

COLOMBIA

TRADE SUMMARY

The U.S. goods trade deficit with Colombia was \$1.9 billion in 2009, up \$206 million from 2008. U.S. goods exports in 2009 were \$9.5 billion, down 17.3 percent from the previous year. Corresponding U.S. imports from Colombia were \$11.3 billion, down 13.5 percent. Colombia is currently the 23rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Colombia was \$6.3 billion in 2008 (latest data available), up from \$4.5 billion in 2007. U.S. FDI in Colombia is concentrated primarily 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. The United States has not yet approved 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, transparency, and labor and environmental protection. Under the CTPA, U.S. firms will have better access to Colombia's services sector than other World Trade Organization (WTO) Members have under the General Agreement on Trade in Services (GATS). All service sectors are covered under the CTPA except where Colombia has made specific exceptions.

IMPORT POLICIES

Tariffs

Most of Colombia's 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 duty; beef and rice, which are subject to an 80 percent duty; and milk and cream, which are subject to a 98 percent duty through August 11, 2010. Whey is currently subject to a 20 percent duty in-quota (3,000 tons) and a 94 percent duty outside the quota. Other agricultural products fall under the Andean Price Band System (APBS) established by Decision 371 of the Andean Community (AC). The AC includes Bolivia, Colombia, Ecuador and Peru. The APBS protects domestic industry with a variable levy by increasing tariffs when world prices fall, and lowering tariffs when world prices rise.

The APBS includes 14 product groups and covers more than 150 tariff lines. This system can result in duties exceeding 100 percent, depending on world commodity prices, for important U.S. exports to Colombia, including corn, wheat, rice, soybeans, pork, poultry parts, cheeses, and powdered milk. The APBS has been suspended for milk powder and rice, and was reactivated for white corn (Decree 671 of 2009) after a temporary suspension. The APBS also negatively affects U.S. access to Colombian markets

for products such as dry pet food, which contains corn. By contrast, processed food imports from Chile and AC Members enter duty-free.

When the CTPA enters into force, Colombia will immediately cease to apply the APBS to imports from 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, an assortment 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 within 10 years. Colombia also agreed to join the WTO Information Technology Agreement, which eliminates tariffs on a wide range of information technology products.

Nontariff Measures

Nontariff barriers include discretionary import licensing, which has been used to restrict imports of milk powder (Resolution 2551 of 2002) and poultry parts (Resolution 001 of 1991). The CTPA contains provisions that should address this issue. The Colombian government maintains TRQs for rice, soybeans, yellow corn, white corn, and cotton (Decree 430 of 2004), and requires that importers purchase local production in order to import under the TRQ. Under the CTPA, the Colombian government committed to ensuring that access to the TRQ in-quota quantity will not be conditioned on the purchase of domestic production.

Based on AC Decision 331, 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 (Resolution 001 of 1995). U.S. industry reports that in practice authorities do not grant such licenses, resulting in an effective import prohibition of these products. Decree 4725 of 2005 prohibits the importation of used or refurbished medical equipment that is older than five years, thereby limiting market access for high-quality remanufactured products, such as imaging equipment. 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 (Law 788 of 2002, Chapter V). 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.

GOVERNMENT PROCUREMENT

U.S. companies are required to have a local partner in order to qualify for government procurement. Under the CTPA, Colombia agreed to provide U.S. goods, services, and suppliers with national treatment. Once the CTPA enters into force, 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. In addition, Colombia will not apply Law 816 of 2003 to CTPA-covered procurements, as that law mandates preferential treatment for tenders that provide Colombian goods or services.

Colombia is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

In a 2008 effort to ease the impact of an appreciating peso, the Colombian government issued tax rebate certificates (known as "CERTs") to exporters in certain sectors. The value of the CERT is equal to 4 percent of the value of exports of designated goods. No CERTs were issued in 2009, although the program remains in place.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Colombia was listed on the Watch List in the 2009 Special 301 report. Key concerns cited in the Report relate to the need for further IPR improvements, including actions to reduce book and optical media piracy and the lack of an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. While enforcement has been slow and weak in Colombia, the Colombian government has made a concerted effort in recent years to combat IPR violations, including through conducting raids seizing counterfeit and pirated products and deterring the counterfeiting of pharmaceuticals.

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

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 (Decree 196 of 1971).

Financial Services

Colombian legislation permits 100 percent foreign ownership in financial institutions. It does not allow foreign insurance companies to establish local branch offices except for "general interest" reasons (Decree 663 of 1993). 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 (Decree 633 of 1993).

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 CTPA, mutual funds and pension funds will be allowed to seek advice from portfolio managers in the United States.

Transportation

Trans-border transportation services are restricted in Colombia. Land cargo transportation must be provided by Colombian citizens or legal residents with a commercial presence in the country and licensed by the Ministry of Transportation (Law 336 of 1996). Colombian 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.

Telecommunications

Colombia currently permits 100 percent foreign ownership of telecommunications providers and has committed to ensure that competitors can interconnect with Colombian dominant suppliers' fixed networks at nondiscriminatory and cost-based rates. There have been complaints about the ability of competitors to obtain non-discriminatory access to the submarine cable landing station owned by incumbent operator Telecom Colombia, and the Colombian government is currently investigating this issue.

The recently passed Postal Services Law allows the Colombian government to cross-subsidize the state-owned postal company, which could give it an unfair competitive advantage over U.S. express courier service companies.

INVESTMENT BARRIERS

Foreign investment in Colombia is accorded national treatment, and 100 percent foreign ownership is permitted in most sectors. Exceptions exist for national security (Decree 356 of 1994), broadcasting, (Law 680 of 2001), and the disposal of hazardous waste (Decree 2080 of 2000). In certain cases, the Colombian government does not include arbitration clauses in contracts to which it is a party. Enforcement of arbitration judgments against the Colombian government, as well as municipal and departmental governments, can be very difficult. The CTPA could be of assistance to U.S. investors in both these regards, when it enters into force.

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