COLOMBIA

TRADE SUMMARY

The U.S. goods trade deficit with Colombia was $880 million in 2007, a decrease of $1.7 billion from $2.6 billion in 2006. U.S. goods exports in 2007 were $8.6 billion, up 27.6 percent from the previous year. Corresponding U.S. imports from Colombia were $9.4 billion, up 1.9 percent. Colombia is currently the 26th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Colombia was $4.9 billion in 2006 (latest data available), up from $4.2 billion in 2005. U.S. FDI in Colombia is concentrated largely in the mining, manufacturing, and wholesale trade sectors.

United States-Colombia Trade Promotion Agreement (CTPA)

The CTPA was signed on November 22, 2006. Colombia's Congress approved the CTPA and a protocol of amendment in 2007, and the Agreement is undergoing a constitutionally mandated court review. The United States is seeking congressional approval of the CTPA in 2008.

IMPORT POLICIES

Tariffs

Since the 1990s, Colombia has reduced customs duties and eliminated many nontariff barriers. 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. Exceptions include automobiles, which are subject to a 35 percent tariff, and agricultural products, which fall under a variable "price-band" import duty system. The price band system includes 14 product groups and covers 154 tariff lines, which at times results in duties exceeding 100 percent for important U.S. exports to Colombia, including corn, wheat, rice, soybeans, pork, poultry, cheeses, and powdered milk. This system also negatively affects U.S. access for products such as dry pet food made from corn. By contrast, processed food imports from Chile and members of the Andean Community (Peru, Ecuador, Bolivia, and Venezuela) enter duty free.

Colombia will immediately eliminate its price band system on trade with the United States upon entry into force of the CTPA. This, coupled with a preference clause included in the CTPA, will help the United States to compete more effectively with other countries, both within and outside of the region, for 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, a variety 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 (TRQ), 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 agreed to join the World Trade Organization (WTO) Information Technology

Agreement, removing tariffs and addressing nontariff barriers to information technology products.

Nontariff Measures

Nontariff barriers include discretionary import licensing, which has been used to restrict imports of milk powder and poultry parts. The CTPA provides that no Party may adopt or maintain a measure that is inconsistent with the WTO Import Licensing Agreement, which should address this issue. The Colombian government maintains 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. Under the CTPA, the government of Colombia committed to ensuring that access to a CTPA TRQ in-quota quantity will not be conditioned on the purchase of domestic production.

Colombia does not permit the importation of used clothing. Certain importers of used goods may apply for licenses to bring products into Colombia under limited circumstances. Industry reports that, in practice, approval is not granted, resulting in the effective prohibition of these imports.

Colombia restricts the importation of used goods and treats remanufactured goods as used 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. 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 beverage alcohol through a system of specific rates per degree (percentage point) of alcohol strength. 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 this element of the excise tax for imports of distilled spirits within 4 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.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

In 2006, the United States and Colombia formalized their recognition of the equivalence of the U.S. meat and poultry inspection systems. However, in 2007, Colombia implemented sanitary certificate requirements with respect to the importation of U.S. poultry products that have prohibited entry of certain heat-treated poultry products from the United States. Work toward agreement on the specific contents of U.S. sanitary certificates accompanying U.S. poultry and poultry products to Colombia is ongoing.

The government of Colombia is currently reviewing and updating import requirements, including sanitary and phytosanitary standards as part of its efforts to become more consistent in applying and enforcing them. The National Institute for the Surveillance of Food and Medicines (INVIMA) was given greater food safety regulatory responsibilities, effective August 1, 2007. As a result, INVIMA has published new standards for food safety and sanitary requirements for slaughter plants, meat processing facilities, and for the storage, transportation, and sale of meat and meat products. In addition, several new INVIMA resolutions were published on standards for maximum residue levels, production, and processing standards, and import requirements for food and meat products. Thus far, with one important exception, INVIMA has not implemented many of the new food safety standards, as it continues to organize its inspection and enforcement staff.

Since August 2007, INVIMA has been applying a zero tolerance policy for salmonella on meat imports, which has led to the rejection of several U.S. mechanically deboned poultry meat shipments. At the same time, the Ministry of Agriculture and its sanitary and phytosanitary regulatory agency, the Colombian Agricultural Institute (ICA), published new import requirements for poultry and poultry products. These requirements appear to be inconsistent with certain international standards, and U.S. officials are working with ICA to resolve these issues. As a result of ICA's policy change, U.S. exports of select poultry products such as poultry meal and processed egg products have been disrupted and/or stopped.

Colombia requires companies to list the ingredients for pet food, as well as the percentage of those ingredients contained in the products, the latter of which U.S. companies consider to be proprietary information. In addition, no pet food may contain any bovine or bovine ingredients other than materials legally imported from a country recognized as free of Bovine Spongiform Encephalopathy (BSE). U.S. officials continue to engage Colombian authorities in pursuit of science based import requirements with respect to such trade.

In August 2006, the U.S. and Colombian governments agreed on the contents of sanitary certificates to accompany shipments to Colombia of U.S. beef and beef products for human consumption. In October 2006, Colombia implemented this agreement, thereby reopening its market to U.S. beef and beef products for human consumption, 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. Restrictions remain with respect to trade in live cattle.

U.S. companies continue to confront problems selling nutritional supplements in Colombia because of the lack of legislation establishing clear parameters for sanitary registration. Colombia does not have a specific classification for nutritional supplements. Colombia issued Decree 3249 of September 18, 2006, on diet supplements, but is currently in the process of revising it.

GOVERNMENT PROCUREMENT

In July 2007, the Colombian government enacted Law 1150/07 that amends its government procurement procedures by modifying the selection process, requiring the publication of more information about government procurements, and setting aside small contracts (up to approximately $150,000) for Colombian small and mid-sized companies. The new law also provides for the establishment of the Colombian Electronic Government Procurement System (SECOP), which will integrate all public procurement-related national systems and constitute the official means for publication of all public procurement information, including notices of procurement and contracts awards. It will also include electronic reverse auctions and electronic purchasing systems (framework agreements). The new reforms came into force in January 2008. All local or foreign suppliers (domiciled or incorporated in Colombia) must be registered in the National Registry of Suppliers in order to be awarded a public contract, although this requirement may be waived for foreign suppliers not domiciled or incorporated in Colombia.

Under the CTPA, Colombia agreed to provide U.S. goods, services, and suppliers with national treatment. 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. Once the CTPA enters into force, Colombia will not be able to apply Law 816 of 2003, which mandates preferential treatment to bids that provide Colombian goods or services, to procurement covered by the CTPA. Colombia is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

The Colombian government has established free zones to promote industries through special customs, tax, and foreign exchange regimes. The users of free zones are exempt from import tariffs and value added tax on imports. The income tax applied in these zones is 15 percent. The zones also have access to special credit lines offered by Colombia's foreign trade bank (Bancoldex). The aim is to promote competitiveness, employment, good business practices, and technology development, as well as attract foreign and new capital investment. A 2007 decree (4051/07) established the following requirements: minimum equity of $5 million to set up a free zone; minimum area of 20 hectares; adequate infrastructure; at least five industrial users of goods and/or services; and minimum total new investment of $10 million. Eleven free zones have received approval from the Trade Ministry to date.

In 2007, the Ministry of Agriculture allocated $72.5 million for a subsidies program for banana and flower producers to improve phytosanitary controls and hedge against the appreciation of the Colombian peso, which appreciated 13 percent between January 2007 and November 2007. To be eligible for the subsidy, the producers must maintain their employee base.

In addition to incentives, the differential import tariff for transitory crops has benefited products such as white corn (45 percent) and powdered milk (50 percent).

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Colombian agencies that administer IPR – the Superintendence of Industry and Commerce (SIC), the Colombian Agricultural Institute (ICA), the Ministry of Social Protection, and the Ministry of Justice – are historically understaffed and under funded. Extensive backlogs exist in the granting of patents, copyrights, and trademarks.

The CTPA provides for improved standards for the protection and enforcement of a broad range of IPR, which are consistent with both U.S. and international standards of protection and enforcement, as well as 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, including by criminalizing end-use piracy.

Patents and Trademarks

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

Enforcement

Enforcement of IPR has been weak and ineffective. Certain infractions are considered criminal offenses and perpetrators can be sentenced to prison and/or fined, but judges rarely impose those penalties. The Colombian government has made a concerted effort in recent years to enforce its intellectual property laws. Coordination between the Colombian government and the private sector is good, resulting in greater enforcement activities, such as raids and arrests. Despite these improvements, intellectual property industry representatives report that the rate of intellectual property enforcement is still a major concern.

SERVICES BARRIERS

The telecommunications, auditing, and energy sectors are generally open to participation by foreign companies. 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. The provision of legal services is limited to law firms licensed under Colombian law. Foreign law firms can operate in Colombia only by forming a joint venture with a Colombian law firm and operating under the licenses of the Colombian lawyers in the firm. Colombia permits 100 percent foreign ownership of insurance firm subsidiaries. It does not, however, allow foreign insurance companies to establish local branch offices. Insurance companies must maintain a commercial presence in order to sell policies other than those for international travel or reinsurance. Colombia denies market access to foreign maritime insurers.

International banking institutions are required to maintain a commercial presence in Colombia through subsidiary offices and therefore, must comply with the same capital and other requirements as local financial institutions. Colombian legislation has limits on the operation of banks and other financial institutions by separating fiduciary, investment banking, commercial loans, leasing, and insurance services from banking services. Current legislation (Law 389 of 1997) permits banking institutions to develop such activities in the same location, but the management of such services must be separate. Colombian legislation permits 100 percent foreign ownership in financial services, although the use of foreign personnel in the financial services sector remains limited to administrators, legal representatives, and technicians. Industry experts estimate that the elimination of trade barriers in the financial services sector could create up to $500 million in opportunities for U.S. firms.

Under the CTPA, Colombia will accord substantial market access across its entire services 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 4 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.

Transborder transportation services are restricted in Colombia. Land cargo transportation must be provided by Colombian citizens or legal residents with commercial presence in the country and licensed by the Ministry of Transportation. Colombia's 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." The Ministry of Foreign Trade reserves the right to impose restrictions on foreign vessels of those nations that impose reserve requirements on Colombian vessels. 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

The Colombian government is planning in the near future to transform the Ministry of Communications into the Ministry of Technologies, Information, and Communications in order to adapt to the evolution of the audiovisual and telecommunication industries. In 2007, Colombia took the positive step of reducing a significant barrier to entry into the international long distance market by reducing the licensing fee for this service from approximately $150 million dollars to a fee equivalent to three minimum wages (about $650), plus a fee of 3 percent of the operators' revenues. However, other barriers to entry remain, including a commercial presence requirement and economic needs tests. However, the parameters that determine an "economic needs test" are not clearly established. In addition, lack of transparency in the interconnection and trunk access policies and guidelines applied by the regulatory authority further limit competition for the provision of local, long distance, and mobile services.

Most other restrictions on foreign participation in telecommunications services have been lifted. Colombia currently permits 100 percent foreign ownership of telecommunications providers. The U.S. trunking company Avantel is now interconnected directly with mobile companies Comcel and Movistar and U.S. companies can obtain the right to interconnect with 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 nondiscriminatory terms and re-sell most telecommunications services of Colombian suppliers to build a customer base.

INVESTMENT BARRIERS

Foreign investment in Colombia is granted national treatment, and 100 percent foreign ownership is permitted in most sectors. Exceptions exist for national security, broadcasting, and the disposal of hazardous waste. Investment screening has been eliminated, and the registration requirements that still exist are generally formalities. All foreign investment must be registered with the Central Bank's foreign exchange office within 3 months in order to ensure the right to repatriate profits and remittances. The Colombian government tax reform package enacted in late 2006 eliminated the 7 percent tax on remittances. Investors, domestic or foreign, are required to obtain a license from the Superintendent of Companies and register with the local chamber of commerce.

Colombian television broadcast laws (Law 182/95 and Law 375/96) impose several restrictions on foreign investment. For example, foreign investors must be actively engaged in television operations in their home country, and their investments must involve a transfer of technology or know how. There is a cap of 40 percent on foreign investment in television network and programming companies.

In recent years, the Colombian government has liberalized its hydrocarbons industry to promote discovery and exploitation. The royalties scale was changed, private companies are allowed 100 percent control of exploration and production projects, and the parastatal Ecopetrol was restructured to compete with private sector companies. In 2007, Ecopetrol auctioned shares to the public totaling a 10.1 percent stake in the company.

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.