



# Trade Facts

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## **Free Trade with Colombia Summary of the United States – Colombia Trade Promotion Agreement**

The United States – Colombia Trade Promotion Agreement was signed on November 22, 2006 in Washington, D.C. On June 28, 2007, the United States and Colombia signed a Protocol of Amendment revising the Agreement to reflect the bipartisan consensus on trade of May 10, 2007. This comprehensive trade agreement will eliminate tariffs and other barriers to goods and services, promote economic growth, and expand trade between the United States and Colombia.

### **New Market Access for U.S. Consumer and Industrial Products**

- Over eighty percent of U.S. exports of consumer and industrial products to Colombia will be duty-free immediately upon entry into force of the agreement, and an additional seven percent will be duty free within five years. All remaining tariffs will be eliminated within ten years.
- Many products in key U.S. export sectors, such as agriculture and construction equipment, aircraft and parts, auto parts, fertilizers and agro-chemicals, information technology equipment, medical and scientific equipment, and wood will gain immediate duty-free access to Colombia.
- Colombia will join the WTO's Information Technology Agreement (ITA), which removes tariff and non-tariff barriers to information technology products.
- Under the Andean Trade Preference Act (ATPA), many products from Colombia already enter the United States duty-free. The agreement will make duty-free treatment permanent, providing certainty for businesses and investors, and will allow nearly all non-textile consumer and industrial products made in Colombia to enter the U.S. duty free immediately upon implementation of the agreement. This agreement will make duty-free treatment a two-way street between the U.S. and Colombia for the first time.
- Colombia has agreed to allow trade in remanufactured goods under the agreement. This will provide significant export and investment opportunities for U.S. firms involved in remanufactured products such as machinery, computers, cellular telephones, and other devices.
- Colombia is a growing market for U.S. products. U.S. goods exports in 2006 totaled \$6.7 billion, an increase of 23 percent from 2005.

### **Expanded Markets for U.S. Farmers and Ranchers**

- U.S. farm exports to Colombia that will receive immediate duty-free treatment include high quality beef, cotton, wheat, soybeans, soybean meal; key fruits and vegetables including apples, pears, peaches, and cherries; and many processed food products including frozen french fries and cookies.
- U.S. farm products that will benefit from improved market access include pork, beef, corn, poultry, rice, fruits and vegetables, processed products, and dairy products.

- The United States and Colombia have worked to resolve sanitary and phytosanitary barriers to agricultural trade, including on food safety inspection procedures for beef, pork, and poultry.

### **Textiles and Apparel**

- Textiles and apparel will be duty-free and quota-free immediately if the products meet the agreement's rule of origin, promoting new opportunities for U.S. and Colombian fiber, yarn, fiber, and apparel manufacturing.
- Special state-of-the-art customs cooperation commitments between the U.S. and Colombia will allow for verification of claims of origin or preferential treatment, and denial of preferential treatment or entry if claims cannot be verified.
- Rules of origin are generally based on the yarn forward standard, thus encouraging production and economic integration between the United States and Colombia. Exceptions to the rules of origin will be handled through an expedited "short supply" determination process after entry into force, or through a similar process under the Andean Trade Preference Act before entry into force. The Parties agreed on 18 "short supply" items as part of the agreement. The agreement does not make use of tariff preference levels (TPLs).
- A "de minimis" provision will allow limited amounts of specified third-country content to go into U.S. and Colombian apparel, giving producers in both countries needed flexibility.
- A special textile safeguard will provide for temporary tariff relief, if imports under the agreement prove to be damaging to domestic producers.

### **Open Services Markets**

- Colombia will accord substantial market access across its entire services regimes, subject to very few exceptions, using the so-called "negative list" approach.
- Colombia agreed to exceed commitments made in the WTO, and to dismantle significant services and investment barriers, such as requirements that U.S. firms hire nationals rather than Americans to provide professional services.
- Colombia also agreed to eliminate requirements to establish a branch in order to provide a service and unfair penalties imposed on U.S. companies for terminating their relationships with local commercial agents.
- These commitments and improvements in Colombia's services and investment regime will allow U.S. firms to take full advantage of the benefits of the agreement across all sectors, including, but not limited to construction, all professional services (such as engineering), and energy.
- U.S. financial service suppliers have full rights to establish subsidiaries or branches for banks and insurance companies.
- Portfolio managers in the U.S. will be able to provide portfolio management services to both mutual funds and pension funds in Colombia, including to funds that manage privatized social security accounts.

### **An Open and Competitive Telecommunications Market**

- Users of a telecommunications network are guaranteed reasonable and non-discriminatory access to the network in Colombia. This prevents local firms from having preferential or "first right" of access to telecommunications networks.
- U.S. phone companies obtained the right to interconnect with Colombian dominant suppliers' fixed networks at nondiscriminatory and cost-based rates.
- U.S. firms will be able to lease lines from Colombian telecom networks on non-discriminatory terms and to re-sell most telecom services of Colombian suppliers to build a customer base.

### **E-Commerce: Free Trade in the Digital Age**

- The U.S. and Colombia agreed to provisions on e-commerce that reflect the issue's importance in global trade and the importance of supplying services by electronic means as a key part of a vibrant e-commerce environment.
- The Parties have committed to non-discriminatory treatment of digital products and agreed not to impose customs duties on digital products transmitted electronically.

### **Important New Protections for U.S. Investors**

- The agreement will establish a stable legal framework for U.S. investors operating in Colombia. All forms of investment will be protected under the agreement, including enterprises, debt, concessions and similar contracts, and intellectual property. With very few exceptions, U.S. investors will be treated as well as Colombian investors (or investors of any other country) in the establishment, acquisition, and operation of investments in Colombia.
- Pursuant to U.S. Trade Promotion Authority (TPA), the agreement draws from U.S. legal principles and practices to provide U.S. investors in Colombia substantive and procedural protections that foreign investors currently enjoy under the U.S. legal system. These include due process protections and the right to receive fair market value for property in the event of an expropriation.
- The investor protections in the Investment Chapter are backed by a transparent, binding international arbitration mechanism, under which investors may, at their own initiative, bring claims against a government for an alleged breach of the chapter. Submissions to investor-state arbitral tribunals will be made public, and hearings will generally be open to the public. Tribunals will also be authorized to accept *amicus* submissions from non-disputing parties.
- In the preamble, the Parties agree that "foreign investors are not hereby accorded greater substantive rights with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in this Agreement." This provision reflects one of the negotiating objectives of the Trade Act of 2002 to ensure "that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States."

- This preambular language does not impose any obligations on the United States and Colombia beyond those set forth in the substantive provisions of the agreement.

### **Greater Protection for Intellectual Property Rights**

- In all categories of intellectual property rights (IPR), U.S. companies will be treated no less favorably than Colombian companies, and the agreement makes a number of important improvements to IPR protections.

### **State-of-the-Art Protection for U.S. Trademarks**

- Requires a system to resolve disputes about trademarks used in Internet domain names, which is important to prevent “cyber-squatting” with respect to high-value domain names.
- Applies principle of “first-in-time, first-in-right” to trademarks and geographical indications, so that the first person who acquires a right to a trademark or geographical indication is the person who has the right to use it.
- Requires the development of an on-line system for the registration and maintenance of trademarks, as well as a searchable database.
- Requires transparent procedures for the registration of trademarks, including geographical indications.

### **Protection for Copyrighted Works in a Digital Economy**

- Copyright owners maintain rights over temporary copies of their works on computers, which is important in protecting music, videos, software and text from widespread unauthorized sharing via the Internet.
- Establishes that only authors, composers and other copyright owners have the right to make their work available on-line.
- Ensures extended terms of protection for copyrighted works, including phonograms, consistent with emerging international trends.
- Establishes strong anti-circumvention provisions to prohibit tampering with technologies (like embedded codes on discs) that are designed to prevent piracy and unauthorized distribution over the Internet.
- Ensures that governments use only legitimate computer software, thus setting a positive example for private users.
- Requires rules to prohibit the unauthorized receipt or distribution of encrypted satellite signals, thus preventing piracy of satellite television programming.
- Provides rules for the liability of Internet Service Providers (ISPs) for copyright infringement, reflecting the balance struck in the U.S. Millennium Copyright Act between legitimate ISP activity and the infringement of copyrights.

### **Patents & Trade Secrets: Stronger Protections**

- Limits the grounds for revoking a patent, thus protecting against arbitrary revocation.
- Clarifies that test data and trade secrets submitted to a government for the purpose of product approval will normally be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. If Colombia relies on U.S. FDA approval of a given drug, and meets certain conditions for expeditious approval of that drug in Colombia, the period of data protection will be concurrent with the term of protection provided in the United States.
- Requires the establishment of procedures and remedies to prevent the marketing of pharmaceutical products that infringe patents.
- Provides protection for newly developed plant varieties.
- The Parties expressed their understanding that the intellectual property chapter does not and should not prevent the Parties from taking measures to protect public health by promoting access to medicines for all, particularly in circumstances of extreme urgency or national emergency. The Parties also reaffirm their shared commitment to the 2001 Doha Declaration on the TRIPS Agreement and Public Health.

### **Tough Penalties for Piracy and Counterfeiting**

- Criminalizes end-user piracy, providing strong deterrence against piracy and counterfeiting.
- Requires the Parties to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. Also provides for enforcement against goods-in-transit, to deter violators from using ports or free trade zones to traffic in pirated products. *Ex officio* action may be taken in border and criminal cases, thus providing more effective enforcement.
- Mandates both statutory and actual damages for copyright infringement and trademark piracy. This serves as a deterrent against piracy, and ensures that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

### **New Access to Government Procurement Contracts**

- U.S. suppliers are granted non-discriminatory rights to bid on purchases of Colombian government ministries, agencies and departments. Low-value purchases are excluded.
- The agreement clarifies that government agencies may include provisions in their procurements to promote environmental protection and requirements that suppliers must comply with core labor laws in the country where they make a product or perform a service.
- The agreement covers the purchases of Colombia's ministries and departments, as well as its legislature and courts. U.S. firms will also be assured of access to the purchases of a number of Colombia's government enterprises, including its oil company. It also includes the purchases of all of the first-tier sub-central entities (comparable to U.S. states) of Colombia.

- U.S. suppliers will also be entitled to national treatment when certain telecom and electrical Colombian utilities that would otherwise not be covered by the Government Procurement Chapter make purchases.
- The agreement requires fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures.

### **Groundbreaking Customs Procedures and Rules of Origin**

- Comprehensive rules of origin will ensure that only U.S. and Colombian goods benefit from the agreement. The rules of origin are designed to provide clarity, predictability and certainty to the private sector and customs administrations.
- The agreement requires transparency and efficiency in administering customs procedures, including the agreement's rules of origin. Colombia commits to publish laws and regulations on the Internet, and will ensure procedural certainty and fairness.
- The Parties agree to share information to combat illegal trans-shipment of goods. In addition, the agreement contains specific commitments to expedite the release of goods, special procedures for the release of express delivery shipments, and the ability of importers to obtain binding advance rulings governing eligibility for preferential tariff treatment, tariff classification, eligibility for duty drawback, country of origin marking and the application of quotas.

### **U.S. Firms Protected Against Anti-Competitive Behavior**

- Commits Colombia to maintain competition laws that prohibit anti-competitive business conduct, and competition agencies to enforce the laws.
- The agreement also requires that Colombia ensure that any private or public monopolies that they designate, and any state enterprises, are subject to disciplines designed to eliminate abuses of their special status that discriminate against or harm the interests of U.S. companies.

### **Protection and Promotion of Worker Rights**

- The Parties reaffirm their obligations as members of the International Labor Organization (ILO).
- The Parties agree to adopt and maintain in their laws and practice the core internationally-recognized labor rights, as stated in the 1998 ILO Declaration on Fundamental Principles and Rights at Work, and including a prohibition on the worst forms of child labor. Neither Party may waive or otherwise derogate from the laws that implement this obligation in a manner affecting trade or investment between the Parties.
- The Parties also agree to effectively enforce labor laws related to the fundamental rights, plus acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.
- All obligations in the Chapter are subject to the same dispute settlement procedures and enforcement mechanisms as obligations in other Chapters of the agreement.

- Procedural guarantees in the agreement will ensure that workers and employers will have fair, equitable, and transparent access to labor tribunals or courts.
- The agreement includes a cooperative mechanism to promote respect for the principles embodied in the 1998 ILO Declaration, and compliance with ILO Convention 182 on the Worst Forms of Child Labor. Cooperative activities include:
  - Law and practice related to the principles and rights of the ILO Declaration;
  - Compliance with ILO Convention 182 on the Worst Forms of Child Labor;
  - Methods to improve labor administration and enforcement of labor laws;
  - Social Dialogue and Alternative Dispute Resolution;
  - Occupational Safety and Health compliance; and
  - Mechanisms and best practices to protect and promote the rights of migrant workers.

### **Commitments and Cooperation to Protect the Environment**

- The agreement commits the Parties to effectively enforce their own domestic environmental laws and adopt, maintain and implement laws and all other measures to fulfill obligations under covered multilateral environmental agreements (MEAs).
- Both parties commit to pursue high levels of environmental protection, and to not waive or derogate for environmental laws in a manner that weaken or reduce protections afforded in those laws in a manner affecting trade or investment.
- The agreement also promotes a comprehensive approach to environmental protection. Procedural guarantees that ensure fair, equitable and transparent proceedings for the administration and enforcement of environmental laws are complemented by provisions that promote voluntary, market-based mechanisms to protect the environment.
- The agreement calls for a public submissions process with an independent secretariat for environmental matters to ensure that views of civil society are appropriately considered.
- All obligations in the Chapter are subject to the same dispute settlement procedures and enforcement mechanisms as obligations in other Chapters of the agreement.

### **Dispute Settlement: Tools to Enforce the Agreement**

- Core obligations of the agreement, including labor and environment provisions, are subject to the dispute settlement provisions of the agreement.
- Dispute panel procedures set high standards of openness and transparency through:
  - Open public hearings;
  - Public release of legal submissions by parties;
  - Special labor of environment expertise for disputes in these areas; and,
  - Opportunities for interested third parties to submit views.
- Emphasis is on promoting compliance through consultation and trade-enhancing remedies.

### **Impacts on Small and Medium-sized Businesses**

- The agreement contains innovative provisions that allow the creation of working groups to evaluate the impacts of the agreement on small and medium-sized businesses.

### **Trade Capacity-Building: Development and Trade Together**

- The agreement includes a Trade Capacity Building Committee, in recognition of the importance of such assistance in promoting economic growth, reducing poverty, and adjusting to liberalized trade. Assistance programs to be discussed by the Committee include, for example, programs for small and medium-sized enterprises and farmers, and programs for improvements in the transportation infrastructure and telecommunications, to assist Colombia in implementing the obligations of the agreement and more broadly benefiting from the opportunities it creates.
- The Trade Capacity Building Committee will build on work done during the negotiations to enhance partnerships with international institutions (Inter-American Development Bank, World Bank, Organization of American States, the United Nations Economic Commission for Latin America (ECLAC), and the Andean Regional Development Bank (CAF), non-governmental organizations, and the private sector.
- The U.S. Government has provided a total of approximately \$150 million in trade capacity building (TCB) assistance to Colombia for the fiscal years 2004 through 2006. Colombia also benefited from U.S. Government provided trade capacity building assistance to Andean regional programs, totaling more than \$8.5 million for the same period. Multilateral lenders such as the Inter-American Development Bank and the World Bank provide additional trade-related assistance in support of the agreement.

### **Recognizing the Importance of Biodiversity**

- The United States and Colombia also reached an understanding that recognizes the importance of traditional knowledge and biodiversity and their potential contribution to cultural, economic and social development. The U.S. and Colombia will endeavor to seek ways to share information that will promote quality patent examination, and recognize the importance of contract-based systems for achieving prior informed consent and equitable benefit sharing related to the use of genetic resources and traditional knowledge.