

Prepared Testimony of William J. Snape, III
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Concerning S. 525, proposed amendments to the Andean Trade Preference Act
United States Senate, Committee on Finance
August 3, 2001

Mr. Chairman, and Members of the Committee, Defenders of Wildlife is an international, not-for-profit organization with approximately one-half million members and supporters worldwide. Defenders is dedicated to the conservation of animals and plants in their natural ecosystems. We have also worked to ensure that tuna eaten by American consumers is dolphin-safe pursuant to the laws passed by Congress, including the 1997 International Dolphin Conservation Program Act, which amended the Marine Mammal Protection Act (MMPA).

We appreciate the opportunity to comment on the proposed expansion of the Andean Trade Preference Act, or ATPA, to include trade preferences on canned tuna (i.e., Atuna, prepared or preserved in any manner, in airtight containers®), and its potential effects on dolphin populations and overall marine biodiversity. Our conclusion is that such an expansion is a promising idea, so long as a country is in full compliance with the Marine Mammal Protection Act and all other applicable law.

The ATPA was enacted in 1991 to strengthen the economies of countries in the Andean Community -- Bolivia, Colombia, Ecuador, Peru -- and to encourage counter-narcotics efforts in the region by creating economic alternatives to the violent and destructive drug trade. The Act provides beneficiary countries duty-free access to US markets for certain products. The original legislation expressly excluded canned tuna from the list of eligible products. Recent studies have determined that the ATPA has had only marginal effects on the economies of the beneficiary countries. Although the legislation was intended to encourage legitimate industries in the Andean region, the Congressional Research Service (CRS) has found that the composition of US imports from the eligible countries has changed only marginally since the ATPA program began. In fact, ATPA-eligible imports grew no faster than US imports from the region as a whole.

S. 525 would expand the ATPA to include canned tuna. While we agree that countries that harvest and/or export truly dolphin-safe tuna should be rewarded with access to the U.S. market, in this instance a reduction of duties, only full compliance with U.S. and international environmental law will ensure that both dolphins and the U.S. tuna industry are not harmed. Indeed, American leadership on dolphin protection clearly demonstrates the inextricable link between environmental protection and international trade, which is a major issue facing Congress with respect to granting the President new trade-negotiating authority under fast-track procedures. Put most simply, if we allow foreign tuna fleets and processors to harm dolphins and the marine environment, we are allowing unfair injury to the competitiveness of the U.S. tuna industry, which deserves credit for its conservation achievements over the past decade.

Thus, we urge this Committee to clarify S. 525 to include compliance with all relevant U.S. environmental laws as a pre-condition to the trade benefits included in the bill. Application of the 1997 Dolphin Act to the bill at hand yields the following analysis with regard to S.525 and its tuna provisions:

1) **Affirmative Findings under the Marine Mammal Protection Act.** The only country of the four ATPA countries that possesses the legal right at present to export tuna to the United States is Ecuador. This is because Ecuador is the only country with an affirmative finding[@] by the U.S. National Marine Fisheries Service (NMFS) regarding its domestic dolphin program pursuant to 16 U.S.C. ' 1371(a)(2)(B). Colombia, reportedly, is in the process of applying for an affirmative finding, but has not yet met the requisite legal requirements. Peru has a small tuna industry, and it too has not received an affirmative finding. Bolivia not only fails to possess an affirmative finding, but is also not even a member of the Inter-American Tropical Tuna Commission (IATTC) and its fleet is the subject of substantial illegal fishing allegations.

2) **Tracking and Verification System for Dolphin-Safe Tuna.** Regrettably, the IATTC continues to pursue a tracking and verification system that is both illegal and massively ineffective. Without such an effective tracking and verification system, mandated by 16 U.S.C. ' 1385(f), there is absolutely no way to know that tuna cans labeled as Adolphin-safe[@] are Adolphin-safe.[@] Just last week, for example, the U.S. Court of Appeals for the 9th Circuit unanimously ruled against the Department of Commerce's (and IATTC) definition of dolphin-safe tuna. Brower v. Evans, No. 00-15968 (July 23, 2001). In addition, a slew of problems plague changes to the tracking and verification system endorsed by the IATTC and accepted by the Department of Commerce, the most notable of which is the secrecy of the tuna-tracking forms. These forms are filled out by tuna boat observers and are the very basis of an effective tracking and verification system. Ecuador should agree to release these tuna tracking forms in order to qualify for the duty-free incentive offered by S. 525.¹

3) **Enforcement Issues.** As this Committee well knows, enforcement of international agreements is paramount. Otherwise, such agreements are frequently not worth the paper they are written upon. According to the IATTC's own statistics, Ecuador has had some enforcement problems over the last several years. And, again, the entire programs of Colombia, Peru and Bolivia have not been approved by the United States. Moreover, recent CRS analysis indicates that the ATPA has had no discernible impact on illegal drug trade. Although total coca production in the region fell by 11 percent from 1991 to 1999, production in Colombia increased by 227 percent. Ironically, Colombia is the principal ATPA beneficiary, responsible for 60 percent of total US imports from the region in 1999. Without adequate checks, the proposed expansion of the ATPA to include canned tuna could make the situation worse. As the CRS report noted, Ecuador grows little coca. But there is evidence that certain tuna fleets and drug traffic are positively linked. Narcotics often pass through the region's seaports and the Pacific Ocean to the United States. The present legislation should not support such lawless behavior.

¹ The tracking and verification system is in litigation before the U.S. Court of International Trade, Defenders of Wildlife et al. v. Dalton.