

September 20, 2006

The Honorable Susan C. Schwab  
United States Trade Representative  
Executive Office of the President  
Washington, D.C. 20508

Dear Ambassador Schwab:

Pursuant to Section 2104 (e) of the Trade Act of 2002 and Section 135 (e) of the Trade Act of 1974, as amended, I am pleased to transmit the report of the Industry Trade Advisory Committee for Services and Finance Industries (ITAC 10) on the U.S.-Colombia Trade Promotion Agreement reflecting consensus support for the proposed Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Vastine". The signature is fluid and cursive, with the first name being the most prominent.

Robert Vastine  
Chairman, ITAC 10

The United States-Colombia Trade Promotion Agreement

Report of the  
Industry Trade Advisory Committee on Services and Finance Industries (ITAC 10)

September 2006

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Industry Trade Advisory Committee on Services and Finance Industries (ITAC 10)

**Advisory Committee Report to the President, the Congress and the United States Trade Representative on the U.S. – Colombia TPA Agreement.**

**I. Purpose of the Committee Report**

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports required under Section 135 (e) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act of 2002. The report must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, the Industry Trade Advisory Committee on Services and Finance Industries (ITAC 10) hereby submits the following report.

**II. Executive Summary of Committee Report**

The committee believes the U.S-Colombia Trade Promotion Agreement (TPA) provides new and expanded trade and investment opportunities and recommends that Congress implement it.

As in the case of other U.S. trade agreements, the Colombia Agreement follows a fairly standard textual model, differing from others mainly in the nature of the reservations taken by Colombia. And, as is the case with our other trade agreements the Colombia Agreement is a high-quality agreement which offers benefits for U.S. service suppliers in a very large Latin market, exceeded in population only by Brazil. It is not widely understood that Colombia has a strong democratic tradition, with vigorously contested multi-party elections. And it is not an inconsequential consideration that the Agreement should help strengthen the Colombian government, which has been increasingly successful in its attempts to create economic prosperity and political stability.

One of the achievements of this Agreement is that it opens most of Colombia's market to the cross-border supply of services, which previously had been large prohibited. It largely eliminates Colombia's sweeping existing prohibitions on hiring U.S. nationals in executive, professional other key positions. However, these benefits are undercut in the

accounting sector, where Colombia retains a measure making it very difficult for foreign nationals to supply accounting services cross-border and to practice in Colombia.

The Agreement also makes enormous progress in opening up services markets in many sectors, eliminating many investment and cross-border restrictions.

An important element in this Agreement are commitments to ensure that dealer distributor arrangements are guided by normal contracting principles, significantly reducing as a result distribution burdens for U.S. companies and their products in Colombia.

The absence of a local presence requirement, and the fair and transparent treatment of domestic regulation provide a welcoming environment for architectural professional service providers.

For government procurement, the Agreement promotes more open, transparent and non-discriminatory access for many U.S. service providers, including for construction projects, of the central and regional governments.

Under the Agreement, Colombia offers a potentially wide range of opportunities for energy services providers. It enhances opportunities for U.S. energy services firms of all sizes and types.

The Agreement includes important provisions for the express delivery services sector, including an appropriate definition of express delivery services and a positive statement ensuring at least the same level of market access at the time of the Agreement.

For insurance the Agreement contains generally high-standard commitments on national treatment and market access, including the ability to establish direct branches (subject to prudential requirements) but not for four years. The Agreement allows U.S. firms to fully own their Colombian establishments.

The Agreement allows within four years U.S. portfolio managers to provide asset management services to both Colombian mutual funds and pension funds, including Colombia's privatized social security accounts.

The Agreement contains important anti-corruption principles.

### Investment

An important element of the Agreement is its chapter on Investment. Foreign direct investment is particularly important for trade in services because many services can only be "traded" by establishing a commercial presence (investing) in a foreign market. The investment chapter in the Colombia Agreement creates significant new opportunities for market access for investment (as discussed in a sector-by-sector manner below) and includes high standard protections for such investment.

Nonetheless the Committee continues to be disappointed by provisions in the Financial Services chapter of this Agreement, which, like other recent trade agreements, could allow governmental restrictions on financial services activities through the use of a prudential carve-out for financial services measures taken by the host government.

Like the Peru Trade Promotion Agreement, the Colombia Agreement differs from some other trade agreements in that it includes a so-called “fork-in-the-road” provision, such that investors are precluded from pursuing investor-to-state arbitration pursuant to the Agreement’s investment chapter if they have first brought the same claim in a local administrative or court tribunal. This is discussed more fully below.

#### Movement of Personnel

The absence of provisions addressing Mode 4 trans-border movement of personnel continues to be a major problem. Without them the liberalization of rights to perform services, encouraged by the market access provisions of the Agreement, cannot be fully realized. As in its prior reports, ITAC 10 strongly urges the appropriate Congressional Committees to participate in the development of appropriate ways by which the essential commitments undertaken in the GATS can, as a practical matter, be used. Without facilitation of temporary entry by service providers in each signatory country, the promise of market access in this, as in prior trade agreements, is much diminished.

### **III. Brief Description of the Mandate of (Committee)**

ITAC 10 performs such functions and duties and prepares reports, as required by Section 135 of the Trade Act of 1974, as amended, with respect to the services sector. To fulfill its mandate the ITAC meets at least monthly to review negotiations with U.S. trade officials and to advise as required by law.

ITAC 10 advises the Secretary of Commerce and the U.S. Trade Representative (USTR) concerning the trade matters referred to in Sections 101, 102, and 124 of the Trade Act of 1974, as amended; with respect to the operation of any trade agreement once entered into; and with respect to other matters arising in connection with the development, implementation, and administration of the services trade policy of the United States, including those matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order 12188, and the priorities for actions there under.

In particular, ITAC 10 provides detailed policy and technical advice, information, and recommendations to the Secretary of Commerce and the USTR regarding trade barriers and implementation of trade agreements negotiated under Sections 101 or 102 of the Trade Act of 1974, as amended, and Sections 1102 and 1103 of the 1988 Trade Act, which affect the services sector, and performs such other advisory functions relevant to U.S. trade policy as may be requested by the Secretary and the USTR or their designees.

#### **IV. Negotiating Objectives and Priorities of ITAC 10**

ITAC 10's overall goal is to liberalize trade in the wide range of services provided by U.S. businesses, thereby promoting the expansion and health of the U.S. economy and, by extension, the economies of its trading partners.

U.S. services industries provide about 87 million jobs, or 80% of total private sector employment. Most new jobs are services jobs. Between 1993 and 2003 services added 20.3 million new U.S. jobs.

According to the U.S. Bureau of Labor Statistics, 90% of all the 21.3 million new jobs to be created over the next 8 years will be services jobs.

ITAC 10's objective for this and other trade agreements is to achieve substantial additional market access for U.S. service industries. This means commitments to greater access to foreign markets for U.S. cross border trade, to investment abroad, and to the temporary movement of persons who provide services. Without similar U.S. commitments extended to our trading partners, U.S. service providers will be less able to realize the full opportunities this Agreement and others like it appear to offer.

With respect to the protection of U.S. investment abroad, ITAC 10's objective is to ensure high levels of protection for U.S. investors. These include: assurance of national treatment and most-favored nation treatment, protection against expropriation without prompt and full compensation; the free transfer of capital both into and out of the country, fair and equitable treatment and full protection and security by local agencies and courts, a prohibitions of performance requirements on foreign investors, and effective and efficient investor-state dispute settlement procedures.

ITAC 10 also sees an opportunity to advance U.S. policy objectives to liberalize foreign markets by focusing U.S. agencies' and private entities' efforts to provide technical assistance and trade-related capacity-building abroad, especially in developing countries and transitional economies. ITAC 10 believes that intensive technical assistance is imperative in many parts of the world if mutual trade liberalization goals are to be attained.

#### **V. Advisory Committee Opinion on Agreement**

Overall, the Committee believes that the U.S.-Colombia Trade Promotion Agreement meets the Committee's objective of achieving new and expanded trade and investment opportunities and recommends that Congress implement it.

##### **A. Crosscutting Provisions.**

The Committee's opinions on anti-corruption, dealer protection, government procurement, investment, movement of personnel, and transparency follow:

## Anti-Corruption

As with the U.S.-Peru Trade Promotion Agreement, it is worth noting the Anti-Corruption Principles included in Chapter 19, Section B of the Agreement. Corruption is an issue that goes to the very heart both of the business community's ability to conduct business openly and fairly and to the ability of governments to use their resources for the benefit of all their people. We applaud the continued efforts of the U.S. Government in this area.

## Dealer Protection Regimes

The Colombia Agreement includes important commitments ensuring that central government level restrictions on distribution created through dealer protection laws are substantially eliminated. In Colombia, dealer protection regimes place substantial burdens on the distribution of U.S. exports and services by making it very difficult and costly for U.S. companies to terminate inefficient, exclusive and effectively permanent relationships, oftentimes regardless of the performance of the local dealer.

The Agreement provides that existing requirements for mandatory termination payments, indemnity payments based on certain factors and exclusive agency requirements must be eliminated. In their place, the Agreement requires that no termination payment may be required; that indemnity payments must be based on general principles of contract law and, where specified, the parties' mutual agreement; and that principals may contract with more than one agent, unless the contract provides otherwise. The Committee welcomes the innovative approach to dealer protection regimes adopted in this Agreement and believes that these provisions will substantially help promote more efficient and improved distribution for U.S. companies within Colombia.

## Government Procurement

The Government Procurement chapter includes strong commitments that will help promote a more open, transparent and fair framework for U.S. companies to participate in Colombia's government procurements. Such provisions are of interest to service providers in a wide variety of sectors and are also important to promote more efficient, accountable, competitive and transparent government procurement structures in our trading partners.

In particular, the Government Procurement chapter ensures national treatment, non-discriminatory treatment, transparent notice and bidding procedures, non-discriminatory technical specifications, penalties for corrupt procurements, and objective domestic review of procurement decisions. These commitments apply to procurements by Colombia's central government, first-tier sub central agencies (similar to U.S. states) and a number of Colombia's government enterprises. These commitments apply to procurements over specified thresholds depending on the level of government and type of procurement.

As explained below, we are, however, concerned by the exclusion from coverage in this chapter of architectural services, engineering and design services, and engineering services during construction and installation phase. We strongly encourage the U.S. Government to remove these restrictions over time and not include them in future agreements.

### Investment

The Agreement will help promote a secure and predictable legal framework for U.S. investors in Colombia. Such provisions are of particular interest to service providers, whose services often require a local presence.

With respect to the protection of U.S. investment, the investment chapter of the Agreement generally contains the primary protections sought by the Committee and included in the Trade Promotion Authority legislation, enacted as part of the Trade Act of 2002. These include a broad definition of “investment,” guarantees of prompt, adequate and effective compensation for expropriation, fair and equitable treatment and full protection and security by local authorities, a ban on performance requirements, commitments to provide national treatment, most-favored nation treatment, fair and equitable treatment and full protection and security by local agencies and courts and the free transfer of capital. Very importantly, the Agreement includes the investor-state dispute settlement mechanism that is vital to afford U.S. investors the opportunity to ensure that their investments are protected against arbitrary, discriminatory and unfair government actions.

In addition, the Agreement importantly provides for investor-state dispute settlement with respect to the breach of existing and prospective investment agreements that a U.S. investor has entered into with the government of Colombia. At the same time, the Agreement protects the legitimate exercise of each government’s regulatory authority to protect “public welfare objectives, such as public health, safety, and the environment” that does not rise to the level of an expropriation. The Agreement also seeks improved transparency in investor-state mechanism as sought by the Trade Act of 2002 and provides for the consideration of a bilateral appellate mechanism after three years.

The Agreement includes a few non-conforming measures that are peculiar to specific procedures under the Colombian constitution and law. These Colombia-specific provisions should not be included in future investment chapters.

The Committee notes that while the Agreement includes strong commitments to guarantee the free transfer of capital into and out of the country, the provisions are weakened somewhat through the incorporation of modified dispute settlement procedures with regard to disputes involving certain capital transfers as detailed in Annex 10-E, including a lengthened period before the filing of an investor-state claim. Given the importance of capital transfers to U.S. investors abroad, the Committee would prefer that these modifications not be included, but recognizes that limitations in this Agreement are of a modest nature.

The Committee notes that unlike several other U.S. trade agreements, the Colombia Agreement (like the Peru Trade Promotion Agreement) includes a so-called fork-in-the-road provision, such that investors are precluded from pursuing investor-to-state arbitration pursuant to the Agreement's investment chapter if they have first brought the same claim (e.g., the breach of an investment agreement or the violation of the Agreement's provisions on expropriation, fair and equitable treatment or other protections) in a local administrative or court tribunal. While the Committee does not object to this provision in particular, it is concerned that the differing standards in recent trade agreements and Bilateral Investment Treaties (BITs) could too easily cause confusion for investors overseas who may inadvertently bring a domestic challenge, only to find that they have unwittingly lost access to the investor-to-state dispute settlement system. This provision also creates a great deal of complexity to arbitrations given whether the same claim is being brought would be an issue in controversy. The Committee urges that the U.S. Government work to ensure that investors in Colombia and in other countries with which the United States has trade agreements or a BIT are provided adequate information on this issue in order to avoid an inadvertent loss of investor-to-state rights.

The Committee remains disappointed by provisions in the Financial Services chapter, which, like other recent trade agreements, could allow governmental restrictions on financial services activities through the operation of a prudential carve-out for financial services measures taken by the host government. The procedure developed to review whether a measure properly falls within the prudential carve-out is extremely lengthy and onerous, allowing not only a government-to-government review, but also a separate dispute settlement proceedings if the two governments cannot agree that the measure taken properly fits within the prudential carve-out.

With respect to ensuring access to U.S. investment, the Agreement makes substantial progress in reducing the barriers to such investment. Overall, the Agreement assures U.S. investors greater opportunities to establish, acquire and operate investments in Colombia in all sectors, except where a reservation has been taken in a particular sector area. Sector specific investment issues are discussed below.

#### Movement of Personnel

The U.S.-Colombia TPA does not include provisions that will facilitate business travel, that is, the temporary entry of key business personnel. As noted in the introduction, ITAC 10 is disappointed by the absence of such provisions in this and other trade agreements.

Skilled personnel are essential to world trade and investment. They are the means by which U.S. service companies provide services to their customers. Without the ability to move their personnel with speed and agility, American services businesses simply cannot fulfill their obligations to clients around the world and compete with other powerful global corporations. Thus, a commercially significant trade agreement should contain meaningful personnel mobility provisions.

U.S. service providers face complex, cumbersome and time-consuming requirements to obtain work permits and visas for their workers on short-term secondments and/or transfer to company facilities, projects or assignments in the U.S. and in other countries. Increasingly, visa and other entry permit barriers face foreign employees and U.S. employers seeking temporary entry into this country for their employees and contract workers. These undermine the spirit and purpose of trade agreements.

The Committee well understands that temporary entry provisions are not being included in this Agreement and other Agreements because of Congressional views that they should not be included. The responsible committees of Congress should develop guidelines for the negotiation of business travel facilitation provisions for future trade agreements so that USTR has the flexibility to negotiate provisions for highly skilled individuals, senior corporate executives, professional personnel (accountants, architects, educators, lawyers, health care personnel, as examples) and others with unique skills and experience.

At a minimum, a trade agreement should include, in the case of business visitors, and in particular professionals, a binding for access to the most common short-term business activities and a prohibition of prior approval procedures, petitions, labor certification tests or numerical limitations. For intra-company transferees, neither party to the agreement should be subject to employment tests, labor certification or numerical limits.

The Committee notes an earlier announcement by the Secretaries of State and Homeland Security of measures intended to improve the processing of visas. It notes that a number of these are tests to be carried out in one or two markets, and that others have been previously announced. And it notes that while improving the efficiency of visa processing is critical to U.S. business, this initiative falls short of that mark. The fundamental need for new legal visa mechanisms to facilitate business travel has not been addressed.

The U.S. Embassy in Bogotá recently advised that appointments to be interviewed by a U.S. consular official as a first step in obtaining a business visit visa now take about 9 working days to be confirmed and that after the interview, the issuance of the visa may take up to 10 days but, if adequately supported, may be issued immediately after the interview.

### Transparency

The Agreement continues the extremely valuable U.S. drive to obtain bilateral commitments to transparency disciplines applicable to domestic regulation. These disciplines are an important achievement, because they commit our trading partners to apply transparency disciplines that have been extensively tested and very widely applied by the United States Government. The U.S. experience is that they have improved the quality of U.S. government regulation practices, which are governed by the U.S. Administrative Procedures Act. Many state governments have comparable procedures. Nowhere is transparency in domestic regulation more important than in the services sector, where government regulation is prevalent. We can only hope that Colombian

government agencies will implement their commitments vigorously, and that companies and consumers will find that they improve the operation of markets.

B. Sectoral Issues: The Committee's opinions on specific service sectors follow:

#### Accounting Services

The global accounting networks have been able to operate in Colombia in a reasonably satisfactory manner under contractual and other arrangements with local firms. The TPA preserves the ability to continue these arrangements and to establish similar new ones. With regard to cross-border trade in accounting services, however, the proposed Agreement permits Colombia to retain serious obstacles to individual U.S. accountants. Specifically, in Annex I, Colombia lists a non-conforming measure, which requires practicing accountants to be registered with the *Junta Central de Contadores*. In order to register, foreign nationals must have been domiciled continuously in Colombia for three years prior to registration and they must have at least one year of prior experience in accounting carried out in Colombia. Furthermore, "domiciled" implies being a resident and having the intention of permanent residency. While this measure does not prevent large U.S. firms which supply the majority of the market from operating effectively in Colombia, it is very onerous for U.S. single practitioners (and small firms) who may otherwise be capable of serving the Colombian market through cross-border delivery of services, but may not have the financial resources or level of business activity, certainly at the outset, to establish a permanent local presence.

#### Architecture and Engineering Services

The general provisions of Professional Services Annex 11-B, on the development of professional standards and criteria, temporary licensing and review, provide for equity and reciprocity in this sector.

Further, the lack of any restrictions or exceptions for national treatment, most-favored-nation treatment, and market access, the absence of a local presence requirement, and the fair and transparent treatment of domestic regulation provide a welcoming environment for architectural professional service providers. The non-conforming measure affecting the practice of architecture is acceptable in that practice by foreign professionals is restricted solely on the basis of a lack of reciprocal treatment by the licensing jurisdictions of both countries. With respect to the temporary licensing of engineers, we support the establishment of the Working Group on Professional Services and the specific priority given to developing procedures for the temporary licensing of engineers at the first meeting of that Working Group. We would encourage the early conclusion of an agreement governing the temporary licensing of engineers.

However, with respect to Government Procurement, Annex 9.1, Section F specifically excludes from coverage architectural services, engineering and design services, and engineering services during construction and installation phase. We noted this with

respect to the Peru Agreement and would encourage the U.S. Government to remove these restrictions over time and refrain from including them in future agreements. High-end architectural, engineering and design services of this nature are the key export of American architectural firms and engineering and construction companies.

### Audiovisual Services

While the U.S. was unable to achieve the fully open market for Audiovisual Services that it wishes, the TPA overall provides the U.S. film industry with substantial commercial access to the Colombian market. Through its reservations in Annex I and II, Colombia maintains certain screen quotas, local advertising requirements and exhibition and distribution taxes that favor local product, and has reserved the right to enter into preferential co-production and culturally based agreements with other countries. Colombia has also reserved the right to take measures, under proscribed circumstances, that would favor domestic programming delivered over “new platforms”. Accordingly, the TPA fails to meet U.S. negotiating objectives and cannot be regarded as a template for future agreements.

However, Colombia has agreed to important limits on the scope of its local protections. Theatrical and free (over the air) television quotas for films have been capped respectively at 15% and 10% annually, whereas current legislation allows authorities to set any level of local film content. Films and other programs supplied from outside Colombia to subscription television services (i.e. cable and satellite) – a key outlet for U.S. films - are completely free of these restrictions provided that no alterations or additions are made in Colombia. The Agreement makes advertising for films in theaters (trailers) and in print media, as well as advertising inserted in programs prior to delivery to Colombia exempt from a permitted local advertising quota.

With respect to “new platforms” (interactive media), Colombia has reserved the right to take measures to enhance the availability of Colombian programming for its consumers upon a finding that such programming is not available. However, the TPA imposes specific conditions upon Colombia’s exercise of its reserved rights: (1) the U.S. must agree to Colombia’s findings regarding program availability and its proposed measure and (2) Colombia must compensate the U.S. by lowering another, existing barrier in this sector. These conditions give U.S. industry meaningful assurances that new media opportunities will not be arbitrarily undercut.

### Construction Services

With respect to construction services the general provisions of the Agreement provide for reciprocity and equity and there are no non-conforming measures affecting this sector. Further, for Government Procurement, Annex 9.1 provides acceptable access to construction projects of the central government and the regional governments.

## Energy Services

Colombia offers a potentially wide range of opportunities for energy services providers. Colombia's proven reserves in oil, natural gas and coal, sector liberalization, improvements in its investment climate, and in security related to pipelines and other energy infrastructure, are making it an increasingly attractive place for U.S. energy companies to do business.

Even prior to the proposed TPA, Colombia's government had taken measures to make the country's investment climate more attractive to energy services companies. Sector liberalizations have included allowing foreign oil companies to own 100 percent stakes in oil ventures; the establishment of a lower, sliding-scale royalty rate on oil projects; longer exploration licenses; and requiring its state-owned oil company to compete with private operators.

Colombia has the second-largest coal reserves in South America, behind Brazil. Because Colombia's coal is relatively clean-burning, production has more than doubled over the last decade and exports have grown accordingly. In order to sustain the rise in coal exports, Colombia will need to invest in transportation infrastructure.

The Colombian electricity sector contains a mixture of public- and privately-owned companies due to deregulation in the 1990s, which opened the sector to private investment and established wholesale electricity and international electricity trading markets.

In each of these energy sectors there are opportunities for U.S. companies to provide Colombia with their expertise. Although Colombia has already undertaken considerable market liberalization which has positively affected energy services, these opportunities are enhanced by the proposed TPA. The TPA, and in particular its chapters on investment, government procurement, cross-border trade in services, and transparency, provides a framework that can increase certainty and, therefore, opportunity in Colombia for U.S. energy services firms of all sizes and types.

Overall, we believe that the Colombia TPA improves the conditions under which energy services will operate and provides for equity and reciprocity.

## Express Delivery Services

The U.S. express delivery industry believes the TPA includes important provisions for the sector, including an appropriate definition of express delivery services (EDS) and a positive statement ensuring at least the same level of market access at the time of the Agreement. The Agreement also contains important provisions to facilitate customs clearance, which is critical to the efficient operation of express carriers. However, it falls short in three ways: 1) the Agreement doesn't adequately address cross subsidization of express delivery services operations by postal authorities that use revenues and other privileges they derive from their government-granted monopoly rights to secure

advantages in competitive express delivery operations. It only states that Colombia intends "to prevent the direction of revenues derived from monopoly postal services." Therefore, we are concerned that the intention expressed does not fully cover the scope of cross subsidization that could occur; 2) the customs provisions offer the standard trade agreement 6-hour window for clearance of express shipments, while the industry advocates a 1-hour window, and finally; 3) the text does not adequately address the postal tax that Colombia imposes upon express delivery service providers. Notwithstanding these shortcomings, the U.S. express delivery industry believes the text of the Agreement provides very substantial advantages. In future trade agreements, the express delivery industry would like to see stronger language to address issues of postal taxation and unfair licensing regimes.

### Financial Services (Insurance)

The TPA with Colombia contains generally high-standard commitments on national treatment and market access. These encompass the ability to establish direct branches subject to solvency, transparency and capital requirements that we consider prudential in nature, although subject to a four-year delay. Colombia imposed no limits on foreign equity participation or market caps in the insurance sector. Requirements to hire nationals rather than U.S. professionals were eliminated, although a foreign national must have resided in Colombia for at least one year before being able to supply services as an insurance agent.

On cross-border trade, the Agreement allows Colombia's citizens and residents access for the first time to the purchase of insurance services from abroad, with the exception of certain limited lines of compulsory insurance. The Agreement matches the standard commitment to allow U.S. financial services providers to supply insurance intermediation and supply of reinsurance and retrocession into Colombia. The cross-border supply and brokerage of MAT insurance is also permitted four years after entry into force of the Agreement. Auxiliary services that may be supplied cross-border are limited to consultancy, risk assessment, and actuarial and claims settlement services.

We note that Colombia's commitment under the Agreement is to open its insurance market four years from entry into force of the Agreement, or on the date of enactment of legislation to implement these provisions, whichever is earlier. We urge that Colombia be encouraged to move sooner than the four years allowed to put the Agreement's specific commitments on insurance into force.

### Healthcare Services

As in previous trade agreements, the Colombia TPA establishes a process to begin discussions to create a credentialing system for professional services including health care that would lead to mutual recognition of licensing. The particulars for such a system are left to a Working Group to be formed. The Colombia TPA also encourages the development of a temporary licensing process. However, as we have seen in past trade

agreements, this provision only reduces barriers if the Working Group is formed and accomplishes its task.

One troubling section in Annex II of the Nonconforming Measures regarding professional services reserved the right of Colombia to adopt or maintain any measure with respect to the provision of social services, including health, that are established or maintained for a public purpose. This provision seems overly broad, and does not explicitly differentiate between health care's role as a social service and as a private, commercial service. We are hopeful the interpretation of this clause is that private hospitals, clinics, consulting and other commercial applications of health care do not fall under this clause.

### Legal Services

Chapter 11 of the proposed TPA addresses Cross-Border Trade in Services. Pursuant to this Chapter, services are provided on a national treatment and MFN basis.

Annex I and II are free of specific limitations applicable to legal services, except that the U.S. preserves its existing requirements that only U.S. citizens and residents may serve as patent attorneys, patent agents or otherwise practice before the U.S. Patent and Trademark Office.

Under its general Professional Services reservations in Annex II, which covers legal services, Colombia does reserve the right to allow a U.S. lawyer to practice in Colombia only to the extent that the jurisdiction licensing that U.S. lawyer allows Colombian lawyers to practice in that jurisdiction. It should be noted, however, that the Supreme Court held more than 30 years ago that citizenship was not a permissible prerequisite for admission to the bar of a State. In *re Griffiths*, 413 U.S. 717 (1973). However, other limits on the scope of practice exist in some jurisdictions. Nevertheless, the American Bar Association estimates that jurisdictions accounting for at least 80% of the market for legal services within United States have adopted rules permitting foreign lawyers to establish themselves as "foreign legal consultants," and Colombian lawyers may take advantage of these rules.

The U.S. agrees, upon entry into the TPA, to initiate a review of state-level measures for legal services for New York, New Jersey, California, Texas, Florida and the District of Columbia, regarding permanent residency or citizenship, reporting the results of that review to Colombia within one year of entry into force. In fact, permanent residence is probably not required in most, if not all, of these jurisdictions.

Annex 11-B to the Services Chapter addresses Professional Services. This Annex provides that each of the U.S. and Colombia shall encourage the "relevant bodies in its respective territory to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers...." Those standards and criteria include education, examination, experience, conduct and ethics, professional development and re-certification, scope of practice, local knowledge and consumer protection.

Nevertheless, as a practical matter, what is most important for U.S. providers of legal services is that this Agreement allows U.S. lawyers to establish a presence in Colombia, provided that no limits are imposed on rights of association by U.S. lawyers lawfully within the country who may wish to be employed by or to employ Colombian lawyers or become partners or shareholders in Colombian law firms.

#### Pensions & Asset Management

The TPA with Colombia contains meaningful commitments on pensions and asset management that Colombia will implement within four years. At that time, U.S. portfolio managers will be able to provide certain asset management services to both Colombian mutual funds and pension funds, including Colombia's privatized social security accounts (SAFPs). This will provide the Colombian pension and mutual fund consumers with the expertise of skilled U.S.-based portfolio managers. The inclusion of pension funds, modeled after the commitment secured in the Peru TPA, expands on cross border commitments obtained in other trade agreements and should become a benchmark for all future trade agreements. By providing for cross border provision of portfolio management services, the TPA allows U.S. firms to achieve economies of scale in serving Colombian clients. The financial services transparency commitments in the Agreement also will benefit the asset management industry.

The TPA allows Colombia to maintain a requirement under which an SAFP, during its first five years, must offer its capital shares to plan participants and beneficiaries and specified entities, allowing them to subscribe to at least 20% of its capital stock. This requirement makes it impossible to fully achieve one of the industry's key trade priorities – the ability to own up to 100% of an asset management entity. Also, currently Colombia restricts the ability of an SAFP to invest outside Colombia. Foreign content regulations are inconsistent with the prudent person concepts used in the U.S. and other countries and endorsed by the OECD. While these two measures are problematic, the TPA on balance represents a solid achievement that secures important rights for U.S. asset managers seeking to do business in Colombia. The industry hopes the Financial Services Committee called for in the TPA will discuss these matters with a view toward eliminating the SAFP capital stock requirement and the foreign content restrictions.

#### Transportation Services

The U.S.-Colombia Free Trade Agreement does not include provisions that will allow the United States or Colombia to engage in the other nation's maritime transportation services. Indeed, both countries have made an explicit reservation of their maritime transportation services in the TPA.

Importantly, both nations made specific reservations of their maritime cabotage trades to the vessels and nationals of their respective countries. For the United States, this is consistent with the longstanding position of the U.S. Trade Representative.

## **VI. Membership of Committee (list of members)**

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