

September 20, 2006

The Honorable Susan C. Schwab
United States Trade Representative
Executive Office of the President
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Schwab:

Pursuant to Section 2104 (e) of the Trade Act of 2002 and Section 135 (e) of the Trade Act of 1974, as amended, we are pleased to transmit the report of the Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC 8) on the U.S.-Colombia Trade Promotion Agreement. This report reflects the consensus opinion of ITAC 8 members on the proposed Agreement.

Sincerely,

Steven W. Stewart
Chair, ITAC 8

The U.S.-Colombia Trade Promotion Agreement

Report of the
Industry Trade Advisory Committee for Information and
Communications Technologies, Services and Electronic
Commerce (ITAC 8)

September 20, 2006

September 20, 2006

**Industry Trade Advisory Committee for Information and Communications
Technologies, Services and Electronic Commerce (ITAC 8)**

**Report to the President, the Congress and the United States Trade Representative
on the U.S.-Colombia Trade Promotion Agreement**

I. Purpose of the Committee Report

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports required under Section 135 (e)(1) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act of 2002.

The report of the appropriate sectoral or functional committee must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, the Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC 8) hereby submits the following report.

II. Executive Summary of the Committee Report

ITAC 8 views the provisions of the U.S.-Colombia Trade Promotion Agreement (TPA) that fall under the scope of the Industry Trade Advisory Committee as consistent with the negotiating objectives the committee has established for U.S. trade agreements. ITAC 8 believes the relevant provisions contained in this agreement promote the economic interests of the United States and provide equity and reciprocity for firms that provide information and communications technology and services, medical devices, scientific instruments and electronic commerce.

The U.S.-Colombia Trade Promotion Agreement achieves services liberalization beyond that to which Colombia is committed in the WTO General Agreement on Trade in Services (GATS) by adopting a comprehensive negative list approach where all sectors are covered except where specific exceptions are made.

The Telecommunications Chapter includes important commitments that will ensure nondiscriminatory access for U.S. companies to Colombia's public telecommunications network. In another sector of interest to ITAC 8 members, computer and related services, Colombia made only limited commitments in the WTO Uruguay Round, so Colombia's commitments for full market access and national treatment in this Agreement provide an important advantage for U.S. information technology service providers.

In the area of electronic commerce, ITAC 8 applauds the USTR's continued emphasis on the concept of trade in digital products. Our assessment of the e-commerce provisions in the Agreement indicates that they meet our negotiating objectives.

The Government Procurement Chapter reflects strong commitments, which is especially important since Colombia is not yet a member of the WTO Government Procurement Agreement. In developing countries, in particular, government is a major purchaser of IT and communications products and services. Therefore, this Committee views the Government Procurement Chapter as critically important to ensuring access to the government procurement market in Colombia.

In an area of growing concern for the U.S. high-tech industry, the Technical Barriers to Trade Chapter of the Agreement contains provisions that emphasize the importance of the WTO Agreement on Technical Barriers to Trade (TBT) and consistently reinforces the TBT provisions.

Tariff elimination for information technology products and medical and scientific equipment remains a top priority for this Committee. Colombia has agreed to become a full participant in the WTO Information Technology Agreement (ITA) no later than December 31, 2007, setting customs duties on many IT products to zero. In addition, Colombia committed to eliminate many other tariffs immediately upon entry into force of the Agreement, phasing out other tariffs, with all U.S. products gaining duty-free access to Colombia within ten years.

The Agreement ensures that U.S. companies will be treated no less favorably than Colombian companies with respect to intellectual property rights protection, and it strengthens this protection.

III. Brief Description of the Mandate of the ITAC 8

ITAC 8 performs such functions and duties and prepares reports, as required by Section 135 of the Trade Act of 1974, as amended, with respect to information and communications technologies, services and electronic commerce. ITAC 8 provides detailed policy and technical advice, information, and recommendations to the Secretary of Commerce and the U.S. Trade Representative regarding trade barriers and implementation of trade agreements.

IV. Negotiating Objectives and Priorities of the ITAC 8

ITAC 8 supports an ambitious trade agenda that addresses the following issues through all available trade negotiating forums, including multilateral, regional, plurilateral and bilateral agreements. ITAC 8 also emphasizes the need for prompt implementation and effective enforcement of free trade obligations once agreements are concluded.

A. Goods Issues

1. Eliminate tariffs on all information technology products (hardware and software) and components, infrastructure equipment, medical equipment and scientific instruments.
 - Within the WTO, seek to gain new signatories to the Information Technology Agreement (ITA), expedite the phaseout of tariffs under the ITA, ensure that as products covered by the ITA evolve technologically they retain zero duty treatment, and seek to expand the product coverage under the ITA.
 - Alternatively, as part of the Doha Round Non-Agricultural Market Access (NAMA) negotiations, countries should agree on sectoral tariff elimination that would apply to IT products, including those products not currently covered by the ITA.
2. Eliminate discriminatory taxes that create barriers to trade.
3. Support global, market-led, voluntary standards developed through an open and transparent process. Ensure that standards do not create unnecessary barriers to trade.
4. Reduce technical barriers to trade. Ensure that product testing, licensing and certification requirements, certificate of origin mandates and customs procedures are fair, transparent and streamlined. Eliminate those procedures that are duplicative, increase costs to users and delay the availability of products to market.
5. Where product regulations are deemed necessary they must be nondiscriminatory, based on sound and widely accepted scientific principles and available technical information, and should not impede the effective functioning of the market. Consistent with existing WTO rules, regulations should be the least trade restrictive possible.

B. Services Issues

1. Increase the number of countries with obligations in telecommunication services, and increase the range of services covered in country schedules. Ensure that telecommunication services are liberalized on a technology-neutral basis. Promote independent regulatory authorities and transparency in the regulatory process. Ensure nondiscriminatory access to, and use of, public telecommunication networks and services.
2. Obtain full market access and national treatment for computer and related services. Ensure that technologically evolving IT services, including those that are delivered electronically, continue to be covered by trade agreements. Ensure that barriers to these services do not develop.
3. Maximize the liberalization of all services that can be delivered electronically.

C. E-Commerce Issues

1. Electronically delivered goods and services should receive no less favorable treatment under trade rules and commitments than like products delivered in physical form. Trade classification should ensure the most liberal treatment possible. Software and other digital products should be duty free.
2. Make permanent the WTO moratorium on customs duties on electronic transmissions.
3. Support a moratorium on Internet taxes.
4. Monitor other e-commerce issues and take action as required: data privacy, security, consumer protection, spam, and digital signatures.

D. Intellectual Property Issues

1. Seek full implementation of existing TRIPs commitments and encourage ratification of WIPO Copyright Treaties.
2. Combat global software piracy and technology product counterfeiting.
3. Oppose Digital Rights Management legislation calling for government-mandated technological standards to protect digital content. Promote the development and adoption of market-led best practices to protect intellectual property.
4. Oppose the application of levies on information technology products as a way to compensate copyright holders for copying.

E. Government Procurement Issues

1. Seek market access and transparency in government procurement.
 - Seek to expand the membership of the WTO Government Procurement Agreement.
 - Seek a WTO Agreement on Transparency in Government Procurement.
2. Promote global use of electronic publication of procurement information, including notices of procurement opportunities.

F. Other Issues

1. Ensure that all countries comply with their obligations under their free trade agreements.
2. Enable global operations of U.S.-based companies by opening markets abroad and avoiding restrictions in the U.S. on worldwide sourcing.
3. Ensure U.S. trade laws are not weakened to the detriment of U.S. companies.

V. Advisory Committee Opinion on Agreement

ITAC 8 reviewed the chapters on Market Access, Government Procurement, Technical Barriers to Trade, Telecommunications, Electronic Commerce and Cross Border Trade in Services. For these chapters, ITAC 8 believes the provisions of the agreement meet our objectives, promote the economic interests of the United States and provide equity and reciprocity for our sectors.

Telecommunications Chapter

The Telecommunications Chapter includes several very important commitments that should foster a more open and liberalized telecommunications market in Colombia. The Chapter ensures that U.S. providers will have access to and use of the public telecommunications network, including leased circuits, on reasonable and nondiscriminatory terms and conditions. The Chapter also includes strong “WTO-plus” obligations for all suppliers, including interconnection and dialing parity, and appropriately more rigorous commitments for major suppliers, including competitive safeguards, resale, and cost-oriented interconnection. Importantly, the Chapter commits Colombia to ensure that its regulatory body is separate from, and not accountable to, any supplier of public telecommunications services and that the regulatory body does not hold a financial interest or operating role in any supplier. The Chapter provides for

enforcement authority, guarantees recourse to regulatory bodies, and specifies an appellate process for resolution of domestic telecommunications disputes, all of which are important to providing effective market access for US providers.

The Chapter includes an annex that clarifies the commitments for rural telephone suppliers. This annex provides definitions for rural suppliers and specific terms for exempting suppliers of public telecommunications services from several elements of the Telecommunications Chapter.

Cross Border Trade in Services Chapter

The Agreement ensures full market access and national treatment for most services by adopting a “negative list” approach and by including limited reservations. With regard to computer and related services, Colombia has made limited commitments in this sector in the WTO General Agreement on Trade in Services (GATS), leaving cross-border delivery in this sector unbound and omitting certain subsectors (CPC 845, maintenance, and CPC 849, other computer services). Therefore, this Agreement provides an important new guarantee for the U.S. information technology industry. The Agreement covers all forms of cross-border delivery for computer and related services, including electronic delivery, such as via the Internet. Importantly, the negative list approach also ensures that rapidly evolving computer services, driven by continual advances in technology, will be covered by commitments contained in the Agreement. Without such an approach, computer and related services definitions and commitments could quickly become obsolete as new services are introduced. The commitments for computer and related services are complemented by the commitments contained in the Electronic Commerce Chapter.

By employing a negative list approach, the Agreement ensures full market access and national treatment for a broad range of services that can be delivered electronically, further enhancing its value with respect to electronic commerce. The Agreement also includes full commitments in management consulting services, which complement technology consulting commitments contained under computer and related services. This provides greater certainty for U.S. information technology service providers that provide comprehensive consulting services targeting the implementation and use of technology to transform and improve their clients’ businesses. Colombia has made only limited commitments in management consulting services as part of its GATS commitments (leaving cross-border delivery unbound for CPC 865), so this Agreement provides an advantage for American companies.

Electronic Commerce Chapter

The U.S.-Colombia Trade Promotion Agreement contains an Electronic Commerce Chapter that continues to promote the concept of “digital products” in terms of trade as defined in previous agreements. The Chapter emphasizes the importance of avoiding

e-commerce barriers and affirms the applicability of WTO rules. The Chapter assures the non-discriminatory treatment of digital products and addresses the valuation of physically delivered digital products.

In the Colombia TPA, the parties agreed not to impose customs duties, fees or other charges on digital products transmitted electronically. This provision is similar to the WTO moratorium on customs duties on electronic transmissions. ITAC 8 seeks to make the moratorium permanent and values the inclusion of the customs duties provision in this TPA. The E-Commerce Chapter reflects digital product development in the last two decades and industry's need for certainty in how digital products are treated in terms of trade.

Colombia agreed to non-discriminatory treatment of digital products, providing a broad national treatment and most-favored nation provision. This is a step forward in securing liberal trade treatment of digital products. ITAC 8 appreciates the importance of this provision and believes it is consistent with our objective to ensure the most liberal treatment possible of electronically delivered goods and services.

With respect to the physical delivery of digital products, Colombia agreed to apply customs duties on the basis of the value of the carrier medium alone. Presently countries use different methods to apply customs duties. ITAC 8 prefers valuation on the basis of the physical medium and applauds the inclusion of this provision in the Agreement.

The Agreement also promotes e-commerce by: requiring publication of laws, regulations and other measures pertaining to e-commerce; providing flexibility for parties to mutually determine the appropriate authentication method for their electronic transactions; and encouraging paperless trade administration.

Government Procurement Chapter

The Government Procurement Chapter reflects strong commitments, which are especially important since Colombia is not yet a member of the WTO Government Procurement Agreement. In developing countries, in particular, government is a major purchaser of IT and communications products and services. Therefore, this Committee views the Government Procurement Chapter as critically important to ensuring access to the government procurement market in Colombia.

The Agreement provides for greater certainty relating to the government procurement of digital products. Specifically, the Chapter clarifies that government procurement includes the procurement of digital products as defined in the Electronic Commerce Chapter. As in the Colombia TPA, ITAC 8 welcomes this clarification and recommends that a similar clarification be included in all future free trade and government procurement agreements.

The Agreement provides that a procuring entity may reduce the time for submission of tenders where the entity publishes a notice of intended procurement in an electronic medium and concurrently provides the tender documentation in an electronic medium. ITAC-8 is particularly pleased with this provision and believes that similar encouragement of the use of electronic means to disseminate information regarding planned procurement should be provided by all future free trade and trade promotion agreements, as it will increase significantly the opportunity for U.S. businesses to participate in procurements.

Technical Barriers to Trade Chapter

Technical barriers to trade worldwide are a longstanding and increasingly serious concern of the U.S. high technology industry because they play a significant role in limiting the sale of U.S. high-tech products. As ITAC 8 noted in our review of the Colombia TPA, increasingly, the IT sector is experiencing more complicated and difficult technical barriers worldwide, including unique encryption standards, unique wireless standards, data privacy barriers, software preference mandates, and chemical content requirements for IT products, among others. Strong enforcement of the WTO Agreement on Technical Barriers to Trade (TBT) and reinforcement of its principles through FTAs are therefore critically important.

Against this backdrop we have considered whether the Colombia TPA promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act of 2002, and have concluded that it does.

In reaching this conclusion we have looked in particular at several key provisions of the WTO Technical Barriers to Trade Agreement (TBT), which we note is mutually and reciprocally reaffirmed by Colombia and the United States in Article 7.1 of the Agreement. As a party to the TBT, Colombia has agreed to apply internationally accepted principles in the development and application of technical regulations, standards and conformity assessment procedures.

Among key TBT principles are national treatment for foreign products, prohibition of unnecessary trade restrictions, use of international standards where possible, and transparency to permit foreign stakeholders the opportunity to comment on proposed measures. More specifically, TBT Articles 2.9 and 2.12 call for signatories to provide adequate time for interested parties to review and comment on technical regulations and to adapt their products and methods of production to the new requirements. Article 5 of the TBT sets similar requirements for conformity assessment procedures. Article 5.1.2 states that conformity assessment procedures should not create “unnecessary obstacles to international trade” and should not be “applied more strictly than necessary to give...adequate confidence that products conform with applicable technical regulations...” Article 5.2.1 states that conformity assessment procedures should be “completed as expeditiously as possible and in a no less favorable order...than for like [domestic] products.”

We believe the Colombia Agreement recognizes and reinforces these key TBT provisions and, in so doing, provides for equity and reciprocity within the ITAC 8 sectoral area, *viz.*, high-tech products and services. Reciprocal National Treatment is accorded by Article 2.2 of the Agreement. Article 2.8 reciprocally prohibits adopting or maintaining specified Non-Tariff Measures. Article 7.3 provides for the use of international standards in Trade Facilitation activities. Mutual and reciprocal transparency is provided for in Article 7.6, requiring that each party “shall allow” the other to participate in development of standards, technical regulations and conformity assessment procedures, and complying with the TBT Article 2.9 by requiring a sixty-day notice period for comment. We believe the Conformity Assessment provisions of Article 7.4 are sufficient to meet the Article 5 TBT requirements; Article 7.4 allows for Supplier’s Declaration of Conformity and for mutual voluntary accreditation and recognition of testing results. Finally, we note that the Agreement calls for creation of a joint Committee on Technical Barriers to Trade, which we are encouraged to see.

We therefore believe that the Agreement promotes the economic interest of the United States and achieves the applicable overall and principal negotiating objectives set forth in the Trade Act of 2002. We are of the opinion that the Colombia Agreement provides for equity and reciprocity within the ITAC 8 sectoral area.

Intellectual Property Rights Chapter

The Colombia TPA builds on the standards already in force in the TRIPS agreement, the NAFTA, the Jordan, Singapore, Chile, and Australia FTAs, updating these standards to take into account the wealth of experience operating under those agreements since their coming into force from 1995 to 2005. It also takes into account the many years of experience gained from bilateral engagement with countries under the Special 301 trade process through which the U.S. Trade Representative has sought to leverage both legal and enforcement reforms in countries posing particular intellectual property problems for U.S. industry and for the U.S. economy. Perhaps most important, the Colombia TPA takes into account the significant legal and technological developments that have occurred since the TRIPS and NAFTA agreements entered into force and mirrors, and, in many areas, improves upon, the Singapore, Chile, and CAFTA-DR agreements in order to establish clear precedents in most key areas of IP protection for future FTA negotiations, many of which precedents were also followed in the FTAs with Morocco, Bahrain, and Oman. Notwithstanding that some of the obligations contained in the Colombia TPA fall short of those contained in the Morocco, Bahrain and Oman FTAs, the fact that Colombia found it in its own interest to significantly increase its levels of IPR protection beyond that required by TRIPS is testament to the principle that high levels of protection benefit indigenous creators and inventors in the same manner as they do in developed countries.

VI. Membership of the Committee

1. Mr. Steven W. Stewart (Chairman) IBM Corporation
2. Ms. B. Anne Craib (Vice-Chairman) Semiconductor Industry Association
3. Mr. Robert J. Mulligan (2nd Vice Chairman) American Electronics Association
4. Mr. Arun K. Bhumitra Arjay Telecommunications
5. Mr. Mark F. Bohannon, Esq. Software and Information Industry Association
6. Mr. Robert G. Britain National Electrical Manufacturers Association
7. Mr. Anthony Caldwell Global Business Communication Solutions
8. Ms. Melika D. Carroll Intel Corporation
9. Ms. Susan D. Chapman General Motors Corporation
10. Mr. Calman J. Cohen Emergency Committee for American Trade
11. Mr. Tod H. Cohen, Esq. eBay Inc.
12. Ms. Holly A. Evans, Esq. Advanced Micro Devices
13. Mr. Mark E. Foster, Esq. Law Offices of Mark E. Foster
14. Ms. Meredith L. Golemon-Anderson Oracle Corporation
15. Mr. John P. Goyer Coalition of Service Industries
16. Mr. Christopher G. Hankin Sun Microsystems, Inc.
17. Ms. Tania W. Hanna Harris Corporation
18. Mr. Christopher J. Hirth Intuit, Inc.
19. Elizabeth A. Hyman, Esq. Consumer Electronics Association
20. Mr. John D. Kania IPC - Association Connecting Electronics Industries
21. Mr. David M. Leifer, Esq. American Council of Life Insurers
22. Mr. Charles B. O'Hara The Procter & Gamble Company
23. Ms. Wendy E. Owens AbleMedia, LLC
24. Mr. Daniel J. Peterson Cook Group, Inc.
25. Mr. David K. Rensin Reality Mobile LLC
26. Ms. Jacquelynn Ruff, Esq. Verizon Communications Incorporated
27. Ms. Laura S. Sallstrom Dell, Inc.
28. Mr. R. Wayne Sayer R. Wayne Sayer and Associates, Inc.
29. Ms. Loretta Schmitzer The Boeing Company
30. Mr. Douglas W. Schoenberger AT&T