COLOMBIA

TRADE SUMMARY

The U.S. trade deficit with Colombia was $2.0 billion in 2002, a decrease of $110 million from 2001. U.S. goods exports in 2002 were $3.6 billion, up 0.2 percent from the previous year. Corresponding U.S. imports from Colombia were $5.6 billion, down 1.8 percent. Colombia is currently the 29th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Colombia in 2001 was $4.8 billion, up from $4.6 billion in 2000. U.S. FDI in Colombia is primarily in the manufacturing, petroleum and finance sectors.

IMPORT POLICIES

Tariffs

As a member of the Andean Community, Colombia has had a Common External Tariff (CET) in effect since 1995. It is estimated that the basic weighted average of Colombian tariffs fluctuates between 11 percent and 13.5 percent. Most duties have been consolidated into four tariff levels as follows: a) zero and 5 percent for raw materials, intermediate and capital goods not produced in Colombia; b) 10 percent and 15 percent for goods in the above categories but with domestic production registered in Colombia; c) 20 percent for finished consumer goods; and d) some exemptions to these general rules such as import duties for automotive vehicles, which remain at the level of 35 percent, and agricultural products which fall under a variable "price-band" import duty system.

At the Andean President's Council held January 31, 2002, the five member countries of the Andean Community agreed to establish an Andean free trade zone, a CET and a customs harmonization policy by January 2004. The CET agreement establishes a unified tariff schedule that will come into effect at the end of 2003. The CET reportedly will be zero duty on capital goods, five percent on industrial goods and raw materials, ten percent on manufactured goods with some exceptions, and twenty percent on "ultra-sensitive goods." The current 15 percent tariff level will reportedly be eliminated.

Colombia has bound its tariffs in the WTO at 30 percent for petrochemical products, 35 percent for a broad variety of industrial products, and 40 percent for textiles and apparel, footwear and other leather items, clothing, autos, and other products.

Since April 1995, Colombia has administered a variable import duty system applied to agricultural products commonly known as the Andean Community price band system, which is based on domestic and international prices. Thirteen basic agricultural commodities including wheat, sorghum, corn, rice, barley, milk, chicken parts, and an additional 146 commodities considered substitute or related products are subject to tariffs calculated under the price band system. If the applicable reference price is within the floor and ceiling price band, the import duty is calculated using the applied tariff rate and the reference price. When the reference price falls below the floor price, a variable duty or surcharge is applied which is based on the difference between the floor and the reference prices. This surcharge is levied in addition to the applied duty. Conversely, when the reference price exceeds the ceiling price a reduction is made to the applied duty based on the difference between the reference and ceiling prices. The Andean Community price band system lacks transparency and can be manipulated to provide arbitrary levels of import protection, often resulting in artificially high, prohibitive tariff rates. Tariff rates for agricultural products subject to the price band system vary between 27 percent and 107 percent. The elimination or reduction of these variable duties is the most important market access issue for the U.S. agricultural sector.

On June 7, 2002, the Andean Community issued Decision 520, removing canned pet food from the Andean Community price band system. This change removed the Andean Community variable duty from canned (usually wet) pet food, lowering the duty to a basic duty of 20 percent, down from 27 percent. The predictability of the basic duty will make it much easier for U.S. producers to export to the Colombian market.

In 1999, Colombia reduced tariff rate bindings for peas, lentils and apples from 16 percent, 15 percent, and 20 percent respectively to a standard 15 percent for the three products. The tariff rate for all other agricultural products was bound at 100 percent in 1995, with the commitment made to reduce it to 70 percent by the year 2004. It should be noted that this bound rate does not apply to agricultural products included in the Andean Community price band system. Colombia has

made no reductions to date in duties toward the 70 percent commitment.

Colombia requires import licenses for less than two percent of all products, which include various commodities, narcotics-precursor chemicals, armaments and munitions, donations, and some imports by government entities. The majority of used goods—cars, manufactured auto parts, tires and clothing—are prohibited from import, and those that are allowed, such as machinery, are subject to licensing. Though the government abolished most import licensing requirements in 1991, it has continued to use prior import licensing to restrict importation of certain agricultural products such as chicken parts and other preserved chicken and turkey products. In addition, since the promulgation of Decree 2439 in November 1994, Ministry of Agriculture approval has been required for import licenses for products which compete with domestic products. Some of these products, which include important U.S. exports to Colombia, are wheat, malt barley, poultry, corn, rice, sorghum, cotton, wheat flour, and oilseeds and their products (i.e., soybean meal and soybean oil). Colombia has implemented absorption agreements which require an importer to purchase a government-specified quantity of domestically produced goods as a precondition for the granting of import licenses.

Colombia adopted a harmonized automotive policy with Venezuela and Ecuador, which went into effect in January 1994. Automotive parts and accessories, and motor vehicles imported from any of the three signatory countries have a zero import duty, while those imported from third countries are covered with CET rates varying between 3 percent and 35 percent depending on the type of vehicle and automotive part.

Colombia also assesses a discriminatory VAT of 35 percent on whiskey aged for less than 12 years, which is more characteristic of U.S. whiskey, versus a rate of 20 percent for whiskey aged for 12 or more years, most of which comes from Europe. This tax regime on distilled spirits appears to violate Colombia's WTO obligation to provide Most Favored Nation (MFN) treatment equally to products from all WTO members. The U.S. Government has contested this practice as an arbitrary discrimination against U.S. products.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Colombian Ministry of Foreign Trade requires specific technical standards for a variety of products. The particular specifications are established by the Colombian Institute of Technical Standards (ICONTEC), a private non-profit organization, which provides quality certification and technical support services, and serves as an Underwriters' Laboratories (UL) inspection center. ICONTEC is a member of the International Standards Organization (ISO) and the International Electrotechnical Commission (IEC). In December 2001, the Ministry of Economic Development issued Resolutions 1190 through 1194, which eliminated mandatory compliance with technical standards on approximately 90 percent of the products previously subject to such requirements. Thus, certificates of conformity are no longer required before importing most products that are subject to technical standards. According to U.S. industry, Colombian requirements for phytosanitary registrations to bring new products into the market are excessive and often take as long as six to eight months to complete.

GOVERNMENT PROCUREMENT

The Government Procurement and Contracting Law, Law 80/93, sought to establish simpler procedures based on the principles of transparency and objective selection. It provides equal treatment to foreign companies on a reciprocal basis and eliminates the 20 percent surcharge previously added to foreign bids. It also eliminated unnecessary requirements and bureaucratic procedures that increased prices of public services and limited their availability. The law also settled procedures for the selection of suppliers, mainly through public tenders. In implementing Law 80, the Colombian government instituted a requirement that companies without local headquarters in Colombia must certify that government procurement laws in the home country meet reciprocity requirements.

Although Law 80 has given more dynamism to the government contracting system, Colombia is still not a signatory of the WTO Government Procurement Agreement and there have been complaints of non-transparency in the awarding of major government contracts. However, during 2001, the Colombian Government made a serious commitment to develop an Internet model for

government purchasing, aimed at reducing corruption in government procurement practices. As a result of this Internet initiative, Colombian citizens now have access to a huge volume of public information related to budgets, government plans, and purchasing. Businesses can now access government procurement information online. The spread of information has contributed to making public officials more accountable and the citizens better informed. With this initiative, the government eliminated non-bid contracts, providing equal treatment to foreign and domestic bidders.

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. Contracts for the exploration and exploitation of renewable and non-renewable natural resources, and all those contracts related to telecommunications, radio, and courier services are governed by special legislation.

EXPORT SUBSIDIES

Colombia has notified the WTO that its "special machinery import-export system" and "free zones" do, in fact, constitute export subsidies. Also, Colombia's tax rebate certificate program (CERT) contains a subsidy component. The Government of Colombia has stated it will replace this subsidy with an equitable drawback system, although it has not yet done so. In late August 2002, the Colombian Government announced a reduction of the CERT subsidy to zero percent due to current fiscal difficulties. Although in practice this means that the subsidy component has disappeared, the CERT has not been eliminated and it might well be increased in the future when Colombia's budgetary conditions improve. The other export subsidy, known as the "Plan Vallejo," allows for duty exemptions on the import of capital goods and raw materials used to manufacture goods that are subsequently exported.

The Colombian Government's efforts to increase exports led to the formulation of a new customs code—Decree 2685 of December 1999. The Decree, which entered into force on July 1, 2000, provided for tariff exemptions on raw materials used by exporting enterprises. These incentives, which are very similar to the CERT, were reinforced with "legal and tax stability agreements" providing for fixed tax and legal conditions over 5 year and 10 year periods to companies that develop special, and in some cases, subsidized export programs. Decree 1198 of June 29, 2000, partially modified Decree 2685 and regulated customs procedures at free trade and special import-export zones. Decree 1198 entered into force on January 1, 2001. In July 2001, the Colombian Congress approved a bill aimed at the creation of five Special Economic Export Zones, which the Government signed as Law 677 of August 3, 2001.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Colombia has been on the Special 301 "Watch List" every year since 1991. In 2001, Colombia was included in the Special 301 "Priority Watch List" for its persistent failure to effectively protect intellectual property rights (IPR). Colombia, which is a WTO member, has ratified its Uruguay Round implementing legislation. It is a member of the World Intellectual Property Organization (WIPO) and has negotiated to join the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty and the Union for the Protection of New Plant Varieties. 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

The patent regime in Colombia currently provides for 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, and provide protection for a similar period of time. In December 2000, the Andean Community issued Decision 486 to replace the patent and trademark regime, which was previously governed by Decision 344. The new regime provides improved protection to patents, trademarks, industrial inventions, rules of origin and unlawful competition related to industrial property. Decision 486 eliminates previous restrictions on biotechnology inventions, increases protection of industrial designs from eight to ten years, protects traditional knowledge of indigenous, Afro-American, or local communities, protects integrated circuit (microchip) designs, and provides improved

protection for industrial secrets in accordance with the TRIPS agreement. Decision 486, however, contains deficiencies in such areas as working requirements, transitional "pipeline" protection, denial of pharmaceutical patent protection for products with multiple or dual use "active principal," and protection of confidential data submitted for pharmaceuticals and agro-chemicals.

Law 599 of July 2000 and Decree 2591 of December 2000 partially regulate Andean Community Decision 486 in Colombia and establish penalties for violations to Decision 486 regarding patents, trademarks and industrial secrets. Resolution 210 of January 15, 2001 provides for more efficient procedures for the protection of industrial property and better information mechanisms for users. Additionally, in June 2001, the Superintendency of Industry and Commerce issued Resolution 17585, which provides for compulsory license approvals to third parties, other than patent holders, in specific cases related to national emergency, public interest or national security, failure on the part of the patent holder to exploit it commercially, or in cases of patent holders' abuse of a dominant position in the market. Resolution 17585 stipulates that license grantees must pay a monetary compensation to patent owners, which varies according to inventions' market value, costs of production, and national and international market conditions. In August 2002, the Colombian Government issued Decree 2085, which provided stronger protection for data. Under the decree, data presented in 2002 for health certification of pharmaceuticals would be protected for a period of three years, increasing to five years for data presented beginning in 2005. In addition, the decree clearly states that bioequivalency and bioavailability studies would only be allowed for use in registrations after the protective period expired. This represented a major step forward in the protection of intellectual property in Colombia.

Colombian trademark protection requires registration and use of a trademark in Colombia. In a 1998 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 a 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 of trademark legislation in Colombia is showing some progress, but contraband and counterfeiting are widespread. U.S. pharmaceutical firms continue to press for a range of legislative and administrative reforms. The Superintendency of Industry and Commerce acts as the local patent and trademark office in Colombia. This agency suffers from inadequate financing and a backlog of trademark and patent applications exceeding 17,000.

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 and have been used to combat infringement and protect rights. Colombia belongs to the Bern and Universal Copyright Conventions, the Buenos Aires and Washington Conventions, the Rome Convention on Copyrights, and the Geneva Convention for Phonograms. It is not a member of the Brussels Convention on Satellite Signals.

In July 2001, Colombia's new Criminal Code entered into effect. It includes copyright infringements as a crime, and significantly increases possible sanctions from a jail term of one to three years to one of three to five years. The code also contains provisions on violation of technological protection measures and rights management, both key obligations of the WIPO treaty.

In 1999, the Colombian Government issued a directive to all government and educational institutions to respect copyrights and avoid the use or purchase of pirated printed works, software and audio/video material. Although this campaign has resulted in increased enforcement efforts by Colombian law enforcement agencies, the piracy rate for business software still reflects an unacceptably high incidence of illegal software use in Colombia, particularly within small to medium-sized organizations. Estimated trade losses due to business software piracy are $35 million in 2001, with an estimated 53 percent piracy level. The recording industry reported that in 2001, the estimated level of audio piracy rose to 65 percent, with estimated losses due to piracy

also rising to $73 million. The publishing industry reports that pirated books and photocopies have a 20 percent to 25 percent market share (50 percent in the English language reference books, which is only a small part of the market). Estimated losses due to book piracy rose slightly to $5.3 million in 2001. Although some enforcement activity has actually improved in the last few years in Colombia, there are few results in terms of deterrent sentences and judgment issues, or actual reductions in the levels of piracy, to show for these efforts.

A major intellectual property rights issue has been the need for the Colombian Government to license legitimate pay television operators and to pursue pirate operators. Colombia's Television Broadcast Law increased legal protection for all copyrighted programming by regulating satellite dishes, and enforcement has been initiated utilizing a licensing process. For several years the U.S. has urged the Colombian Government to reduce the widespread piracy and to pursue pirate operators by legitimizing non-royalty paying service providers and by initiating investigations of suspected pirate operators. The U.S. Government is continuing to monitor progress in this area. Annual losses due to audiovisual piracy are estimated by the U.S. industry to have been $40 million in 2002.

SERVICES BARRIERS

The "apertura" policy implemented during the 1990's promoted and facilitated the importation of most services. Sector liberalization has progressed furthest in financial services, telecommunications, accounting/auditing, energy, and tourism. It has occurred to a lesser extent in legal services, insurance, distribution services, advertising, and data processing. 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. 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 in order to sell policies other than those for international travel or reinsurance. Colombia denies market access to foreign maritime insurers.

A commercial presence is required to provide information processing services. All tourism service providers must be registered with the Ministry of Economic Development and must be licensed by the Government's National Tourism Corporation. Health service providers must be registered with the various supervisory entities (the Ministry of Health, the National Council of Social Security and Health, and the Superintendency of Health) which impose strict parameters pertaining to cost accounting structures and the quality of the service provided. Foreign educational institutions must have resident status in Colombia in order to receive operational authority from the Ministry of Education.

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. Colombia also restricts the movement of personnel in several professional areas, such as architecture, engineering, law and construction. For firms with more than ten employees, no more than ten percent of the general workforce and 20 percent of specialists can be foreign nationals.

In October 2000, the National Planning Department issued Decree 2080, which unified foreign investment regulations revoking all the rules on the subject previously dispersed into various decrees. Decree 2080 eliminated percentage limits previously placed on foreign equity participation as well as limits on foreign participation in audiovisual and radio services.

Financial Services

Colombian legislation 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. In April 2000, the Central Bank completely removed previous reserve requirements on foreign borrowing operations. Such reserve requirements on foreign loans were designed to reduce the amount of import-related debt.

Basic Telecommunications Services

In the WTO negotiations on basic telecommunications services, Colombia made fairly liberal commitments on most basic telecommunications services and adopted the WTO reference paper. However, Colombia specifically prohibited "callback" services and

excluded fixed and mobile satellite systems. Currently, foreign investment is allowed in telecommunications firms, but under the WTO agreement, Colombia reserves the right to limit foreign investment in these firms based on an economic needs test. While Colombia has allowed new competitors into long distance and international services, high license fees are a significant barrier.

INVESTMENT BARRIERS

Colombian foreign investment statutes provide for national treatment for foreign investment. One hundred percent foreign ownership is permitted in most sectors of the Colombian economy. Exceptions include activities related to national security and the disposal of hazardous waste. Investment screening has been largely eliminated, and the mechanisms that still exist are generally routine and non-discriminatory. As a measure against money laundering, Foreign Direct Investment (FDI) in real estate was prohibited until February 8, 1999, when prohibitions on foreign investment in real estate companies were abolished by Decree 241.

All foreign investment must be registered with the Central Bank's foreign exchange office within three months in order to insure the right to repatriate profits and remittances. All foreign investors, like domestic investors, must obtain a license from the Superintendent of Companies and register with the local chamber of commerce.

Under the Andean Community Common Automotive Policy, Colombia, Venezuela and Ecuador impose local content requirements in order to qualify for reduced duties on imports. In November 1999, regional content requirements were gradually increased from an average of 23 percent to a maximum of 34 percent by the year 2009. This automotive policy is inconsistent with Colombia's WTO obligations under Trade Related Investment Measures (TRIMs).

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 standard association contract were modified in 1994, 1995, 1997, 1998, and again in 1999. In view of Colombia's need for new oil reserve discoveries, the Pastrana administration embarked on the implementation of a new hydrocarbon policy designed to attract foreign investment. The new policy was aimed at achieving the long-term goal of producing 1.5 million barrels of crude oil per day by the year 2010. Colombia's improved terms, with much faster cost recovery, provide a significant increase to a typical project's expected rate of return. The association contract provides for an initial three-year exploration period, which can be extended for an additional three years. If gas is discovered in the process, an additional four-year period can be provided in order to find a market and develop infrastructure. After discovery of oil reserves are made, a 22-year period is granted for production (30 years in the case of gas). Ecopetrol participates with a 30 percent share of an investment during the production period and reimburses its associate 30 percent of exploration costs prior to discovery. Then, production is distributed taking into account the "R factor," which is the ratio between the associate's cumulative revenues and expenditures.

The new contract terms were put into practice between 2000 and 2002 through bidding auctions. A record 60 contracts for exploration or incremental production were awarded in 2000 and 2001 to small, medium, and large size foreign companies including Occidental (US), Texas Star (US), Cespa (Spain), Elf (France), Tecnoil (Venezuela), and OAO NK Rosnef (Russia). Seven new exploration contracts have been awarded as of November 2002 to foreign companies including Lukoil (Russia), Emerald Energy (US), Argosy (US), and Petrobank (Canada). The development of those 67 projects will demand investments of approximately $1.2 billion. The government has expressed concern that it might not remain self-sufficient in petroleum production. Colombia will face the prospect of becoming a net oil importer unless new reserves are found by 2005. Although security conditions—guerrilla warfare and narco-terrorism—continue to be worrisome, foreign investors have remained interested because of the favorable long-term characteristics of these prospects.

ELECTRONIC COMMERCE

Electronic commerce in Colombia is primarily regulated by Law 527 of August 28, 1999. The law grants organizational, inspection, vigilance and sanctioning responsibilities to the Superintendency of Industry and Commerce. The Superintendency regulates certifying agencies which are the only entities authorized by law to

provide for registration, data transmission and reception services, and to issue certificates related to electronic agreements. Law 527/99 provides the same contractual and legal validity to electronic data transfer as that of hard copies. For a digital signature to be valid, it must be verifiable, must be under the unique control of the person using it, and must be linked to the information or message being transferred. Certifying agencies (local or foreign) must be authorized by the Superintendency of Industry and Commerce to operate in Colombia. Decree 1747 of September 11, 2000, regulates Law 527 in regards to certificates and digital signatures, and establishes minimum capital and other requirements for certifying agencies to be approved by the Superintendency of Industry and Commerce. Decree 1747 and Resolution 26930 of October 26, 2000 established all legal requirements necessary for certifying agencies to begin operations in Colombia.

In May 2000, the Colombian Government signed a common declaration with the US Government in which both parties recognized the importance of electronic commerce and agreed to cooperate in removing barriers and implementing a transparent and non-discriminatory legal framework for the development of such activity. In 2001, for the first time in Colombia, an enterprise began offering electronic certifications to companies registered in all 57 chambers of commerce across the country. This allowed approximately 820,000 firms to obtain an electronic identification certificate to perform secure transactions through the Internet. According to the Bogota Chamber of Commerce, in 2002, direct business transactions through the Internet amounted to approximately $470 million. According to a study by the Center of Intellectual Property of the "Externado" University, e-commerce in Colombia has grown at an annual rate of between five and six percent since 1997. This growth rate could have been much higher if not for the lack of confidence in the Internet. According to this study, Colombia occupies the last place in e-sales in Latin America. This is due to the weak penetration of the Internet in the country (only 2.5 percent of the population or approximately 1.1 million people). The growth of Colombia's e-commerce market will be contingent upon improvements in phone lines and simultaneous development of the linkage of PCs, Internet hosts, and cellular phones.

OTHER BARRIERS

In 1998, Colombia liberalized prices for most pharmaceutical products which were previously subject to price controls. However, pharmaceuticals with "active principal" ingredients that have three or fewer local suppliers are still subject to price controls.

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 increased protection for all copyrighted programming by regulating satellite dishes and permitted private television broadcasters to compete with the government-owned broadcaster. The law increased restrictions on foreign content in broadcasting, and imposed a complicated burdensome system of sub-quotas for different hours of the day. The 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. Retransmissions 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 quasi-independent National Television Commission (CNTV).

Colombian television broadcast laws (Law 182/95 and Law 375/96) impose several restrictions on foreign investment. For example, foreign investors must be actively engaged in television operation in their home country and their investments must involve an implicit transfer of technology. Until October 2000, foreign investment in television was limited to 15 percent of the total capital of local television production companies. However, Decree 2080 of October 18, 2000 abolished the limits on foreign investment in the Colombian motion picture industry. As a result, foreign investment in local television production companies is now unlimited.