most improvement are its suspension¹¹² and emergency relief¹¹³ provisions. That which the United States can give to the Andean nations it also can take away. Obviously, a new Act of

105. H.R. REP. NO. 337, 102d Cong., 1st Sess. 15 (1991).

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* As recently as 1990, the United States denied a petition by Colombia for duty-free preferential treatment under the GSP program. *Id.*

111. *See supra* note 45.

112. *See supra* note 46 and accompanying text.

113. *See supra* notes 48-49 and accompanying text.

Congress could repeal the Andean Trade Preference Act. Several other avenues, however, allow the United States to withdraw the Act's unilaterally granted benefits.

First, the United States can suspend the Act's promise of free trade by re-instituting tariffs if the President determines that tariffs are necessary to provide import relief or protect the national security.¹¹⁴ Labor and industry lobbies in the United States that support protective tariffs on competitive foreign imports are very influential.¹¹⁵ These groups will pressure Congress and the President to suspend the duty-free status of competing products.

Similarly, the Act's emergency relief provision could stifle the Act's goals. Under this provision, the President may, upon recommendation of the Secretary of Agriculture, withdraw duty-free treatment of perishable products.¹¹⁶ A large percentage of domestic products that compete with Andean nations' exports are eligible for emergency relief.¹¹⁷ For example, fresh cut flowers are Colombia's third largest export¹¹⁸ and are included in the category of perishable products eligible for emergency relief.¹¹⁹ Strong lobbying efforts by United States fresh flower labor and industries will undoubtedly influence the determination as to whether emergency action is appropriate.¹²⁰

Finally, the Andean Trade Preference Act has no effect on additional duties that may be imposed under United States anti-

114. See *supra* note 46 and accompanying text.

115. Since 1988 the soybean association has lobbied to ensure that none of the \$20 million in annual United States food aid to Bolivia goes to encourage soybean production. Greg Rushford, *The Drug War vs. Private Interest: Guess Who Wins?*, LEGAL TIMES, June 11, 1990, at 1. Similar lobbying efforts have been undertaken to protect the fresh cut flower market from Andean competition. Tim W. Ferguson, *Blushing Flowers Shall Rise, With Hybrid Ventures*, WALL ST. J., Jan. 7, 1992, at A13. Colombian exports account for a solid majority of United States sales of some popular flowers. *Id.* Representative Leon Panetta, the powerful Democrat who represents much of the California growing area, wants to impose import quotas and require country-of-origin labeling for every flower arrangement. *Id.* See also *Flowers and Cocaine; U.S. Could Help Colombian Farmers by Allowing Imports of Chrysanthemums*, L.A. DAILY J. (from the N.Y. TIMES (editorial)), Feb. 21, 1990, at 6 [hereinafter *Flowers and Cocaine*]; and Bill Workman, *Cheap Foreign Roses Peril U.S. Growers: Crisis Linked to Battle Against Cocaine*, S.F. CHRON., Dec. 21, 1991, at A18.

116. The emergency relief provision is described *supra* in notes 48-49 and accompanying text.

117. See *supra* notes 5 and 47.

118. *Flowers and Cocaine, supra* note 115, at 6.

119. See *supra* note 47.

120. See *supra* note 115 and accompanying text.

dumping or countervailing duty laws.¹²¹ For example, the United States frequently levies anti-dumping duties on fresh cut flowers.¹²²

Although the Andean Trade Preference Act purports to provide duty-free treatment to imports from Andean nations, in reality these products can easily fall victim to the Act's suspension and emergency relief provisions or to U.S. antidumping and countervailing duty laws. These multiple U.S. escape routes from the Act's trade provisions undermine the entire Act and imperil any gains made. Andean farmers will seek security before switching from drug-related crops to legitimate crops, but will find none in the tentative U.S. commitment. In order to make the Act successful, Congress must eliminate or severely restrict the ability of the United States to withdraw trade benefits as a result of lobbying pressure from domestic industries.

CONCLUSION

The Andean Trade Preference Act has been described by its sponsors as an economic incentive program to encourage the replacement of the narcotics trade with legitimate products. The Caribbean Basin Economic Recovery Act, however, is not a competent model for the Andean Trade Preference Act. The CBERA was not designed to achieve the goals of the Andean Trade Preference Act and it has contravened its own purpose of alleviating the economic crisis in the Caribbean Basin nations.

Congress must amend the Andean Trade Preference Act for it to be an effective weapon in reducing drug production and trafficking. The Act's beneficiary country provisions should be more understanding of the Andean economies and less discriminatory in favor of United States investment. Congress should extend duty-free treatment to all major exports of the Andean nations, and especially to exports whose production serves as a substitute for drug cultivation. Finally, Congress should restrict the ability of the United States to suspend duty-free treatment to protect U.S. producers.

Without these changes, the Andean Trade Preference Act is likely only to hurt the Andean nations. The Act will not aid in the reduction of narcotics production, but rather will assist

121. H.R. REP. NO. 337, 102d Cong., 1st Sess. 10 (1991).

122. In recent years, the United States has levied antidumping duties against all four Andean nations. Workman, *supra* note 115, at A18.

United States business investment and maintain the economic predominance of the United States in the western hemisphere at the expense of the Andean economies.

