COLOMBIA

TRADE SUMMARY

The U.S. goods trade deficit with Colombia was $2.6 billion in 2006, a decrease of $830 million from $3.4 billion in 2005. U.S. goods exports in 2006 were $6.7 billion, up 22.8 percent from the previous year. Corresponding U.S. imports from Colombia were $9.3 billion, up 4.7 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 2005 was $3.4 billion (latest data available), up from $2.8 billion in 2004. U.S. FDI in Colombia is concentrated largely in the manufacturing, mining, and wholesale sectors.

United States – Colombia Trade Promotion Agreement (CTPA)

In May 2004, the United States entered into free trade negotiations with Colombia, Ecuador and Peru. To date, the United States has concluded free trade agreements with Peru and Colombia. The United States-Colombia Trade Promotion Agreement (CTPA) was signed on November 22, 2006. The United States and Colombia will work towards securing approval of the CTPA by their respective legislatures in 2007.

IMPORT POLICIES

Tariffs

Colombia has opened its economy considerably since the early 1990s. Customs duties have been cut and many non-tariff barriers eliminated. Most duties have been consolidated into three tariff levels: 0 percent to 5 percent on capital goods, industrial goods and raw materials not produced in Colombia; 10 percent on manufactured goods with some exceptions; and 15 percent to 20 percent on consumer and "sensitive" goods.

Some important exceptions include automobiles, which are subject to a 35 percent tariff, and many agricultural products, which fall under a variable "price band" import duty system. The price band system includes 14 product groups and covers more than 150 tariff lines. When international prices surpass the price band ceiling, tariffs are reduced; when prices drop below the price band floor, tariffs are raised. At times this results in duties approaching or exceeding 100 percent for important U.S. exports to Colombia, including corn and products made from corn including pet food, wheat, rice, soybeans, pork, poultry, cheeses and powdered milk, and negatively affects U.S. access.

Colombia will immediately eliminate its price band system on trade with the United States upon entry into force of the CTPA. This is critical for the United States to be able to compete with regional and MERCOSUR countries. Over half of the value of current U.S. agricultural exports to Colombia will enter duty-free upon entry into force of the CTPA, including high quality beef, a variety of poultry products, soybeans and soybean meal, cotton, wheat, whey, and most horticultural and processed food products. U.S. agricultural exporters will also benefit from duty-free access through tariff-rate quotas, including on corn, rice, dairy products, and pet food.

In addition, over 80 percent of U.S. exports of consumer and industrial products to Colombia will become duty-free immediately under the CTPA, with remaining tariffs phased out over 10 years. Colombia also

agreed to join the World Trade Organization (WTO) Information Technology Agreement, removing tariffs and addressing non-tariff barriers to information technology products.

Non-Tariff Measures

Colombia prohibits imports of used clothing, and used and new automotive vehicles whose importation occurs more than two years following their date of production. Colombia grants licenses for the importation of certain used goods under limited circumstances. These licenses are granted at the discretion of the Ministry of Industry, Trade and Tourism. Industry reports that in practice, approval is not granted, resulting in the effective prohibition of these imports. U.S. officials continue to monitor the situation in the context of the WTO Import Licensing Committee.

Colombia also uses discretionary import licensing to ban imports of powdered milk and poultry parts. Colombia removed the "absorption" requirements for all remaining agricultural products at the end of 2003, when the WTO waiver allowing them to link imports to local purchases expired. The Colombian government replaced this system with tariff-rate quotas for rice, yellow corn, white corn and cotton, and a requirement to purchase local production in order to import under the tariff-rate quota.

Additionally, industry has been negatively affected by the position taken by the Colombian customs authority that certain types of automatic teller machines (ATMs) do not qualify as ATMs, thereby subjecting these imports to higher duties.

The United States addressed a significant number of Colombia's barriers during the CTPA negotiations. For example, under the Agreement, the government of Colombia committed to ensuring that access to a CTPA tariff-rate quota (TRQ) in-quota quantity will not be conditioned on purchase of domestic production. This obligation addresses a key barrier U.S. agricultural exporters have faced in the Colombian market.

In addition, Colombia's prohibitions on the importation of used goods apply to remanufactured goods, thereby effectively prohibiting the importation of U.S. remanufactured goods. 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. Upon entry into force of the CTPA, this commitment will provide significant new export and investment opportunities for firms involved in remanufactured products such as machinery, computers, cellular phones and other devices.

Under Law 788, Colombia assesses a consumption tax on beverage alcohol based on a system of specific rates per degree (percentage point) of alcohol strength. This tax regime discriminates against imported distilled spirits through arbitrary breakpoints that have the effect of applying a lower tax rate per degree of alcohol to domestically-produced spirits. Under the CTPA, Colombia committed to eliminate this discriminatory element of the excise tax for imports of distilled spirits within four years of entry into force of the agreement. Additionally, under the national treatment principle of the CTPA, Colombia committed to eliminate discriminatory practices that have restricted the ability of U.S. distilled spirits companies to conduct business in Colombia.

In December 2005, Colombia enacted Decree No. 4665 which established potential trade restrictions on importers of textiles and apparel, and footwear. On April 27, 2006, Colombia passed Decree No. 1299, which rescinded Decree No. 4665 and removed such restrictions.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The United States and Colombia resolved a number of sanitary and phytosanitary (SPS) barriers to agricultural trade during 2006. In February of 2006, Colombia formalized its recognition of the equivalence of the U.S. meat and poultry inspection systems. In August 2006, the U.S. Government and the Colombian government agreed on the contents of sanitary certificates to accompany shipments of U.S. beef and beef products to Colombia. In October, Colombia implemented this agreement, thereby reopening its market to all U.S. beef and beef products, except high risk materials, when accompanied by a sanitary certificate issued by the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS), consistent with international standards. In addition, in 2006, Colombia agreed to allow the importation of U.S. poultry and poultry products from all U.S. states accompanied by an FSIS Export Certificate of Wholesomeness. Work toward formalizing agreement on the specific contents of these and other U.S. sanitary certificates accompanying U.S. poultry and poultry products to Colombia is ongoing.

Colombia requires companies not only to list the ingredients for pet food, but also the percentage of those ingredients contained in the products, which U.S. companies consider proprietary information. In addition, no pet food may contain any bovine or bovine ingredients with the exception of bovine or bovine materials legally imported from Australia or New Zealand or any other country recognized as free of BSE.

U.S. companies retailing nutritional supplements in Colombia continue to experience problems due to the lack of legislation that establishes clear parameters for sanitary registration. Colombia does not have a specific classification for nutritional supplements. The Colombian government, through the Ministry of Social Protection, published Decree 3249 on September 18, 2006, establishing regulations for the production, commercialization, packaging, labeling, registration, quality control, sanitary surveillance and sanitary control for dietary supplements, both imported and locally-produced.

For textile products, Colombia requires that in addition to the name of the producer, the name of the importer also be included on the label. Industry reports that such information is difficult if not impossible to know during the manufacturing process when permanent labels are attached. Re-labeling of products upon entry to meet these requirements results in additional costs and delays.

GOVERNMENT PROCUREMENT

Government procurement represents approximately 16 percent of gross domestic product according to the Colombian government. The Government Procurement and Contracting Law, Law 80/93, establishes procedures for the selection of suppliers, mainly through public tenders. The private sector has complained of a lack of transparency and credibility, and inefficiency in government procurement processes. The Colombian Congress is in the process of reforming Law 80.

Under the CTPA, Colombia agreed to provide U.S. goods, services and suppliers with national treatment. U.S. firms will have access to the purchases of Colombia's ministries and departments, legislature, courts, and first-tier sub-central entities as well as a number of Colombia's government enterprises, including its oil company. Once the CTPA enters into force, Colombia will not be able to apply Law 816 of 2003, which mandates that all public entities accord preferential treatment to bids that incorporate Colombian goods or services. This Law has created a barrier to participation by U.S. suppliers in Colombian government procurement.

Additionally under the CTPA, the United States and Colombia agreed to terms that require the use of fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures.

Colombia is not a signatory of the WTO Agreement on Government Procurement, but is an observer to that agreement. According to industry analysts, the elimination of barriers in the government procurement sector could yield an increase of U.S. exports in the range of $100 million to $500 million.

EXPORT SUBSIDIES

Colombia has been working to eliminate export subsidies since its General Agreement on Tariffs and Trade (GATT) accession. This process has continued under the WTO Agreement on Subsidies and Countervailing Measures.

Free zones are geographic areas where industrialization processes are promoted through special customs, tax and foreign exchange regimes. Users of free zones are exempt from income tax, import tariffs and value-added tax on imports, and have access to special credit lines offered by Colombia's foreign trade bank (Bancoldex). In compliance with its obligations under the WTO, the Colombian government announced it would phase out all export subsidies in free trade zones by December 31, 2006. However, free trade zones and special import-export zones will maintain their special customs and foreign exchange regimes. After December 31, 2006, free zones in Colombia are no longer exempt from the income tax.

The Colombian government eliminated "Plan Vallejo" on December 31, 2006. This was an export subsidy program that allowed for duty exemptions on the import of capital goods and raw materials used to manufacture goods that were subsequently exported.

In 2006, the Ministry of Agriculture created the Sanitary Incentive for banana and flower producers, consisting of a direct subsidy to improve phytosanitary controls for these export-oriented crops. The government of Colombia appropriated approximately $32 million for this program. The government also granted approximately $6.2 million in export subsidies for exporters of sugar-cane, palm, tobacco, fruit (including plantain), milk and dairy products, cacao, beef, shrimp and fish, to hedge their exchange rate risk; and an additional $14.7 million for Rural Capitalization Incentives, which consists of direct subsidies to agricultural producers who make new investments directed at modernizing their production for international markets.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In Colombia, the grant, registration and administration of intellectual property rights (industrial property and copyright) are carried out by four different government entities. The Superintendence of Industry and Commerce acts as the Colombian patent and trademark office. This agency was given control of the government's IPR policy effective January 2000. The agency suffers from inadequate financing and personnel, a high turnover rate and a large backlog of trademark and patent applications, which has led to a large number of appeals. The Colombian Agricultural Institute is in charge of the issuance of plant variety protection and agro-chemical patents. The Ministry of Social Protection is in charge of the issuance of pharmaceutical patents, while the Ministry of Justice is in charge of the issuance of literary copyrights. Each of these entities suffers from significant financial and technical resource constraints. Moreover, the lack of uniformity and consistency in IPR registration and oversight procedures limits the transparency and predictability of the IPR enforcement regime.

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

Copyrights

Colombia provides generally comprehensive legal protection of copyrights through a combination of Andean Community and Colombian law, although certain enhancements are expected in connection with Colombia's implementation of the CTPA. Colombian Law 44 and the country's civil code include some provisions for IPR enforcement and have been used to combat infringement and to protect copyrights.

Patents and Trademarks

The patent regime in Colombia currently provides for a 20-year protection period for patents and a 10-year term for industrial designs; protection is also provided for new plant varieties. However, U.S. companies are concerned that the Colombian government does not provide patent protection for new uses of previously known or patented products. In 2002, the Colombian government issued Decree 2085, which improved the protection of confidential data for pharmaceutical and agro-chemical products.

Colombia is a member of the Inter-American Convention for Trademark and Commercial Protection. Enforcement of trademark rights legislation in Colombia is showing some progress, but contraband and counterfeiting are widespread.

Enforcement

In January 2005, Law 890 and Law 906 took effect, and included constructive amendments to the Colombian criminal code of 2001 and the Colombian criminal procedures code, in regard to copyright enforcement. First, Article 14 of Law 890 increased the prison sentences for all crimes in the criminal code. Second, Article 5 of Law 890 modified Article 64 of the criminal code, mandating that judges may grant parole only if the convict has completed two-thirds of the prison term and shows good behavior. Granting parole is subject to the full payment of fines imposed and indemnification of the victim.

The International Intellectual Property Alliance estimates that in 2005 piracy levels in Colombia for recorded music reached 71 percent, with damage to U.S. industry estimated at about $48 million. Motion picture piracy represented 75 percent of the market, with an estimated loss of $40 million. Piracy in both business software and book publishing continued to grow in 2005. According to the Business Software Alliance, losses due to piracy in business software amounted to $44.8 million in 2005 (a 55 percent piracy level) while book piracy generated losses of $60 million (piracy level for books is uncertain). Although Colombia has made some progress toward strengthening its IPR regime, it still needs to make further improvements by addressing copyright piracy, conducting effective prosecutions, imposing deterrent sentences by courts and strengthening border enforcement initiatives.

SERVICES BARRIERS

Colombia maintains specific restrictions in a variety of sectors, including in broadcasting, telecommunications, financial services, transportation, tourism and certain professions. In addition, Colombia maintains certain restrictions affecting all sectors, including measures that condition the

provision of services on establishment in Colombia, and other measures that can prevent companies from hiring the managers, professionals and key personnel of their choice. Colombia also maintains highly restrictive laws regarding agency relationships that make it very difficult for principals to terminate relationships with unproductive local agents.

Under the CTPA, Colombia will accord substantial market access across its entire service regime, subject to a limited number of exceptions. Colombia agreed to remove and to limit specific barriers. For example, Colombia will phase in several liberalizations in financial services, such as allowing branching by banks and insurance companies and allowing the sale of international maritime shipping and commercial aviation insurance within four years of entry into force of the agreement. Under the agreement, mutual funds and pension funds will be allowed to use portfolio managers in the United States.

Colombia retained the ability to impose a local content measure on free-to-air broadcasting, including a 70 percent requirement during weekday prime-time hours, but agreed to reduce such requirements on weekends and at the regional level. Colombia also agreed to limit its ability to impose such requirements on subscription television, in movie theaters and on advertising in these media platforms. Finally, Colombia made a commitment to phase out restrictions on the number of broadcasting concessions at the regional and local level and to cap a discriminatory movie fee.

Colombia limits the supply of land cargo transportation to natural or legal persons with a commercial presence in the country. Colombia has exchanged rights in agreements with surrounding countries removing this requirement. Under the terms of these agreements, U.S.-owned companies are treated as companies of the host country. Under the terms of the CTPA, Colombia committed to allow 100 percent foreign ownership of land cargo transportation enterprises in Colombia. The agreement removes the Ministry of Foreign Trade's right to impose cargo reservation restrictions on U.S.-flagged vessels.

Additionally, Colombia committed in the CTPA to allow companies in most sectors to hire managers and other professionals of their choice free from nationality restrictions, including those applying to engineers and architects. Colombia also committed to remove onerous restrictions applying to agency relationships affecting the sale of goods. Some restrictions that remain under the CTPA are those requiring residency in the accounting and tourist sectors.

Telecommunications

In June 2005, the Telecommunications Regulatory Commission (CRT) adopted Resolution 1250, which modified the tariff framework for local fixed telephony. The new tariff framework includes three components: (1) shifts from methodologies that exercised direct control over rates to methodologies that regulate based on rules of behavior; (2) improves competitiveness by mandating minutes-based billing; and (3) provides incentives by shifting from a regulation based on income caps, to a regulation based on price caps. As a result, these measures have reduced fixed line bills by between 9 percent and 33 percent. The CRT continues working to determine final cap amounts for all regional networks.

CRT Resolution 1296, enacted on September 13, 2005, stipulated an eventual cap of $392 pesos (U.S. 17 cents) on fixed to mobile call rates, to be implemented in two phases. The first phase called for a reduction to $464 pesos (U.S. 20 cents) by November 1, 2005; followed by a second drop to $392 pesos (U.S. 17 cents) by November 1, 2006. Implementation of the resolution was postponed on October 31, 2005, after local operators complained that the new caps were below cost. In 2006, carriers and the CRT agreed to a single step reduction to a cap of $464 pesos (U.S. 20 cents), which was successfully implemented in 2006.

The CRT has sought measures geared at unbundling the subscriber loop to promote competition and as a way for incumbent operators to diversify their offerings, find an alternate source of income, and promote investment in new infrastructure, such as for broadband access. In Colombia, cable penetration is limited, and the deployment of digital subscriber line technology has been slow, resulting in lower than average broadband access penetration compared to other Latin American countries. Nevertheless, broadband access is growing. The CRT has been working to design new regulatory measures in order to promote faster deployment of network services, including broadband access, and plans to submit a proposal in this regard in the near future.

In July 2006, the CRT obligated Comcel and Movistar to offer direct interconnection to their networks by the trunking company Avantel for the next 10 years, based on certain technical, operational and economic conditions. This decision is important to U.S. phone companies that may seek to interconnect with the Colombian dominant suppliers' fixed networks at nondiscriminatory and cost-based rates. Under the CTPA, U.S. firms will be able to lease lines from Colombian telecommunications networks on non-discriminatory terms and to re-sell most telecommunications services of Colombian suppliers to build a customer base.

During the CTPA negotiations, Colombia agreed to remove significant barriers to entry in telecommunications services including a reduction of the high license fees for telecommunications services (currently $150 million for a long distance license), as well as permitting resale of telecommunications services.

INVESTMENT BARRIERS

Colombian law currently requires that foreign investments be accorded national treatment. 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 eliminated, and the registration requirements that still exist are generally mere formalities. In the telecommunications, financial services, oil and mining sectors, for example, prospective foreign investors must comply with certain registration procedures, but there are no restrictions on the amount of foreign capital that may be invested in these sectors. All foreign investment must be registered with the Central Bank's foreign exchange office within three months in order to ensure 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. To promote the discovery and exploitation of new oil reserves, the Colombian government, through Law 756 of 2002, changed royalties from a flat 20 percent to a sliding scale, from 8 percent to 25 percent, depending on the size of the field. Colombia also implemented in June 2003 a new hydrocarbon policy, Law 1760, designed to attract foreign oil companies to Colombia. The new policy eliminated Ecopetrol's mandatory participation in joint ventures, allowed private companies 100 percent control of exploration and production projects, and restructured Ecopetrol by creating the National Hydrocarbon Agency (ANH). Although Ecopetrol is still state-owned, it increasingly operates like other commercial hydrocarbon companies. In December 2006, Colombia passed a law permitting the sale of 20 percent of Ecopetrol.

The ANH regulates the hydrocarbon sector and issues exploration and production contracts. The government is also extending existing contracts on a case-by-case basis. In early November 2005, the ANH established a requirement that companies or joint ventures interested in signing exploration/exploitation agreements with Colombia should be considered "capable." To qualify as

"capable," an operator must prove a minimum of five years of experience at the time of the exploration/exploitation proposal; joint venture partners must prove a minimum of ten years of experience at the time of the proposal.

Colombian television broadcast laws (Law 182/95 and Law 375/96) impose several restrictions on foreign investment. Foreign investment in broadcast television network and programming companies is also capped at 40 percent.

In August 2005, the government issued Law 963, which authorizes the conclusion of legal stability agreements between foreign or local investors and the Colombian government. Under a stability agreement, the Colombian government promises not to change the tax and regulatory treatment applicable to an investor for periods of between 3 years and 20 years. All foreign and local investors making new investments exceeding one million dollars in value after the issuance of the law are eligible for stability agreements with the Colombian government. Such agreements may be signed in most sectors of the Colombian economy, including manufacturing, agriculture, tourism, mining, petroleum, telecommunications, construction, transportation and energy. Stability agreements are subject to a 1 percent fee on the annual value of the new investment. In late October of 2005, the Social and Economic Policy Council approved a modification of the Colombian Foreign Investment Statute (Decree 2080 of 2000) allowing foreign investors to use local financing resources (local credit) for the purchasing of securities in the Colombian stock market.

In December 2005, the government issued Decree 4474, which mandated that foreign portfolio investment should remain in the country for at least one year. The government revoked this measure through Decree 1940 in June 2006, allowing all foreign portfolio investment and proceeds to be freely remitted abroad without restrictions.

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

ELECTRONIC COMMERCE

Banking and financial services organizations have been at the forefront of electronic commerce development in Colombia. For example, Colombia's stock exchange and its member banks and brokerages were quick to shift from floor-driven trading to remote private Internet-based electronic trading networks and were likewise quick to introduce e-banking and e-brokerage systems for their clients. This trend continues today, with a heightened focus on strengthening security and industry-wide self-regulatory capabilities, ensuring data privacy and adding to e-banking, brokerage data, and transaction systems capabilities.

The United States and Colombia agreed to provisions on electronic commerce in the CTPA that will provide non-discriminatory treatment of digital products. The United States and Colombia also agreed not to impose customs duties on digital products transmitted electronically. The CTPA agreement also establishes procedures for resolving disputes about trademarks used in Internet domain names.