

COLOMBIA

TRADE SUMMARY

The U.S. goods trade deficit with Colombia was \$1.7 billion in 2008, an increase of \$778 million from \$876 million in 2007. U.S. goods exports in 2008 were \$11.4 billion, up 33.7 percent from the previous year. Corresponding U.S. imports from Colombia were \$13.1 billion, up 38.8 percent. Colombia is currently the 26th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Colombia was \$5.6 billion in 2007 (latest data available), up from \$4.6 billion in 2006. U.S. FDI in Colombia is concentrated largely 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. Colombia's Constitutional Court completed its review in July, 2008 and concluded that the Agreement conforms to Colombia's Constitution. In April 2008, the United States submitted to the U.S. Congress legislation that would approve the CTPA. The U.S. Congress did not act on the legislation primarily due to concerns regarding violence against labor unionists in Colombia. The Obama Administration has indicated that it will promptly, but responsibly, address the issues surrounding the CTPA.

The CTPA is a comprehensive free trade agreement. When the CTPA 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. 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, and labor and environmental protection. Under the CTPA, U.S. firms will have better access to Colombia's services sector than other WTO Members have under the GATS. All service sectors are covered under the CTPA except where Colombia has made specific exceptions.

IMPORT POLICIES

Tariffs

Since the 1990s, Colombia has reduced customs duties and eliminated many nontariff barriers. Most duties have been consolidated into three tariff levels: 0 percent to 5 percent on capital goods, industrial goods, and raw materials not produced in Colombia; 10 percent on 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 tariff, beef and rice subject to an 80 percent duty, milk products subject to a 33 percent tariff and other agricultural products, which fall under a variable "price band" import duty system. The price band system includes 14 product groups and covers 154 tariff lines, which, depending on world commodity prices, can result in duties exceeding 100 percent for important U.S. exports to Colombia, including corn, wheat, rice, soybeans, pork, poultry parts, cheeses, and powdered milk. While milk powder, rice, and white corn are subject to price bands, the mechanism for these products has been suspended and a fixed duty currently is being applied. The price band system also negatively affects U.S. access for products such as dry pet food, which contains corn. By contrast,

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processed food imports from Chile and countries bound by commitments under the Andean Community (Peru, Ecuador, and Bolivia) enter duty free.

When the CTPA enters into force, Colombia will immediately eliminate its price band system on trade with the United States. This, coupled with a preference clause included in the CTPA, will help U.S. exports compete more effectively in Colombia's market. Over half of the value of current U.S. agricultural exports to Colombia will enter duty free upon entry into force of the CTPA, including high-quality beef, a variety 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, and dairy products.

Over 80 percent of U.S. exports of consumer and industrial products to Colombia will become duty free immediately upon implementation of the CTPA, with remaining tariffs phased out over 10 years. Colombia agreed to join the WTO Information Technology Agreement, removing tariffs and addressing nontariff barriers to information technology products.

Nontariff Measures

Nontariff barriers include discretionary import licensing, which has been used to restrict imports of milk powder and poultry parts. The CTPA contains provisions that should address this issue. The Colombian government maintains tariff-rate quotas for rice, soybeans, yellow corn, white corn, and cotton and requires that importers purchase local production in order to import under the tariff-rate quota. Under the CTPA, the government of Colombia committed to ensuring that access to a CTPA TRQ in-quota quantity will not be conditioned on the purchase of domestic production.

Colombia does not permit the importation of used clothing. Importers of used and remanufactured goods may apply for licenses to bring products into Colombia under limited circumstances. Industry reports that, in practice, approval is not granted, resulting in the effective prohibition of these imports. Under the CTPA, Colombia affirmed that it would not adopt or maintain prohibitions or restrictions on trade in remanufactured goods, and that certain 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. 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 entry into force of the agreement. Additionally, Colombia committed to eliminate practices that have restricted the ability of U.S. distilled spirits companies to conduct business in Colombia.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary (SPS) Measures

In 2006, the United States and Colombia formalized their recognition of the equivalence of the U.S. meat and poultry inspection systems, and reached agreement on the specific contents of U.S. sanitary certificates accompanying U.S. poultry and poultry products exported to Colombia. However, the Ministry of Agriculture through its sanitary and phytosanitary regulatory agency, the Colombian Agricultural Institute (ICA), has imposed separate import requirements that do not follow the World Organization for Animal Health's (OIE) recommendations and have negatively impacted U.S. exports of

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cooked poultry meat, poultry meal, and egg products. In addition, since August 2007, the National Institute for Surveillance of Food and Medicines (INVIMA) has been applying a zero tolerance policy for salmonella on meat imports, which has led to the rejection of several U.S. mechanically deboned poultry meat shipments.

Colombia requires companies to list the ingredients in pet food, as well as the percentage of those ingredients contained in the product, which U.S. companies consider to be proprietary information. In addition, no pet food may contain any bovine ingredients other than materials legally imported from a country recognized as free of Bovine Spongiform Encephalopathy (BSE). U.S. officials continue to engage Colombian authorities in pursuit of science-based import requirements with respect to such trade.

Colombia maintains a ban on the importation of live cattle from the United States due to BSE concerns. Colombia insists on addressing this issue through the Andean Community's SPS regulatory process. The U.S. Government is working to resolve this issue and secure a lifting of the ban.

GOVERNMENT PROCUREMENT

Under the CTPA, Colombia agreed to provide U.S. goods, services, and suppliers with national treatment. U.S. firms will have 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. Once the CTPA enters into force, Colombia will not be able to apply Law 816 of 2003, which mandates preferential treatment to bids that provide Colombian goods or services, to procurement covered by the CTPA. Colombia is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

In 2007, the Colombian government reactivated a dormant program, which offers tax rebate certificates (known as "CERTs"), to exporters in certain sectors. The value of the CERT is worth 4 percent of total exports of designated goods. In an effort to ease the impact of an appreciating peso, the Colombian government issued CERTS in May and August of 2008 to exporters of textiles, clothing, shoes, leather, plastics, food, graphic arts, auto parts, furniture, and jewelry.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Colombian agencies that administer IPR – the Superintendence of Industry and Commerce (SIC), the Colombian Agricultural Institute (ICA), the Ministry of Social Protection, and the Ministry of Justice – are historically understaffed and underfunded. Extensive backlogs exist in the granting of patents, copyrights, and trademarks. The patent regime in Colombia provides for a 20 year protection period for patents and 10 year term for industrial designs; protection is also provided for new plant varieties. U.S. pharmaceutical and biotechnology companies are concerned with the limited scope of patentable subject matter, specifically with respect to improvements.

The CTPA provides for improved standards for the protection and enforcement of a broad range of IPR, which are consistent with both U.S. and international standards of protection and enforcement, as well as with emerging international standards. Such improvements include state-of-the-art protections for digital products, such as U.S. software, music, text, and videos; stronger protection for U.S. patents, trademarks, and test data, including an electronic system for the registration and maintenance of trademarks; and further deterrence of piracy and counterfeiting, including by criminalizing end-user piracy.

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Enforcement

Enforcement of IPR has been slow and weak. Certain infractions are considered criminal offenses and perpetrators can be sentenced to prison and/or fined, but judges rarely impose those penalties. The Colombian government has made a concerted effort in recent years to enforce its intellectual property laws. Coordination between the Colombian government and the private sector is good, resulting in greater enforcement activities, such as raids and arrests. Despite these improvements, intellectual property industry representatives report that the level of intellectual property enforcement is still a major concern.

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

The provision of legal services is limited to law firms licensed under Colombian law. Foreign law firms can operate in Colombia only by forming a joint venture with a Colombian law firm and operating under the licenses of the Colombian lawyers in the firm.

Financial Services

Colombia permits 100 percent foreign ownership of insurance firm subsidiaries. It does not, however, allow foreign insurance companies to establish local branch offices. 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.

Colombian legislation permits 100 percent foreign ownership in financial institutions. Foreign banks must establish a subsidiary to operate in Colombia.

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

Transportation

Transborder transportation services are restricted in Colombia. Land cargo transportation must be provided by Colombian citizens or legal residents with commercial presence in the country and licensed by the Ministry of Transportation. Colombia's 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.

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Telecommunications

Colombia currently permits 100 percent foreign ownership of telecommunications providers, and U.S. companies can obtain the right to interconnect with Colombian dominant suppliers' fixed networks at nondiscriminatory and cost-based rates. When the CTPA enters into force, U.S. firms will be able to lease lines from Colombian telecommunications networks on nondiscriminatory terms and re-sell most telecommunications services of Colombian suppliers to build a customer base.

One trade association has complained that the creation of a "convergent license" category has resulted in the imposition of licensing conditions that are burdensome for some carriers (particularly smaller carriers) because they require accounting separation, the posting of a performance bond, and – in the case of long distance service suppliers – a modification of the company's legal entity.

INVESTMENT BARRIERS

Foreign investment in Colombia is granted national treatment, and 100 percent foreign ownership is permitted in most sectors. Exceptions exist for national security, broadcasting, and the disposal of hazardous waste.

In 2008, Colombia abolished deposit requirements of up to 50 percent on foreign portfolio investment. The requirements had been imposed in 2007 in an effort to stem the appreciation of the Colombian peso.

Colombia agreed to strong protections for U.S. investors in the CTPA. When it enters into force, the Agreement will establish a stable legal framework for U.S. investors operating in Colombia. All forms of investment will be protected under the CTPA. U.S. investors will enjoy in almost all circumstances the right to establish, acquire, and operate investments in Colombia on an equal footing with local investors. The CTPA's investor protections will also be backed by a transparent, binding investor-state arbitration mechanism.