

# COLOMBIA

## TRADE SUMMARY

U.S. goods exports in 2014 were \$20.3 billion, up 10.5 percent from the previous year. Colombia is currently the 19th largest export market for U.S. goods. Corresponding U.S. imports from Colombia were \$18.2 billion, down 15.7 percent. The U.S. goods trade surplus with Colombia was \$2.1 billion in 2014, shifting from a trade deficit of \$3.2 billion in 2013.

The stock of U.S. foreign direct investment (FDI) in Colombia was \$7.8 billion in 2013 (latest data available), up from \$7.4 billion in 2012. U.S. FDI in Colombia is led by the mining, manufacturing, finance, and insurance sectors.

### **The United States-Colombia Trade Promotion Agreement**

The United States-Colombia Trade Promotion Agreement (CTPA) entered into force on May 15, 2012. The CTPA is a comprehensive free trade agreement, under which Colombia immediately eliminated duties on 80 percent of U.S. exports, with most remaining tariffs to be phased out over ten years, with tariffs on some sensitive agricultural products being phased out over longer periods of time. Under the CTPA, Colombia also provides for substantially improved market access for U.S. service suppliers. In addition, the CTPA includes disciplines on customs administration and trade facilitation, technical barriers to trade, government procurement, investment, electronic commerce, telecommunications, intellectual property rights, transparency, and labor and environmental protection.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### **Sanitary and Phytosanitary Barriers**

#### *Live Cattle*

Colombia continues to ban imports of U.S. live cattle due to concerns over bluetongue and leucosis. In June 2010, Colombia nominally allowed live cattle imports from the United States, but at the same time imposed restrictive requirements that effectively prevented any such imports. In 2014, the United States continued to raise its ongoing concerns regarding Colombia's bluetongue requirements, including at the CTPA Standing Committee on Sanitary and Phytosanitary Matters (SPS Committee) meeting held in May 2014. At that meeting, Colombia highlighted its proposed testing requirements for bluetongue, and U.S. regulatory authorities underscored the problematic technical aspects associated with those measures. The two sides continue to hold technical discussions on this issue.

#### *Beef*

Two 2006 letter exchanges between the United States and Colombia fully opened the Colombian market to U.S. beef and beef products from animals of all ages. However, as the side letters predated the United States' 2007 classification by the World Organization for Animal Health (OIE) as "controlled risk" for Bovine Spongiform Encephalopathy (BSE), the side letters use the OIE definition of specified risk materials which includes the entire vertebral column, rather than the Food Safety Inspection Services' domestic SRM definition, which requires participation in a USDA Agricultural Marketing Service (AMS) export verification (EV) program. Meat used in processed products must also be sourced from establishments that participate in an EV program. The United States has been engaging Colombia on updating its certification requirements for U.S. beef and beef products imported into Colombia to reflect changes in the U.S. risk

status for BSE, including the OIE classification of the United States as “negligible risk” for BSE. The changes in certification requirements would enhance U.S. beef and beef product exporters’ access to Colombia’s market by removing the current necessity of participation in an EV program. In 2014, the United States continued to press for updating the certification statements, including at the May 2014 CTPA SPS Committee. Colombia’s relevant regulatory authority reported that its internal risk assessment process had been completed, and that the import requirements would be subsequently discussed internally within the Colombian government, pursuant to the established regulatory process. The United States continues to engage with Colombia to address this issue.

### *Rice*

As part of the CTPA, Colombia agreed, via an exchange of letters with the United States dated April 15, 2012, to provide access for U.S. rough rice through the Port of Barranquilla, subject to specified certification requirements and the pre-export fumigation of shipments. Colombia’s concerns pertaining to *Tilletia horrida* (a rice smut) and that the rice not be imported near Colombia’s rice producing areas. Based on a subsequent December 2013 report that *Tilletia horrida* had been detected in rice production areas in Colombia, the United States has been raising the issue with Colombia, including at the May 2014 meeting of the CTPA SPS Committee to discuss the situation and its potential implications on the conditions of the April 2012 agreement. At that time, Colombia indicated it was conducting an epidemiologic survey to update the status of *Tilletia horrida* as a result of the December 2013 report and would provide the United States with the results and possible actions to be taken relating to imports from the United States. The United States will continue to engage Colombia in addressing this issue, as the United States seeks to expand the list of eligible ports of entry for U.S. rough rice beyond the Port of Barranquilla and to remove the methyl bromide fumigation requirement.

## **IMPORT POLICIES**

### **Tariffs**

About 80 percent of U.S. exports of consumer and industrial products to Colombia became duty free immediately upon the CTPA’s entry into force on May 15, 2012. Subsequent tariff reductions occur on January 1 of each year, and the fourth round of tariff reductions took place on January 1, 2015. The remaining consumer and industrial product tariffs are to be phased out within ten years of entry into force.

Colombia applies variable tariffs to imports of certain agricultural products pursuant to the Andean Community’s price band system. However, upon entry into force of the CTPA, Colombia stopped imposing variable tariffs on U.S. agricultural exports, and almost 70 percent of U.S. agricultural exports (by value) became duty free. Duties on most other U.S. agricultural goods will be phased out over a period of 5 years to 12 years, depending on the product. Tariffs on the most sensitive products for Colombia, such as some poultry products, some dairy products, sugar, and rice will be phased out over 15 years to 19 years. U.S. agricultural exporters also benefit from zero-duty tariff rate quotas on corn, rice, poultry parts, dairy products, sorghum, dried beans, standard grade beef, animal feeds, and soybean oil. This access will increase as quotas are increased and over-quota duties are phased out over the course of the implementation period.

### **Nontariff Measures**

#### *Truck Scrappage*

Prior to March 2013, new freight trucks over 10.5 metric tons (mt) could be legally registered in Colombia either by paying a “scrappage fee” to the government or by demonstrating that an old freight truck of

equivalent capacity had been scrapped and its registration cancelled. In Decree 486 of March 2013, without public consultation or a transition period, Colombia eliminated the option to pay a “scrappage fee.” Therefore, scrapping an old truck of equivalent cargo capacity is now a condition for the sale and registration of new freight trucks over 10.5 mt.

Sales of new freight trucks in Colombia were strong in the past, even though the scrappage fee raised costs. However, the elimination of the fee option has effectively frozen the sale of imported trucks (which are generally over 10.5 mt). In the first year of this policy, imports fell 65 percent, costing U.S. exporters a reported \$500 million in lost sales. In addition, sales-related administration costs rose by \$60 million for all importers.

In December 2013, Colombia passed another decree, also without consultation or a transition period, to provide greater flexibility to scrap trucks (*e.g.*, allowing the scrapping of two smaller trucks for one larger), but this measure has not alleviated the scarcity of the “coupons” generated by scrapping vehicles, which are needed to register new trucks. Industry estimated that there were only enough coupons to cover about one quarter of the demand that existed prior to Decree 486.

In 2014, the United States continued to raise concerns with the scrapping requirements, as well as with the lack of a transparent public consultation process and transition period for the new measures, in multiple fora and at multiple levels, including in the Organization for Economic Cooperation and Development (OECD) Trade Committee in the context of Colombia’s accession to the OECD. Colombia has frequently suggested that it would issue new measures that would address U.S. concerns, but to date no tangible actions have been taken that comprehensively address the issue. The United States will continue to press Colombia for a resolution of this issue to effectively reopen the Colombian market for U.S. trucks.

#### *Internal Taxes on Distilled Spirits and Alcohol Monopolies*

Colombia currently assesses a consumption tax on distilled spirits with a system of specific rates per degree (half percentage point) of alcohol strength (Law 788 of 2002, Chapter V, as amended by Law 1393 of 2010). Arbitrary breakpoints based on alcohol content result in a lower tax rate on spirits that are produced locally. This may result in an unfair disadvantage for imported distilled spirits. Under the CTPA, Colombia committed to eliminating the breakpoints with respect to imports of distilled spirits four years after entry into force of the CTPA, that is, by May 15, 2016.

Additionally, the Department of Cundinamarca, which accounts for over half of U.S. liquor sales in Colombia, implemented new ordinances in 2014, without providing a public comment period, which increase the consumption tax by eight percent on private producers (department-owned monopolies are exempt) and implemented additional market access restrictions. In 2014, the government of Colombia formed a working group to identify solutions to barriers to trade in liquors. The working group includes national ministry and department-level representatives, as well as stakeholders and foreign government officials.

In January 2015, this group presented a draft regulation intended to address both the consumption tax issue as well as issues with respect to departmental alcohol monopolies which was subsequently included in Colombia’s draft National Development Plan. While some aspects of the relevant provisions of the National Development Plan could have been helpful, particularly with regard to the alcohol monopolies-related issues, it proposes that the differential consumption tax on distilled spirits be eliminated over five years, that is, by 2019, and then in a subsequent version, over 10 years, both dates are well after the May 15, 2016, deadline reflected in the CTPA. In March 2015 all language on these two issues in the National Development Plan was removed. The United States will continue to press Colombia to meet its CTPA and WTO commitments on these issues.

### *Remanufactured Goods*

Under the CTPA, Colombia affirmed it would not adopt or maintain restrictions on trade of remanufactured goods (provided they have warranties similar to new goods) and treat remanufactured goods in the same manner as new goods. It also affirmed that some existing prohibitions on trade in used goods would not apply to remanufactured goods. In January 2015, Colombia's customs authority published for comment a draft regulation regarding the importation of remanufactured goods. While the draft regulation appears to provide for the importation of remanufactured goods under several of Colombia's free trade agreements, including under the CTPA, it also raises concerns that it might impose additional requirements for the importation of remanufactured goods as opposed to new goods. The United States has consulted with Colombia on the draft regulation and will continue to monitor further developments of the draft regulation.

### *Biologics and Biotechnologic Medicines*

In September 2014, Colombia issued a final decree establishing a framework for marketing approval of biological medicines and biosimilars. The Decree established three approval pathways, the third of which, the "abbreviated" pathway, permits an applicant to rely on "any information deemed relevant" when that information originates from designated countries or specified health authorities abroad. The United States will monitor the implementation of the Decree to determine whether specific market access concerns arise.

### *Third Party Customs Observers*

Colombia recently began to implement a 1999 decree that allows third party "customs observers" at ports of entry to provide technical support to customs inspectors. The "customs observers," some of whom are from national producer organizations that directly compete with U.S. importers, are permitted to review product quantities, weights, and customs values, and to identify appropriate commodity codes for agricultural products. Although "customs observers" do not have the authority to reject shipments, they have reportedly caused delays in the release of U.S. imports and questioned U.S. Department of Agriculture statutory product quality grading standards, which could have significant implications for the duties imposed on certain products. Additionally, samples of some products, such as ethanol, are sent for testing to the laboratories of local producers that compete directly with the U.S. importers raising concerns about possible conflicts of interest.

### *Ethanol*

In April 2014, the Ministry of Mines and Energy (MME) published a decree that allowed Colombia to set import quantity limits on ethanol and establish a licensing mechanism for importing firms to allow for imports in cases of domestic shortfall.

## **GOVERNMENT PROCUREMENT**

Under the CTPA, Colombia grants national treatment to U.S. goods, services, and suppliers in procurements covered by the Agreement. The CTPA expands U.S. firms' access to procurement by Colombia's ministries, departments, legislature, courts, and first tier sub-central entities, as well as a number of Colombia's government enterprises, including its majority state-owned oil company. In addition, Colombia does 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 are still required to have some local representation in order to qualify for government procurement.

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 February 1996.

## **INTELLECTUAL PROPERTY RIGHTS PROTECTION**

Colombia remained on the Watch List in the 2014 Special 301 Report. Colombia's implementation of the intellectual property rights (IPR) provisions of the CTPA was interrupted in 2013 when the Constitutional Court invalidated on procedural grounds the law enacting those obligations. In the second half of 2014, Colombia actively reengaged and advanced several CTPA IPR implementation measures, including finalizing decrees enhancing damages in trademark infringement cases and addressing patent term limitations caused by administrative examination delays. Colombia anticipates that the remaining implementation measures will be introduced or significantly advanced in 2015. The United States will continue to engage with Colombia at political and technical levels to complete implementation as soon as possible.

In 2013, Colombia began implementing a system identifying geographical indications (GIs) to review and make determinations regarding European Union applications to register a range of GIs in Colombia. Since then, Colombia has issued several administrative rulings to clarify the scope of protection granted to registered GIs. During engagement with Colombia on the matter, the United States stressed the need for consistency in protections and process, including public notice and opportunity for opposition and cancellation, and transparency in decision making, in particular the need for transparency and clarity with regard to the determinations and the scope of coverage of protection. The United States will continue to engage on GIs with Colombia to preserve market access for U.S. agricultural producers.

The growing use of microchipped Free-to-Air (FTA) boxes, used exclusively for pirating broadcasting signals, has become a concern with regard to intellectual property. Although Colombia still does not officially prohibit the importation of these products, in response to U.S. concerns, it has started to take some measures to restrict their use. In November 2014, Colombia issued a guideline to establish a national policy on satellite services provided by the government that prohibits the use of FTA boxes with decodification capacities. It also drafted a decree to prohibit the importation of these boxes and requires Internet Service Providers to take down webpages that contain software updates needed to decrypt TV signals.

## **SERVICES BARRIERS**

The CTPA grants U.S. service suppliers improved market access. 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.

### **Telecommunications**

Foreign participants in Colombia's telecommunications market, including U.S. providers, continue to raise concerns about regulatory treatment in the mobile market. In August 2014, the Communications Regulation Commission proposed changes to its regulations for mobile termination rates and roaming rates. Although the proposed changes decrease the rates charged for mobile termination, it delays full implementation beyond earlier proposals from Colombia. In addition, the proposed changes would not reduce roaming rates as much as earlier proposals from Colombia. The United States will continue to monitor this issue and engage with the government of Colombia.