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U.S.-Colombia Trade Promotion Agreement

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Summary

On February 27, 2006, U.S. Trade Representative Rob Portman and Colombia's Minister of Trade, Industry, and Tourism, Jorge Humberto Botero, announced the conclusion of a bilateral free trade agreement. The Administration announced recently that the Colombia Trade Promotion Agreement (CTPA) would be signed on November 22, 2006. President Bush notified Congress on August 24, 2006, of his intention to enter into the CTPA. Implementing legislation for the CTPA has not been introduced in the U.S. Congress. The CTPA is a comprehensive trade agreement which, if ratified, would eliminate tariffs and other barriers in goods and services trade between the United States and Colombia. A free trade agreement with Colombia was originally intended to be part of a broader U.S.-Andean free trade agreement (FTA), including Colombia, Ecuador, and Peru.

Introduction

On February 27, 2006, U.S. Trade Representative Rob Portman and Colombia's Minister of Trade, Industry, and Tourism, Jorge Humberto Botero announced the conclusion of a U.S.-Colombia Trade Promotion Agreement (CTPA). The two countries finalized the text of the agreement on July 8, 2006. On August 24, 2006, President Bush notified the Congress of his intention to sign the CTPA. On November 10, 2006, President Bush announced that the CTPA would be signed on November 22, 2006. Under Title XXI (Bipartisan Trade Promotion Authority Act of 2002) of the Trade Act of 2002 (P.L. 107-210), the CTPA would be considered by the Congress on an expedited basis that is limited in debate and with no amendments. The Trade Promotion Authority procedures require the President to submit formally the draft agreement, the implementing legislation, and statement of administrative action to Congress after entering into the agreement, but with no time limit to do so.

The CTPA negotiations began in May 2004, when the United States, Colombia, Peru, and Ecuador participated in the first round of negotiations for a U.S.-Andean free trade agreement (FTA). After thirteen rounds of talks, however, negotiators failed to reach an agreement. Peru continued negotiations with the United States on a bilateral

basis and concluded a bilateral agreement in December 2005.¹ Colombia and the United States continued their negotiations for a bilateral agreement in January 2006. Negotiations with Ecuador are stalemated.

U.S.-Colombia Economic Relations

With a population of 46 million people, Colombia is the third most populous country in Latin America, after Brazil and Mexico. Colombia's economy is relatively small compared to the U.S. economy. Colombia's gross domestic product (GDP) in 2005 was \$123 billion, approximately one percent of U.S. GDP (\$12.5 trillion in 2005). Its economy has grown over the past three years. GDP growth was 5.2% in 2005, but it is expected to decrease slightly to 4.8% in 2006 and 4.3% in 2007.²

The United States is Colombia's leading trading partner. In 2005, 39% of Colombia's exports went to the United States, and 29% of Colombia's imports were supplied by the United States. The second most significant trading partner for Colombia is Venezuela, accounting for 7% of Colombia's imports and 10% of Colombia's exports. Other significant trading partners for Colombia are Mexico, Ecuador, Germany, and Brazil.

U.S. imports from Colombia have increased notably since 1996, from \$4.27 billion in 1996 to \$8.85 billion in 2005, a 107% increase (see **Table 1**). The U.S. trade deficit with Colombia was \$3.43 billion in 2005. Colombia accounts for less than 1% of total U.S. trade. Colombia is the 28th largest U.S. export market (\$5.41 billion in 2005) and the 31st largest source of U.S. imports (\$8.85 billion in 2005). The dominant U.S. import item from Colombia is crude oil (38% of U.S. imports from Colombia in 2005), followed by coal (7% of total), and other petroleum oils (6% of total). The leading U.S. export items are corn (4% of U.S. exports to Colombia in 2005), vinyl chloride (4% of total), and office and data processing machinery parts (3% of total).

Table 1. U.S. Merchandise Trade with Colombia, 1996-2005
(\$ Billions)

	1996	1998	2000	2002	2004	2005
U.S. Exports	4.77	4.82	3.69	3.59	4.50	5.41
U.S. Imports	4.27	4.65	6.97	5.61	7.29	8.85
U.S. Trade Balance	0.50	0.16	-3.28	-2.02	-2.79	-3.43

Source: USITC Interactive Tariff and Trade DataWeb at [<http://dataweb.usitc.gov>].

The United States currently extends duty-free treatment to imports from Colombia under the Andean Trade Promotion and Drug Eradication Act (ATPDEA), a regional

¹ See CRS Report RL32770, *Andean-U.S. Free-Trade Agreement Negotiations*, by M. Angeles Villarreal; and CRS Report RS22391, *U.S.-Peru Trade Promotion Agreement*, by M. Angeles Villarreal.

² Based on estimates and forecasts by *The Economist Intelligence Unit*, March 2006.

trade preference program that expires in December 2006.³ In 2005, 51% of all U.S. imports from Colombia received preferential duty treatment under the ATPDEA. Of those, the leading imports were certain subcategories of crude oil and cut flowers.

U.S. foreign direct investment (FDI) in Colombia on a historical-cost basis totaled \$3.39 billion in 2005. The largest amount of U.S. FDI in Colombia in 2005 was in manufacturing, which accounted for about 19%, or \$1.35 billion, of total U.S. FDI in Colombia. The second largest amount, \$630 million (20% of total), was in mining, followed by \$447 million (13%) in wholesale trade.⁴

The United States Trade Representative (USTR) notes that Colombia applies tariffs in the 0-5% range on capital goods, industrial goods, and raw materials; 10% on manufactured goods with some exceptions; and 15% to 20% on consumer and “sensitive” goods. It also applies variable levies (“price bands”) to certain agricultural products to assure that import prices do not fall below a minimum price. There are problems with lax customs enforcement and legal cases pending against suspected counterfeiters, as well as counterfeit pharmaceutical products. There are some concerns that the Colombian government does not provide patent protection for new uses of previously known or patented products. Colombia maintains certain barriers to services trade, but the USTR notes that some liberalization has occurred in telecommunications, auditing, and energy, and to a lesser extent in accounting, tourism, legal services, insurance, distribution services, advertising, and data processing. Although total foreign ownership is allowed in most sectors, Colombia places some restrictions on foreign investment, such as registry with the Central Bank’s foreign exchange office.⁵

Key Provisions of the U.S.-Colombia Trade Promotion Agreement

The comprehensive free trade agreement would eliminate tariffs and other barriers to goods and services. The following paragraphs are based on a summary of the agreement text as provided by the United States Trade Representative.⁶

Market Access. Upon implementation, the agreement would eliminate duties on 80% of U.S. exports of consumer and industrial products to Colombia. An additional 7% of U.S. exports would receive duty-free treatment within five years of implementation. Remaining tariffs would be eliminated ten years after implementation. Colombia will join the World Trade Organization’s (WTO) Information Technology Agreement (ITA), which would remove Colombia’s trade barriers to information technology products. The CTPA

³ Measures have been introduced in the 109th Congress to extend the Andean trade preferences program until 2008. On September 14, 2006, the House introduced a measure (H.R. 6076) that includes a provision that would extend the Andean program until December 31, 2008. On September 15, 2006, the Senate introduced a similar measure (S. 3904).

⁴ Based on data from the U.S. Bureau of Economic Analysis, see [<http://www.bea.gov>].

⁵ United States Trade Representative (USTR), *2006 National Trade Estimate Report on Foreign Trade Barriers*, pp. 163-174.

⁶ Office of the United States Trade Representative, “Free Trade with Colombia: Summary of the Agreement,” February 27, 2006.

would make the preferential duty treatment for U.S. imports from Colombia under the ATPDEA permanent.

In agriculture, the agreement would grant duty-free treatment immediately to certain farm products from both countries, including high quality beef, cotton, wheat, and soybean meal. Other products that would receive immediate duty-free treatment are key fruits and vegetables, including apples, pears, peaches, and cherries, and many processed food products, including frozen french fries and cookies. Some other products would receive improved market access; these include pork, beef, corn, poultry, rice, fruits and vegetables, processed products, and dairy products. The United States and Colombia worked together to resolve sanitary and phytosanitary barriers to trade in agriculture, including food safety inspection procedures for beef, pork, and poultry. These commitments are reportedly written in two separate side letters on sanitary and phytosanitary measures that would be attached to the FTA.⁷

The sugar provisions of the agreement would triple the U.S. quota on sugar imports from Colombia the first year. Colombia would be allowed to export an additional 50,000 metric tons, over the 25,000 metric tons it may currently export, of sugar to the United States during the first year the agreement is in effect. Colombia's additional amount of exports gradually would increase to 60,000 metric tons 15 years after the agreement is in effect. Some U.S. tariffs on Colombian sugar would remain in place.⁸ Sugar was among the most sensitive issues in the negotiations for the United States and was settled in the final part of the talks.⁹

In textiles and apparel, products that meet the agreement's rules of origin requirements would receive duty-free treatment immediately. The United States and Colombia agreed to state-of-the-art customs cooperation commitments that would allow for verification of claims of origin or preferential treatment and denial of preferential treatment or entry if the claims cannot be verified. The rules of origin requirements are generally based on the yarn forward standard to encourage production and economic integration. A "de minimis" provision would allow limited amounts of specified third-country content to go into U.S. and Colombian apparel to provide producers in both countries flexibility. A special textile safeguard would provide for temporary tariff relief if imports prove to be damaging to domestic producers.

The agreement includes comprehensive rules of origin provisions that would ensure that only U.S. and Colombian goods could benefit from the agreement. The agreement also includes customs procedures provisions, including requirements for transparency and efficiency, procedural certainty and fairness, information sharing, and special procedures for the release of express delivery shipments.

⁷ World Trade Online, *Inside U.S. Trade*, "Colombia, U.S. Trade SPS Commitments in Two Side Letters to Free Trade Agreement (FTA)," March 10, 2006.

⁸ American Sugar Alliance (ASA) Press Release, "U.S. Sugar Producers Comment on Colombia Trade Agreement," February 27, 2006.

⁹ World Trade Online, *Inside U.S. Trade*, "Completed Colombia FTA Would Triple Sugar Access in First Year," March 3, 2006.

In government procurement contracts, U.S. companies would be granted non-discriminatory rights to bid on contracts from a broad range of Colombian government ministries, agencies, public enterprises, and regional governments. The agreement includes provisions that require the use of fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures.

Services. In services trade, Colombia would grant market access to U.S. firms in most services sectors, with very few exceptions. Colombia agreed to exceed its commitments made in the WTO, and to dismantle services and investment barriers, including measures such as requiring U.S. firms to purchase local goods or to hire nationals rather than U.S. professionals. Colombia also agreed to eliminate its requirements on U.S. companies to establish a branch in order to provide a service and penalties for terminating their relationships with local commercial agents. The affected services sectors would include telecommunications, financial services, construction, all professional services, and energy. In telecommunications services, all users of a network would be guaranteed reasonable and non-discriminatory access to the network. U.S. phone companies would have the right to interconnect with Colombian dominant suppliers' fixed networks at nondiscriminatory and cost-based rates.

Investment. The agreement includes investment provisions intended to establish a stable legal framework for U.S. investors operating in Colombia. The agreement would protect all forms of U.S. investment in Colombia, including enterprises, debt, concessions and similar contracts, and intellectual property. The agreement grants investors the right to establish, acquire and operate investments in Colombia on an equal footing with local investors and investors of other countries. It draws from U.S. legal principles and practices to provide U.S. investors in Colombia substantive and procedural protections that foreign investors have under the U.S. legal system, including due process protections and the right to receive fair market value for property in the event of an expropriation. Protections for U.S. investments would be backed by a transparent, binding international arbitration mechanism. Investor-state arbitration would be available for claims by investors of breaches of investment agreements.

IPR Protection. The agreement would provide intellectual property rights (IPR) protections for U.S. companies. The agreement's IPR protection provisions include protection for U.S. trademarks, copyrighted works in a digital economy, and patents and trade secrets. The agreement also provides for penalties on piracy and counterfeiting.

Dispute Settlement. The core obligations of the agreement, including labor and environmental provisions, are subject to dispute settlement provisions. These provisions include procedures for openness and transparency and emphasis on promoting compliance through consultation and trade-enhancing remedies. An enforcement mechanism includes monetary penalties to enforce commercial, labor, and environmental obligations of the trade agreement.

Labor and Environmental Provisions. The labor and environmental obligations of the agreement are included in the core text. Parties would be required to effectively enforce their own domestic labor and environmental laws. These obligations would be enforceable through the agreement's dispute settlement procedures. The agreement includes procedural guarantees that would ensure that workers and employers would have fair, equitable, and transparent access to labor tribunals. The labor provisions

could be among the more controversial of the agreement.¹⁰ The environmental provisions have not been controversial thus far.

Prospects

In the United States, much of the business community supports a CTPA. The National Association of Manufacturers (NAM), for example, states in its 2006 policy agenda that one of its key objectives is the congressional approval of free trade agreements being negotiated with countries in the Andean region. The U.S. Chamber of Commerce issued a statement saying that the agreement "... opens the door to huge opportunities for American businesses and agriculture in Colombia."¹¹ On the other hand, a number of other groups, such as the AFL-CIO, Public Citizen, and American Friends Service Committee, generally oppose the idea of regional trade agreements with Andean countries. These opponents generally argue that these kinds of trade agreements cost the U.S. economy jobs, erode protection for the environment and workers' rights, and impose extraneous commitments on countries. U.S. sugar producers also have voiced concern about the adverse cumulative impact the CTPA and other trade agreements would have on U.S. sugar producers.

President Alvaro Uribe, a strong supporter of a trade agreement with the United States, was re-elected in Colombia's presidential elections held on May 28, 2006. Colombia is pursuing an FTA with the United States to assure access to the U.S. market. It has preferential access now under the ATPDEA, but that access is scheduled to expire at the end of December 2006. An FTA would lock-in those preferences and provide additional duty-free treatment. In Colombia, supporters of the agreement include the textile and flower industries. These industries export a significant portion of their production to the United States and could experience major losses if the CTPA is not ratified and the ATPDEA is not renewed. Opponents of the agreement say that many Colombian agriculture workers would lose their jobs because they cannot compete with subsidized agriculture products coming from the United States.

Under the Bipartisan Trade Promotion Authority Act, there is no deadline for the President to submit the final text of the agreement and draft implementing legislation to Congress after the agreement is signed. In the absence of a CTPA, and if the ATPDEA has not been renewed before the end of 2006, many Colombian products entering the U.S. market will be subject to higher duties. In November 2006, Colombian President Alvaro Uribe met with policymakers to urge an extension of the ATPDEA trade preferences to prevent a disruption of business for Colombian and U.S. companies. President Bush has stated that he supports an extension of the ATPDEA. The Bush Administration and President Uribe view the extension of the trade preferences program as a temporary measure in reducing tariffs from Andean countries. They have stated that the long-term goal is a free trade agreement so that tariff reductions are permanent.

¹⁰ For more information on the issue of labor rights in trade agreements, see CRS Report RS22159, *DR-CAFTA Labor Rights Issues*, by Mary Jane Bolle.

¹¹ U.S. Chamber of Commerce, "U.S. Chamber Hails U.S.-Colombia Trade Deal," February 27, 2006.