

# COLOMBIA

In 1997, the U.S. trade surplus with Colombia was \$474 million, an increase of \$39 million from the U.S. trade surplus of \$435 million in 1996. U.S. merchandise exports to Colombia were \$5.2 billion, an increase of \$490 million (10.4 percent) from the level of U.S. exports to Colombia in 1996. Colombia was the United States' twenty-sixth largest export market in 1997. U.S. imports from Colombia were \$4.7 billion in 1997, an increase of \$451 million (10.6 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Colombia in 1996 was about \$3.5 billion, an increase of 3.5 percent from the level of U.S. FDI in 1995. U.S. FDI in Colombia is concentrated largely in the manufacturing and petroleum sectors.

## IMPORT POLICIES

Under an economic liberalization plan known as "apertura" (opening) in the early 1990's, Colombia substantially reduced tariffs, eliminated almost all import licensing requirements, simplified import and export procedures, established a free market exchange rate regime (with very few conditions), created transparent and more liberal foreign investment rules, and opened up nearly all sectors of the economy for foreign investment. The agricultural sector has been a general exception to this opening.

## Tariffs

As a result of the Uruguay Round negotiations, Colombia bound most of its tariff rates at 35 to 40 percent. Currently, Colombia's average applied tariff rate is about 12 percent ad valorem, based on the CIF value. Claiming a fiscal shortfall, Colombia temporarily raised its tariffs between 2 and 5 percent for a 90-day period April through June 1997; however, at the end of this period, all tariffs returned to their earlier lower levels.

Colombia, along with Venezuela and Ecuador, implemented an Andean Community common external tariff (CET), which took effect on February 1, 1995. The CET has a four-tier structure, with duty levels of 5, 10, 15, and 20 percent for most products. In accordance with the Andean Community CET, Colombia harmonized its national four-tier tariff schedule with that of Venezuela and Ecuador, with some exceptions taken by each country.

In recent years Colombia has negotiated trade arrangements with other Latin American and Caribbean countries. Colombia has a comprehensive free trade agreement with Mexico and Venezuela, known as the G-3 Agreement, which took effect on January 1, 1995, under which most tariffs are to be reduced to zero by the year 2007. Colombia also has a partial free trade agreement with Chile. All of Colombia's bilateral and regional trade agreements are based on Latin American Integration Association (ALADI) regulations and procedures. Other agreements, such as those negotiated with Cuba, Panama, Central America, and CARICOM, have either been ineffective or have not been fully implemented. Colombia, along with the other members of the Andean Community, has entered into negotiations for a free trade arrangement with the countries of MERCOSUR.

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Colombia did not sign on to the WTO Information Technology Agreement.

### **Non-Tariff Measures**

Colombia requires import licenses on less than two percent of products, primarily weapons and other products related to defense as well as "precursor" chemicals that may be used in refining cocaine. The majority of used goods -- used cars, tires, and clothing -- are prohibited from import, and those that are allowed, such as machinery, are subject to licensing. The agriculture sector in Colombia remains protected. Since the promulgation of Decree 2439 in November 1994, the Ministry of Agriculture has been required to approve import licenses for many agricultural items, such as wheat, poultry meat, malting barley, corn, cotton, rice, sorghum, wheat flour, oilseeds and their products, soybeans, soybean meal, and soybean oil.

Colombia has implemented absorption agreements under the Samper Administration for domestically-produced corn, wheat, sorghum, and malting barley in which both quantity and price are set. Prices for these products are fixed well above international market levels. Failure to comply with the domestic absorption agreements is likely to result in denial of import licenses. This import licensing regime appears to be discretionary and thus not consistent with Colombia's obligations under the WTO Agreement on Agriculture.

If the import licensing requirement for the products indicated above were eliminated, it is estimated that U.S. annual exports would increase by about \$10 million.

Fourteen basic agricultural commodities (powdered milk, wheat, malting barley, yellow and white corn, crude palm and soybean oils, white rice, soybeans, white and raw sugars, chicken and turkey pieces, and pork meat) and an additional 120 commodities that are considered substitutes or related products are subject to a variable import tariff "price band" system. Imported wheat is also subject to minimum import prices. There are at this time no reliable figures showing how much U.S. exports would increase if the price band system were eliminated. The Colombian Foreign Trade Institute (INCOMEX) requires approval by the Ministry of Agriculture prior to the importation of chicken and turkey whole birds or parts. Under this system, the Government of Colombia has approved import licenses only when it has determined that such imports will not adversely affect Colombian producers. Since 1994, import licenses to import U.S. chicken and turkey parts have been regularly denied, and licenses for whole birds are often delayed. If the import licensing requirement for chicken and turkey parts were eliminated, it is estimated that U.S. annual exports would increase by approximately \$10 million.

Valuation of imported merchandise, previously the responsibility of the customs service, can now ostensibly be done by importers who self-value, assess, and pay duties and other taxes at commercial banks. Customs clearance processes in many instances can be performed fairly rapidly. However, Colombia's pre-shipment inspection of imported equipment must be performed by an independent testing agency which, according to U.S. industry, results in unnecessary delays. Through a series of resolutions dating back to November 1994, the Colombian Government has created a pre-shipment inspection (PSI) mechanism using private PSI companies. Upon acceding to the WTO Agreement on Pre-shipment Inspection, Colombia took measures to allow PSI companies to perform certain direct functions under the control of the National Tax and Customs Directorate (DIAN). As of February 1, 1996, PSI companies began mandatory pre-clearance of all goods defined as "sensitive" by the Colombian Government. Inconsistencies on the part of customs in adhering to standardized procedures, and lack of transparency in enforcement, continues to create delays and problems.

**STANDARDS, TESTING, LABELING, AND CERTIFICATION**

INCOMEX mandates compliance with specific technical standards for a variety of products. The particular specifications are established by the Colombian Institute of Standards (ICONTEC). Under Decree 300 of 1995, a certificate of conformity with Colombian standards is required prior to the importation of any good regulated by a standard. This certificate can be obtained by providing notarized documents from certifying organizations which have been previously approved or recognized by the country of production/export. Certifications from most U.S. product quality organizations are accepted in Colombia. In the past, problems had sometimes arisen due to the shortage of officially-recognized testing laboratories, but over the past two years the government's efforts to certify an increasing number of both public and private testing facilities has alleviated this problem.

The Colombian Institute of Technical Standards (ICONTEC), a private non-profit organization, has been accredited as a certification entity. It is also responsible for technical standards development, provides quality certification and technical support services, and serves as an Underwriter's Laboratories (UL) inspection center. ICONTEC is a member of the International Standards Organization (ISO) and the International Electrotechnical Commission (IEC), and recently received recognition from the German Association for Accreditation (TGA) to carry out ISO 9000 quality management certification.

Colombia's tax law, Law 223, which took effect on January 1, 1996, establishes that all distilled spirits are subject to a value-added tax of 35 percent. However, the law makes an exception for whiskeys that are aged for 12 or more years, which are subject to a 20 percent value-added tax. Bourbon and Tennessee whiskey -- both distinctive products of the United States -- are typically aged from four to eight years and, as a consequence, face a higher tax rate than most competing imported whiskeys which are aged longer. This distinction between whiskeys creates a competitive disadvantage for Bourbon and Tennessee whiskey. The United States has pointed out this inconsistency in the Colombian tax law but, to date, the Government of Colombia has not revised its law.

According to U.S. industry, Colombian requirements for phytosanitary registrations to bring new products into the market take an excessively long time (six to eight months) to fulfill.

**GOVERNMENT PROCUREMENT**

An October 1993 government procurement and contracting law, Law 80, provides equal treatment to foreign companies on a reciprocal basis and eliminates the 20 percent surcharge previously added to foreign bids. In implementing Law 80, the Government of Colombia instituted a requirement that companies without local headquarters must certify reciprocity in government procurement in the home country. Law 80 does not apply to contracts for the exploration and exploitation of renewable or non-renewable natural resources, their commercialization, and those activities performed by state companies involved in these sectors. Colombia is not a signatory to the WTO Agreement on Government Procurement.

Despite laws to encourage transparency, the government procurement process in many sectors of both the national and regional level still suffers from allegations of corruption. While in 1997 no official complaints were filed, in past years U.S. industry has complained of illicit payments or lack of market access in government bids for high-tech equipment and services and infrastructure projects.

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### **EXPORT SUBSIDIES**

Colombia's tax rebate certificate program (CERT) contains a subsidy component; the Government of Colombia has committed to eliminate the subsidy and create an equitable drawback system, but has not yet done so. Colombia also has notified the WTO of its "special machinery import-export system" and "free zones" as constituting export subsidies.

### **LACK OF INTELLECTUAL PROPERTY PROTECTION**

Despite significant improvement in 1993 and 1994 in the area of Intellectual Property Rights (IPR), Colombia does not yet provide adequate and effective protection. As a result of its laws and practices -- especially its inadequate IPR enforcement -- Colombia has been on the "Watch List" under the Special 301 provision of the 1988 Trade Act every year since 1991. Colombia has ratified, but not yet fully implemented, the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

#### **Patents and Trademarks**

Two Andean Community decisions on the protection of patents and trademarks and of plant varieties have been in effect in Colombia since January 1, 1994. The decisions are comprehensive and offer a significant improvement over previous standards of protection of intellectual property in the Andean Community countries. For example, they provide a 20-year term of protection for patents and reversal of the burden of proof in cases of alleged process patent infringement. The provisions of the decisions covering protection of trade secrets and new plant varieties are generally consistent with world-class standards for protecting intellectual property rights. However, the decisions still contain deficiencies, including overly broad compulsory licensing provisions, working requirements, restrictions on biotechnology inventions, denial of pharmaceutical patent protection for patented products listed on the World Health Organization's model list of essential drugs, the lack of transitional ("pipeline") protection, and the lack of protection against parallel imports. In June 1996, Colombia ratified the Paris Convention for the protection of industrial property, which went into effect in September 1996.

Colombia's trademark protection requires registration and use of a trademark in Colombia. In a recent decree, Colombia announced that registration of a trademark must be accompanied with its use in order to prevent parallel imports. Trademark registrations have a ten-year duration and may be renewed for successive ten-year periods. Priority rights are granted to the first application for trademark in another Andean Community country or in any country which grants reciprocal rights. Colombia is a member of the Inter-American Convention for Trademark and Commercial Protection. Enforcement in the trademark area remains weak.

The Colombian Government has made progress administering patent and trademark regulations. The backlog of pending cases with the agency in charge of patents and trademarks -- the Superintendency of Industry and Commerce -- has been coming down somewhat from earlier years. However in 1997, it increased again slightly to approximately 29,000 cases.

According to U.S. industry, Colombia maintains a policy of promoting unbranded "generic" pharmaceuticals at the expense of the brands typically produced by multinational companies. Law 100 establishes that the Colombian people will be covered by either social security or health promoting entities and that pharmaceutical

products will be supplied based on a list of only 307 generic substances. As common practice, however, Colombians are limited to the listed pharmaceuticals only in the basic medical plans due to cost constraints.

### Copyrights

Andean Community Decision 351 on the protection of copyrights has been in effect in Colombia since January 1, 1994. Colombia also has a modern copyright law, Law 44 of 1993. The law extends protection for computer software to 50 years, but does not classify it as a literary work. Law 44 and Colombia's civil code include some provisions for IPR enforcement which have been used to combat infringement and protect rights. Colombia belongs to both the Berne and the Universal Copyright Conventions and provides a generally Berne-consistent system. Semiconductor layout designs are not protected under Colombian law.

Colombia's 1993 copyright law significantly increased penalties for copyright infringement, specifically empowering the Attorney General's office to combat piracy. Also, Colombia's television broadcast law potentially increases protection for all copyrighted programming by regulating satellite dishes. However, enforcement of copyright laws is still quite lacking and U.S. industry estimates that the majority of the video cassette, sound recording and business software markets are pirated. Industry estimates that in 1997, total revenue lost to copyright piracy was \$151 million.

### SERVICES BARRIERS

Colombia maintains barriers in a number of service areas, including audiovisual, franchising, data processing and professional services. In some industries, percentage limits are placed on foreign equity participation. In addition, a minimum of 50 percent of any television commercial for public broadcast network programming must be produced locally.

In the recently concluded WTO Financial Services negotiations, Colombia made broad-based commitments to allow the provision of all insurance services. Colombia retained its restrictions on most cross-border insurance activities with the exception of insurance of international cargo originating or terminating in a Colombian port. Colombia, in its offer, continues to require a commercial presence to sell all other insurance except international travel or reinsurance. Colombia permits 100 percent foreign ownership of insurance subsidiaries, but the establishment of branch offices of foreign insurance companies is not allowed.

Cargo reserve requirements in transport have been eliminated. However, the Ministry of Foreign Trade reserves the right to impose restrictions on foreign vessels of nations which impose reserve requirements on Colombian vessels.

Foreign law firms are not permitted a commercial presence in Colombia unless the firm is headed by a Colombian attorney. Colombia also restricts the movement of personnel in several professional areas, such as architecture, engineering, law and construction. Firms with more than ten employees can have no more than 20 percent of specialists and 10 percent of unskilled laborers who are foreign nationals.

In 1991 Colombia promulgated Resolution 51, which permits 100 percent foreign ownership in financial services, although the use of foreign personnel in the financial services sector remains limited to administrators, legal representatives and technicians. For a full discussion of the treatment of U.S. banking and securities

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firms, see the Department of Treasury's 1994 National Treatment Study.

In March 1997, the Colombian Central Bank created a reserve requirement on all foreign loans over six months designed to reduce the amount of foreign private debt, which was subsequently altered slightly in May 1997. Thirty percent of all proceeds from foreign loans must be left on deposit with the Central Bank in a non-interest bearing account for 18 months. Certain loans such as for certain raw materials and capital goods are exempted from this requirement.

### **Basic Telecommunications Services**

In the recently concluded WTO negotiations on basic telecommunications services, Colombia committed to provide market access and national treatment for private networks for voice and data, paging, trunked radio, geostationary satellite and local public voice services. Market access and national treatment commitments for long-distance and international services are subject to an economic needs test, meaning that Colombia can limit the number of suppliers arbitrarily. This is also true for cellular services and PCS as of January 1, 2000. Colombia agreed to permit 70 percent foreign ownership for all services authorized and it adopted the reference paper on regulatory commitments. Colombia specifically prohibited "call-back" services and excluded fixed and mobile satellite systems.

### **INVESTMENT BARRIERS**

Investment screening has been largely eliminated, and the mechanisms that still exist are generally routine and non-discriminatory. Legislation grants national treatment to foreign direct investors and permits complete foreign ownership in virtually all sectors of the Colombian economy. However, since 1994, in an effort to curb money laundering, the Colombian Government has prohibited foreign direct investors from obtaining ownership in real estate not connected with other investment activities.

Under the Andean Community Common Automotive Policy, Colombia, Venezuela and Ecuador impose regional content requirements in the automotive assembly industry in order to qualify for reduced duties on imports. The local content requirement for passenger cars was 32 percent in 1997 and has risen to 33 percent for 1998. Colombia has notified to the WTO the local content requirements in the automotive sector, which are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. Proper notification allows developing country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Colombia, therefore, must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet these obligations.

All foreign investment in petroleum exploration and development in Colombia must be carried out under an association contract between the foreign investor and Ecopetrol, the state oil company. The terms of the association contracts were modified in 1994, 1995, and again in 1997, in an effort to continue to attract the necessary foreign investment. However, security conditions continue to be worrisome, and notwithstanding the improvements in the terms of the contracts, foreign investors will probably continue to remain cautious.

Colombia has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content and trade balancing

requirements in the automotive and agricultural sectors. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Colombia therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet these obligations.

### **OTHER BARRIERS**

#### **Television local content quotas**

As part of the de-monopolization of Colombia's government-owned television network, Colombia passed the television broadcast law, Law 182/95, effective January 1995, which increases protection for all copyrighted programming by regulating satellite dishes and permits private television broadcasters to compete with the government-owned broadcaster. It permits foreign direct investment in the Colombian motion picture industry, but limits foreign investment to 15 percent of the total capital of local television programming production companies. The law increases restrictions on foreign content in broadcasting, including a complicated, burdensome system of subquotas for different hours of the day. The Colombian law requires broadcasters to transmit 70 percent locally-produced programming during prime time and a range of zero to 40 percent during other times on national television, and 50 percent locally-produced programming on regional channels and local stations. Retransmission of local productions are calculated to fulfill only part of the national content requirement. Foreign talent may be used in locally-produced programming, but limits are set by the Colombian quasi-independent National Television Commission.

Law 182/95 also includes burdensome restrictions on foreign investment, mandating reciprocity requirements and requirements that foreign investors be engaged actively in television operations in their country of origin. Foreign investment also must involve an implicit transfer of technology. The National Television Commission has the authority to reduce these restrictions, but has not taken action in this area.