

## U.S.-Colombia Trade Promotion Agreement

### Services

With the implementation of the U.S.-Colombia TPA, U.S. service providers will gain improved access to the Colombian market and greater assurance of their rights and privileges in Colombia. Colombia has made very substantial commitments to liberalize services trade, including telecommunications and financial services. These commitments significantly improve upon Colombia's WTO commitments in terms of sectors covered and elimination of restrictions. The U.S.-Colombia TPA establishes a solid framework for trade in services by providing for the elimination of obstacles in most service sectors and for improved regulatory transparency.

#### *Why do services commitments matter?*

The services sector accounts for the majority of jobs in the United States. In the United States, private services industries accounted for over 95 million U.S. jobs in 2006, or roughly eighty percent of private non-farm employment. U.S. services exports are a vital part of this picture and they continue to grow. In 2007, services exports of \$472 billion accounted for 29 percent of total U.S. exports, generating a services trade surplus of \$104 billion, which helped to offset nearly thirteen percent of the U.S. merchandise trade deficit.

U.S. services firms are well positioned relative to their competitors abroad to take advantage of free trade agreements. The intensity and vigor of the U.S. market give rise to extremely competitive companies prepared to meet stringent demands at home and enable them to compete abroad. Consumers in Colombia value services that help boost their own productivity and enhance their lives and look to the United States as a model in terms of providing high-quality and cutting-edge services and technologies.

#### *U.S.-Colombia TPA Allows Service Providers to Choose Mode of Delivery – a Key Provision for SMEs*

Colombia's commitments in services cover both the supply of services across the border (such as supplying a service from one country to another through electronic means, or through the travel of nationals), as well as the supply of services through investment and a local presence to supply the service. The Colombian government is prohibited from requiring a U.S. company to incorporate or to make any form of local investment in order to supply services on a cross-border basis. In other words, a U.S. company wishing to provide its service in Colombia is not required to have any formal presence there (with very few exceptions). This is a benefit to all U.S. service providers, especially SMEs, who may not have the resources to maintain a presence in Colombia or to conduct enough business in Colombia to warrant that kind of presence.

The freedom for service providers to choose their mode of delivery becomes increasingly important as technology makes distance less of a service barrier. Providing education services through distance learning, for example, has undergone a dramatic transformation due to technology. Satellites and the Internet are transforming the world into a borderless educational arena, benefiting both previously under-served potential students and education entrepreneurs. Colombia is one of the Andean region's leaders in Internet use and innovators in using technology for distance learning and videoconferencing. Major new investments in telecommunications and information systems that are likely to result from the U.S.-Colombia TPA will dramatically improve access to IT, benefiting all "e-service" providers.

#### *Barriers to Foreign Service Suppliers Lifted*

Colombia has a number of barriers to foreign service suppliers that the U.S.-Colombia TPA will address. Removal of these barriers will allow increased access and streamlining of operations for U.S. companies. For example, upon implementation of this Agreement, Colombia will eliminate a services barrier requiring U.S. firms located in Colombia to hire nationals rather than U.S. citizens to provide professional services. Additionally, upon implementation of the Agreement, U.S. companies providing a service under concession to the Colombian government will be free to purchase on the basis of price and quality, not on the basis of nationality of the goods in these sectors. Currently, such companies, which typically operate in the transportation, energy and mining sectors, are required to buy locally.

#### *Sector-Specific Benefits for the Service Sector*

Colombia's sectoral coverage in the U.S.-Colombia TPA is significantly broader than the commitments it undertook in the WTO General Agreement on Trade in Services (GATS). One reason is that the Agreement uses a more inclusive method of sectoral coverage - the "negative list" approach. This means that every sector is completely covered unless an exception is listed, and that trade disciplines are automatically extended to services that have yet to be created or brought to market. Such automatic coverage of new services is especially important to industries where market development, technological advances and innovation continuously result in new service offerings and means of delivery, including sectors such as communications, express delivery, financial and computer related services. The GATS uses a "positive list," which means that only those sectors that a country expressly lists are covered by the GATS national treatment and market access obligations. Colombia's GATS commitment is fairly limited with relatively few of the possible 150 different sectors and sub sectors listed.

U.S. service providers should immediately benefit from U.S.-Colombia TPA commitments in a number of key areas. Some examples are provided below.

### *Financial Services*

Colombia will open its financial service sector and will allow U.S. providers to have full rights to establish subsidiaries or branches for banks or insurance providers, enabling them to provide credit to underserved areas, breaking the monopoly of retailers and banks that charge very high interest rates and making credit more readily available to Colombian consumers.

U.S.-based firms will be able to supply insurance on a cross-border basis, including through electronic means for key markets including reinsurance and reinsurance brokerage upon entry into force, and marine, aviation and transport (MAT) insurance and brokerage within two years of implementation. U.S.-based banking and other non-insurance firms will be able to offer services cross-border in areas such as provision, transfer, and processing of financial data and information; related software; and the provision of advisory and other auxiliary financial services, excluding intermediation.

U.S.-based asset managers, including insurance companies, will be able to provide investment advice and other portfolio management services to mutual funds and pension funds, including the funds that manage the portfolios of collective investment schemes established in Colombia.

### *Advertising*

Colombia made full commitments in this important sector. This is an improvement over the GATS, where Colombia only made a partial commitment in advertising.

### *Construction and Engineering Services*

The U.S.-Colombia TPA provides full market access for construction services in Colombia. In addition, improved regulatory regimes and strong investment environments will stimulate growth opportunities for construction consultants and engineers. This is an improvement over the GATS, where Colombia only made a limited commitment for engineering services largely based on reciprocal treatment.

### *Distribution Services, including Retail and Wholesale Services, Direct Marketing, and Direct Selling*

Retailers will benefit from the removal of barriers that inhibit the movement of products among manufacturers, wholesalers, retailers, and consumers. Intellectual property rights provisions will ensure the concept brands of the franchise companies are protected. Retailers working with transportation,

telecommunications, financial, computer and other service providers may be able to improve and streamline the supply chain to better serve consumers in the United States and throughout the hemisphere. Direct marketers should benefit from improved wireless telecommunication services and Internet service that are likely to result from the U.S.-Colombia TPA, and from Colombia's commitments to open specific services sectors that are important to direct marketers, such as travel and tourism.

### *Franchising*

The U.S.-Colombia TPA provides full market access for franchising in Colombia. Furthermore, commitments in other areas of the U.S.-Colombia TPA will benefit U.S. franchisers. Trademark provisions will protect the franchiser name, and tariff liberalization will allow the lower-cost import of key equipment needed to supply the franchisee.

### *Entertainment, including Audiovisual and Broadcasting*

The U.S.-Colombia TPA provides full market access for U.S. films and television programs over a variety of media including cable, satellite, and the Internet. This market opening is in stark contrast with the GATS, where Colombia made no commitments in this area. Additionally, the Agreement provides state-of-the-art intellectual property protection and mandates that each Party criminalize the willful unauthorized receipt or distribution of encrypted satellite signals, thus preventing piracy of satellite television programming. The Agreement also requires non-discriminatory treatment for digital products, such as U.S. software, music, text, and videos.

### *Express Delivery Services*

The Chapter on Services includes an expansive definition of express delivery services, locks in existing competitive opportunities in Colombia and prevents cross-subsidization from a postal monopoly. This is in contrast with the GATS, where Colombia did not make a commitment in either postal/courier services or in express delivery. The U.S.-Colombia TPA provisions on customs trade facilitation will help express delivery service companies provide better services to customers who are seeking to enhance their competitiveness in the hemisphere and global market place. Express delivery services are in demand from a wide range of companies--from high-tech to agriculture, and auto manufacturing to retail services. Speed-to-market, just-in-time inventory processes and total quality management are critical to success in today's economy. Commitments in this sector will facilitate U.S. commercial interests in Colombia.

### *Energy Services*

The Agreement's extensive obligations on regulatory transparency and investment provide a framework that can yield opportunities for U.S. energy services firms and facilitate the provision of energy services between the United States and Colombia. Energy demand in Colombia is increasing and its coal and oil reserves are the second and fifth largest in South America. As the Andean countries pursue their goal of a common electricity market, there will be opportunities for U.S. energy services providers. The U.S.-Colombia TPA better positions U.S. companies to take advantage of these opportunities. In the GATS, Colombia made no commitments in energy services.

#### *Information Services, including Computer Related Services*

The U.S.-Colombia TPA provides full access to the Colombia market in the information services sector, which is a major improvement over the GATS where Colombia made no commitments. The U.S.-Colombia TPA covers all modes of delivery of information services, including electronic delivery, such as via the Internet. 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. U.S.-Colombia TPA obligations cover "digital products" and other e-commerce products, which will also benefit U.S. technology service providers. In addition, as technology users increasingly purchase information technology solutions as a combination of goods and services (including specialized equipment with customized software), Colombia's commitment to eliminate tariffs on U.S. IT goods and to join the WTO Information Technology Agreement will benefit service providers as well. New market access for U.S. service providers in sectors such as banking, financial services, and telecommunications as a result of the U.S.-Colombia TPA will increase demand for strong software development, data processing, and other information services.

#### *Professional Services, including Accounting, Legal Services, and Management Consulting*

Liberalization in such sectors as banking, investment, and financial services will offer increased opportunities for professional service providers. While the U.S.-Colombia TPA does not remove licensing requirements to provide certain services, the provisions in the cross-border services chapter provide obligations intended to ensure that administrative decisions related to licensing are prompt and fair. This chapter also calls for Colombia and the United States to work together to develop mutually acceptable standards and criteria for licensing, certification and mutual recognition of professional service suppliers.