

COLOMBIA

TRADE SUMMARY

U.S. goods exports in 2013 were \$18.6 billion, up 13.8 percent from the previous year. Corresponding U.S. imports from Colombia were \$21.6 billion, down 12.2 percent. The U.S. goods trade deficit with Colombia was \$3.0 billion in 2013, down \$5.3 billion from 2012. Colombia is currently the 20th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Colombia was \$8.4 billion in 2012 (latest data available), up from \$6.5 billion in 2011. U.S. FDI in Colombia is primarily concentrated in manufacturing and finance/insurance sectors.

The United States-Colombia Trade Promotion Agreement

The United States-Colombia Trade Promotion Agreement (CTPA) entered into force on May 15, 2012. The CTPA is a comprehensive free trade agreement, under which Colombia immediately eliminated the majority of tariffs on U.S. exports, with all remaining tariffs to be phased out over defined time periods. Under the CTPA, Colombia also allows substantially improved market access for U.S. service suppliers. In addition, the CTPA calls for improving customs administration and trade facilitation, technical barriers to trade, government procurement, investment, electronic commerce, telecommunications, intellectual property rights, transparency, and labor and environmental protection.

IMPORT POLICIES

Tariffs

About 80 percent of U.S. exports of consumer and industrial products to Colombia became duty free immediately upon the CTPA's entry into force, with remaining tariffs to be phased out within ten years of entry into force. The first round of tariff reductions took place on May 15, 2012. Subsequent tariff reductions occur on January 1 of each year and the third round of tariff reductions took place on January 1, 2014. In March 2012, Colombia joined the WTO Information Technology Agreement, under which participants eliminate tariffs on a most favored nation basis for a wide range of information technology products.

Colombia applies variable tariffs to imports of certain agricultural products pursuant to the Andean Community's price band system. However, when the CTPA entered into force, Colombia stopped imposing variable tariffs on imports of agricultural exports from the United States. Under the CTPA, almost 70 percent of U.S. agricultural exports (by value) became duty free upon entry into force of the Agreement, including high quality beef, an assortment of poultry products, soybeans and soybean meal, cotton, wheat, whey, and most horticultural and processed food products. The remaining tariffs on U.S. agricultural exports will be phased out over defined time periods. U.S. agricultural exporters also benefit from zero-duty tariff rate quotas (TRQs) on corn, rice, poultry parts, dairy products, sorghum, dried beans, standard grade beef, animal feeds, and soybean oil. The TRQs permit immediate duty-free access for specified quantities of each of these products, with the duty-free amount increasing during its tariff phase-out period.

Nontariff Measures

In March 2013, Colombia imposed a one-for-one scrapping requirement based on the cargo capacity of old trucks as a condition for the sale and registration of new freight trucks, without public consultation or a transition period. Previously, importers could register new trucks by paying a “scrappage fee” to the government. Although the fee increased the cost of doing business, the option provided a more flexible method to register new trucks without having to comply with the scrapping requirement. Three thousand U.S. freight trucks, valued at approximately \$113 million, imported to Colombia since March 2013 cannot be sold because there is insufficient supply of old trucks to be scrapped or because owners of old trucks are requesting excessive prices for their old trucks. The United States has raised concerns with the scrapping requirements, as well as the lack of a transparent public consultation process and transition period for the new measures, in multiple fora and at multiple levels, including in the OECD Trade Committee in the context of negotiations on Colombia’s membership in the OECD. A number of other truck exporting trading partners have also raised concerns with Colombia. Late in 2013, Colombia passed another decree, also without consultation or a transition period, in an attempt to address these concerns. While this effort is welcome, it did not address U.S. concerns. The United States will continue to press Colombia for a resolution of this issue to effectively reopen the Colombian market for U.S. trucks.

Colombia currently assesses a consumption tax on distilled spirits with a system of specific rates per degree (half percentage point) of alcohol strength (Law 788 of 2002, Chapter V, amended by Law 1393 of 2010). Arbitrary breakpoints result in a lower tax rate on spirits produced locally and therefore creates an unfair disadvantage for imported distilled spirits. Under the CTPA, Colombia committed to eliminating the breakpoints for imports of U.S. distilled spirits four years after entry into force of the CTPA, that is, by May 15, 2016. The Ministry of Trade plans to introduce a bill in early 2014 that will regulate government-owned entities with distilled spirits distribution monopolies by addressing tax inequalities and market access barriers. The bill calls for non-discriminatory and transparent contracts between departments (provincial districts), which own such monopolies, and alcohol importers.

Under the CTPA, Colombia affirmed it would not adopt or maintain prohibitions or restrictions on trade of remanufactured goods (provided they have warranties similar to new goods) and that some existing prohibitions on trade in used goods would not apply to remanufactured goods. The import of remanufactured goods has been a challenge, however, particularly in the mining sector. Although the government does not require import licenses due to the CTPA, procedures to pay taxes or issue certain required certificates for remanufactured products make the process cumbersome. The private sector has asked the government of Colombia to research other countries’ remanufactured markets and has pointed out how difficult it is to trace the origin of remanufactured parts or to guarantee the complete disassembly of new parts. Colombia is working to develop a policy on this issue with assistance from U.S. technical experts. In addition, Colombia does not permit the importation of used clothing, in accordance with Andean Community Decision 337.

Colombia is considering new rules affecting the approval methodologies for biologic and biotechnologic medicines. The proposed draft decree would establish three pathways for the approval of biological medicines. The first two pathways appear to be aligned with World Health Organization guidelines as well as U.S. Food and Drug Administration (FDA) approval processes, and would permit biological medicines to be approved either: (1) on a stand-alone basis with a full dossier of supporting preclinical and clinical evidence (the Complete Dossier path), or (2) on the basis of a robust analytical preclinical and clinical comparison with a previously approved innovative biologic (the Comparability path). By contrast, the third pathway is an abbreviated pathway that does not appear to require the same detailed information and clinical evidence to prove the quality, safety, and efficacy of a product but would instead permit an applicant to rely on “any information deemed relevant” when the information originates from designated countries or specified health authorities abroad for a product with an “active pharmaceutical

ingredient.” In July 2013, Colombia notified the fourth version of this draft decree to the WTO through the TBT Committee. The United States, the European Commission, U.S. stakeholders, and a Colombian patient safety group each submitted comments to the WTO expressing concern with the third pathway. Despite initial indications that the regulation might be reviewed and revised, the Ministry of Health and Social Protection continues to indicate that it intends to retain the third party abbreviated pathway. The United States will continue to engage with Colombia on this issue in 2014.

GOVERNMENT PROCUREMENT

Under the CTPA, Colombia grants national treatment to U.S. goods, services, and suppliers in procurements covered by the Agreement. The CTPA expands U.S. firms’ access to procurement by Colombia’s ministries, departments, legislature, courts, and first tier sub-central entities, as well as a number of Colombia’s government enterprises, including its majority state-owned oil company. In addition, Colombia does not apply Law 816 of 2003 to CTPA-covered procurements, as that law mandates preferential treatment for tenders that provide Colombian goods or services. U.S. companies are still required to have some local representation in order to qualify for government procurement.

Colombia is not a signatory to the WTO Agreement on Government Procurement, but it has been an observer to the WTO Committee on Government Procurement since February 1996.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Colombia was listed on the Watch List in the 2013 Special 301 Report. In 2013, Colombia continued to improve its efforts against intellectual property rights (IPR) violators through enforcement action and improved coordination among IPR enforcement agencies and with rights holders. Colombia continued to take steps in 2013 to address its patent backlog and to accelerate processing time and quality by increasing the staff numbers and the budget of the Patent and Trademark (SIC) office, as well as granting the SIC and the Copyright office (DNDA) new authority to handle IP-related civil cases as an expedited alternative to the judicial system. The SIC began adjudicating cases early in 2013 and average wait times for a decision have been reduced from 63 months in 2010 to 34 months in 2013. Despite these positive developments, there remains a need for further IPR improvements in Colombia, particularly through additional training and resources for agencies involved in enforcing IPR and more public awareness and outreach by the Colombian government is also needed. The United States will continue to monitor progress during 2014.

In January 2013, the Constitutional Court declared the law implementing several FTA related commitments – including copyrights, TV programming quotas, and IPR enforcement measures – unconstitutional on procedural grounds. In response, the Santos administration decided to present several separate bills to Congress. As of the end of the legislative session in December 2013, television programming quotas and IPR enforcement bills had been reintroduced to Congress; the first has been approved in three of the four required debates as Law 226 of 2013 in the Senate and as Law 300 of 2013 in the House, and the latter was fully approved again as Law 1648 of 2013 in July 2013. The copyright law is being circulating for comment prior to resubmission to Congress during the next legislative session that begins on March 15, 2014. The fourth law needed is for Internet Service Providers (ISPs) liability, which was to be in place one year after entry into force of the TPA, and a new law has yet to be sent to the Colombian Congress.

In 2013, Colombia began implementing a system identifying geographical indications in response to the process of reviewing and making determinations regarding European Union applications to register a range of GIs in Colombia. During engagement with Colombia on the matter, the United States stressed the need for consistency in protections and process, including public notice and opportunity for

opposition and cancellation, and transparency in decision making, in particular the need for transparency and clarity with regard to the determinations, particularly with regard to the scope of coverage of protection. The United States will continue to press this issue.

SERVICES BARRIERS

The CTPA grants U.S. service suppliers substantially improved market access across Colombia's 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.

Telecommunications

Foreign participants in Colombia's telecommunications market, including U.S. providers, have raised concerns about regulatory treatment in the mobile market, specifically with respect to the ability to obtain roaming agreements with existing operators. In 2013, Colombia issued regulations for the auction of new spectrum which required existing operators to provide automatic national roaming, prior to launching new 4G mobile services. Two companies with significant U.S. investment acquired licenses in this auction. Despite the requirement to provide roaming agreements when requested, none of the three existing providers in Colombia have done so with new entrants and, moreover, all three have launched 4G mobile services contrary to Colombian regulations. Although the government of Colombia has now ordered the incumbent carriers to comply, it has not yet taken enforcement action against the three incumbent providers that prematurely launched service. The United States will continue to monitor and engage with Colombia to ensure that it enforces these rules.

Financial Services

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. Foreign banks must establish a subsidiary to operate in Colombia. Under the CTPA, Colombia will phase in further liberalization of financial services, such as allowing branching by banks and allowing the cross-border supply of international maritime shipping and commercial aviation insurance by 2016. Additionally, mutual funds and pension funds will be allowed to seek advice from portfolio managers in the United States.