

COLOMBIA

TRADE SUMMARY

The U.S. goods trade deficit with Colombia was \$8.8 billion in 2011, up \$5.2 billion from 2010. U.S. goods exports in 2011 were \$14.3 billion, up 18.6 percent from the previous year. Corresponding U.S. imports from Colombia were \$23.1 billion, up 47.6 percent. Colombia is currently the 22nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Colombia was \$6.6 billion in 2010 (latest data available), up from \$6.2 billion in 2009. U.S. FDI in Colombia is primarily concentrated in the mining and manufacturing sectors.

TRADE PROMOTION AGREEMENT

The United States-Colombia Trade Promotion Agreement (CTPA) was signed on November 22, 2006. Colombia's Congress approved the CTPA and a protocol of amendment in 2007. The U.S. Congress enacted legislation approving the CTPA on October 12, 2011, and Colombia is currently in the process of taking the measures necessary to comply with those provisions of the CTPA that take effect when the agreement enters into force.

The CTPA is a comprehensive free trade agreement. Once the agreement enters into force, Colombia will immediately eliminate most of its tariffs on U.S. exports, with all remaining tariffs phased out over defined time periods. Colombia will accord substantially improved market access for U.S. suppliers. The CTPA also includes important disciplines relating to: customs administration and trade facilitation; technical barriers to trade; government procurement; investment; telecommunications; electronic commerce; intellectual property rights; transparency; and labor and environmental protection.

On April 7, 2011, the U.S. and Colombian governments announced an Action Plan on Labor Rights in which the Colombian government committed to a series of measures in defined time frames to improve the protection of internationally recognized labor rights, the prevention of violence against labor leaders, and the prosecution of the perpetrators of such violence. The Santos Administration is meeting these milestones under the Action Plan.

IMPORT POLICIES

Tariffs

Colombia reduced applied import duties on November 5, 2010 for more than 4,000 tariff lines. Decrees 4114 and 4115 list the reductions. The average import duty was reduced from 12.2 percent to 8.3 percent. Consumer goods, capital goods, and raw materials produced outside of Colombia were the main reduction targets. As part of a concerted effort to stimulate the economy and address the effects of massive flooding, additional reductions were enacted by Decrees 511, 1750, 2916, and 2917 of February, May, and August 2011. The additional reductions instituted either zero percent or five percent duties, which are valid for one year after publication.

Most of Colombia's import duties have been consolidated into three tariff levels: zero percent to 5 percent on capital goods, industrial goods, and raw materials not produced in Colombia; 10 percent on

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manufactured goods, with some exceptions; and 15 percent to 20 percent on consumer and “sensitive” goods. Exceptions include: automobiles, which are subject to a 35 percent duty; beef and rice, which are subject to an 80 percent duty; and milk and cream, which are subject to a 98 percent duty. Whey is currently subject to a 20 percent in-quota duty (3,000 tons) and a 94 percent duty outside the quota. Other agricultural products fall under the Andean Price Band System (APBS) established by Decision 371 of the Andean Community (AC), which includes Bolivia, Colombia, Ecuador, and Peru. The APBS protects domestic industry with a variable levy by increasing tariffs when world prices fall and decreasing tariffs when world prices rise.

The APBS includes 14 product groups and covers more than 150 tariff lines. This system can result in duties exceeding 100 percent, depending on world commodity prices, for important U.S. exports to Colombia, including corn, wheat, soybeans, pork, poultry parts, and cheeses. The APBS also negatively affects U.S. access to Colombian markets for products that contain corn, such as dry pet food. By contrast, processed food imports from Chile and AC Members enter duty free.

Under the CTPA, Colombia will immediately cease to apply the APBS to imports from the United States. This, and other tariff-related provisions of the CTPA, will help U.S. exports compete more effectively in Colombia’s market. Under the CTPA, over half of the value of current U.S. agricultural exports to Colombia would enter duty free, including high quality beef, an assortment of poultry products, soybeans and soybean meal, cotton, wheat, whey, and most horticultural and processed food products. U.S. agricultural exporters also will benefit from duty-free access through tariff-rate quotas (TRQs) on corn, rice, poultry parts, dairy products, sorghum, dried beans, beef, animal feeds, and soybean oil.

About 80 percent of U.S. exports of consumer and industrial products to Colombia will become duty free immediately upon entry into force of the CTPA, with remaining tariffs phased out within 10 years. Colombia also agreed to join the WTO Information Technology Agreement, under which countries eliminate tariffs on a most favored nation (MFN) basis for a wide range of information technology products.

Nontariff Measures

Nontariff barriers include discretionary import licensing, which has been used to restrict imports of milk powder (Resolution 2551 of 2002) and poultry parts (Resolution 001 of 1991). The CTPA contains provisions that should address this issue. The Colombian government maintains 67 TRQs, including on rice, soybeans, yellow corn, white corn, and cotton (Decree 430 of 2004), and requires that importers purchase local production in order to import under the TRQ. Under the CTPA, the Colombian government committed to ensuring that U.S. access to the TRQ in-quota quantity will not be conditioned on the purchase of domestic production.

Based on AC Decision 331, Colombia does not permit the importation of used clothing. Importers of used and remanufactured goods may apply for licenses to import products into Colombia under limited circumstances (Resolution 001 of 1995). U.S. industry reports that, in practice, authorities do not grant such licenses, resulting in an effective import prohibition of these products. In addition, Decree 4725 of 2005 prohibits the importation of used or refurbished medical equipment that is older than five years, thereby limiting market access for high quality remanufactured products, such as imaging equipment. Under the CTPA, Colombia affirmed that it would not adopt or maintain prohibitions or restrictions on trade in remanufactured goods and that some existing prohibitions on trade in used goods would not apply to remanufactured goods. This will provide significant new export and investment opportunities for firms involved in remanufactured products, such as machinery, computers, cellular phones, and other devices.

Colombia assesses a consumption tax on alcoholic beverages through a system of specific rates per degree (percentage point) of alcohol strength (Law 788 of 2002, Chapter V). Arbitrary breakpoints have the effect of applying a lower tax rate to domestically produced spirits and therefore create a barrier for imported distilled spirits. Under the CTPA, Colombia committed to eliminate the breakpoints for imports of distilled spirits within four years of the Agreement's entry into force. Additionally, Colombia committed to eliminate practices that have restricted the ability of U.S. distilled spirits companies to conduct business in Colombia.

GOVERNMENT PROCUREMENT

U.S. companies are required to have a local partner in order to qualify for government procurement. Under the CTPA, Colombia agreed to accord national treatment to U.S. goods, services, and suppliers in procurements covered by the Agreement. Under the CTPA, U.S. firms will have greater access to procurement by Colombia's ministries and departments, legislature, courts, and first tier sub-central entities, as well as a number of Colombia's government enterprises, including its oil company. In addition, Colombia will not apply Law 816 of 2003 to CTPA-covered procurements, as that law mandates preferential treatment for tenders that provide Colombian goods or services. U.S. companies have complained about the lack of transparency in government procurement practices.

Colombia is not a signatory to the WTO Agreement on Government Procurement, but it has been an observer to the WTO Committee on Government Procurement since 1996.

EXPORT SUBSIDIES

In a 2008 effort to ease the impact of an appreciating peso, the Colombian government issued tax rebate certificates (known as "CERTs") to exporters in certain sectors. The value of the CERT is equal to four percent of the value of exports of designated goods. While no CERTs were issued in 2009 or 2010, as a result of the expiration of Andean Trade Preference Act benefits in February 2011, the government of Colombia approved the issuance of up to \$25 billion in CERTS for the partial or full reimbursement to exporters of tariffs paid between January 1, 2011 and October 31, 2011. The sectors that benefitted from this measure were textiles, footwear, foodstuffs, plastic manufactures, furniture, leather products, jewelry, automotive parts, and editorial products.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Colombia was listed on the Watch List in the 2011 Special 301 Report. During 2011, Colombia continued to improve its efforts against intellectual property rights (IPR) violators through enforcement action and improved coordination among IPR enforcement agencies and with rights holders. This builds on the Colombian government's concerted effort in recent years to combat IPR violations, including through conducting raids to seize counterfeit and pirated products and deter the counterfeiting of pharmaceuticals.

Colombia also took steps in 2011 to address its patent backlog. Despite these positive developments, there remains a need for further IPR improvements in Colombia, particularly through additional training and resources for agencies involved in enforcing IPR. A key concern cited in the Special 301 Report is the lack of deterrent sentences. Actions are still needed to reduce book and optical media piracy, combat piracy over the Internet, and television signal piracy, and to address the need for an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products.

Colombia is developing, with USTR, a joint cooperation plan to improve enforcement of intellectual property rights in Colombia, with a goal of removing the country from the Watch List.

SERVICES BARRIERS

Implementation of the CTPA will require Colombia to accord substantial market access across its entire services regime, subject to a limited number of exceptions. Some restrictions, such as economic needs tests and residency requirements, still remain in sectors such as accounting, tourism, legal services, insurance, distribution services, advertising, and data processing.

Legal Services

Foreign law firms can only operate in Colombia by forming a joint venture with a Colombian law firm and operating under the licenses of Colombian lawyers in the firm.

Financial Services

Insurance companies must maintain a commercial presence to sell policies other than those for international travel or reinsurance. Colombia prohibits the sale of maritime insurance by foreign companies. Foreign banks must establish a subsidiary to operate in Colombia.

Under the CTPA, Colombia will phase in further liberalization in financial services, such as allowing branching by banks and allowing the cross-border supply of international maritime shipping and commercial aviation insurance within four years of the Agreement's entry into force. Under the CTPA, mutual funds and pension funds will be allowed to seek advice from portfolio managers in the United States.

Transportation

Trans-border transportation services are restricted in Colombia. Land cargo transportation must be provided by Colombian citizens or legal residents with a commercial presence in the country and licensed by the Ministry of Transportation. Colombian law permits international companies to provide cabotage services (*i.e.*, transport between two points within Colombian territory) "only when there is no national capacity to provide the service." Under the terms of the CTPA, Colombia committed to allow 100 percent foreign ownership of land cargo transportation enterprises in Colombia.

Telecommunications

Colombia currently permits 100 percent foreign ownership of telecommunications providers and has committed to ensure that competitors can interconnect with Colombian dominant suppliers' fixed networks at nondiscriminatory and cost-based rates.

Express Delivery

Law 1369 of 2009 regulates postal services in Colombia. U.S. industry reports delays in obtaining express delivery licenses and establishing facilities.

INVESTMENT BARRIERS

Foreign investment in Colombia is accorded national treatment, and 100 percent foreign ownership is permitted in most sectors. Exceptions exist for broadcasting and the disposal of hazardous waste. In certain cases, the Colombian government does not include arbitration clauses in contracts to which it is a party. Enforcement of arbitration judgments against the Colombian government, as well as municipal and departmental governments, can be very difficult.

Colombia agreed to strong protections for U.S. investors in the CTPA. The CTPA includes provisions that will provide a stable legal framework for U.S. investors operating in Colombia. All forms of investment will be protected under the CTPA. In almost all circumstances, U.S. investors will enjoy the right to establish, acquire, and operate investments in Colombia on an equal footing with domestic investors. The CTPA includes a transparent, binding investor-state arbitration mechanism.