



**Legislative Bulletin..... October 12, 2011**

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**H.R. 3078 - United States-Colombia Trade Promotion Agreement Implementation Act**

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Implementation Act (Cantor, R-VA)**

**Order of Business:** The bill is scheduled to be considered on October 12, 2011 under a closed rule, [H.Res. 425](#). The rule provides for 90 minutes of debate with 60 of those minutes equally divided, and 30 minutes controlled by Rep. Michaud (*D-ME*). It does not provide a motion to recommit. Under Trade Promotion Authority (TPA) (Public Law 107-210), bills implementing trade agreements are not amendable either in committee or on the House floor. More information on the legislation is below.

**Summary:** The U.S. – Colombia Trade Promotion Agreement, often referred to as the Colombia Free Trade Agreement, was signed on [November 22, 2006](#). According to the International Trade Commission (ITC), this agreement [would boost exports](#) of goods by \$1.1 billion and add \$2.5 billion to U.S. GDP. This increase in export opportunities does not include increases to the service industry.

The U.S. / Colombia Free Trade Agreement had been long held up because of Colombian labor issues. Opponents have argued that Colombia lacks labor laws that prevent attacks against labor union members. On April 6, 2011, the White House announced that the Administration and Colombia have reached agreement on an action plan to resolve outstanding Colombian labor issues. Additional information on the benefits of this trade agreement are below.

**SUMMARY BY TITLE:**

**TITLE I--APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT**

- Implements the United States-Colombia Trade Promotion Agreement submitted to Congress on October 3, 2011.
- Makes U.S. law paramount to any provision in the agreement that conflicts with U.S. law. States that the agreement would not modify or limit any authority conferred under any U.S. law.
- A state law that conflicts with any provision in the agreement could only be declared invalid in an action brought by the United States Government.
- Prevents private legal actions against any provision of the agreement.

- Authorizes the President to establish or designate an office with the Department of Commerce to handle disputes that could arise from the agreement. This office is authorized to be appropriated \$262,500 for each fiscal year.

## **TITLE II – CUSTOMS PROVISIONS**

- Allows the President to modify any tariffs or tariff-free treatment in the agreement and to create additional tariffs as necessary (subject to certain limitations).
- Requires the President to terminate Colombia’s designation as a beneficiary developing country for treatment under the Generalized System of Preferences and as a beneficiary country for treatment under the Andean Trade Preferences Act.
- Instructs the President, when implementing the agreement, to ensure that imports of agricultural goods do not disrupt the orderly marketing of commodities in the United States. According to the Committee Report, the provision is necessary to ensure United States compliance with the market access provisions of the agreement. The Committee expects the President to comply with the letter and spirit of the consultation and layover provisions of this Act in carrying out section 201(b).
- Implements the agricultural safeguard measures of Article 2.18 and Annex 2.18 of the Agreement (which can be [found in detail here](#)).
- Rules of Origin:
  - Establishes the basis of any tariff classification is the [Harmonized Tariff Schedule \(HTS\)](#).
  - Considers a good an “originating good” if that good was wholly obtained or produced in its entirety in the territory of Colombia, or the United States, or both. Originating goods are the goods that receive preferential treatment under the agreement.
  - Includes the costs of freight, insurance, packing, and other such transportation costs, as well as duties, taxes, customs fees, and spoilage in the calculation of value of an originating material.
  - Also includes the cost of duties, taxes, and customs brokerage fees on the material paid in the territory of Colombia, the United States, or both, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.
  - Allows for certain textiles or apparel goods to be considered an “originating good,” as long as the total weight of all nonoriginating fibers in such a good does not exceed 10% of its total weight.
  - Requires that a person’s selected inventory method be used consistently without change throughout a fiscal year. The inventory management method could mean “averaging,” “last-in, first-out,” “first-in, last-out,” or any other method otherwise accepted by that country.
- Defines numerous operative terms, including and especially “good wholly obtained or produced entirely in the territory of Colombia, the United States, or both,” for the purposes of the preferential tariff treatment under the Agreement.
- The legislation amends U.S. Code to clarify that “No fee may be charged under subsection (a)(9) or (10) with respect to goods that qualify as originating goods under section 203 of the United States-Colombia Trade Promotion Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.”

- Shields an importer from penalties for making an incorrect claim of a qualifying originating good if he “promptly and voluntarily” makes a corrected declaration and then pays any duties owed. Exporters would be similarly shielded if they voluntarily provide written notice of any incorrect informant to every person to whom the original certification of a qualifying originating good was made.
- Establishes recordkeeping requirements of goods exported that receive preferential treatment under this agreement.

### **TITLE III—RELIEF FROM IMPORTS**

- Authorizes the filing (with the U.S. International Trade Commission) by an entity, including a trade association, firm, certified or recognized union, or group of representative workers, of a petition requesting adjustment to the obligations of the United States under the agreement (and asking for provisional relief). The Commission would then have to investigate whether “a substantial cause of serious injury or threat thereof.”
- If the Commission finds injury or threat of injury, it would then have to recommend the amount of import relief necessary to correct or prevent harm. Further, the Commission would have to facilitate the efforts of the domestic industry to make a “positive adjustment to import competition.”
- The President would not have to provide the suggested import relief, if doing so would have greater economic and social costs than benefits.

### **TITLE IV—PROCUREMENT:**

- Extends the Andean Trade Preference Act (ATPA) through July 31, 2013. More information on the ATPA is below.

### **TITLE VI—OFFSETS:**

- Eliminates certain North America Free Trade Agreement Customs Fees Exemptions.

**Additional Information:** More information from the Ways and Means Committee, see this page: [http://waysandmeans.house.gov/UploadedFiles/Colombia\\_FTA\\_Commercial\\_Talking\\_Points\\_v09\\_Sept\\_29\\_2011.pdf](http://waysandmeans.house.gov/UploadedFiles/Colombia_FTA_Commercial_Talking_Points_v09_Sept_29_2011.pdf)

For the text of the agreement, see this page: <http://www.ustr.gov/trade-agreements/free-trade-agreements/colombia-fta/final-text>

For a brief summary from the U.S. Trade Representative’s office, see this page: <http://www.ustr.gov/uscolombiatpa/facts>

Additional information from the Heritage Foundation can be found here: [U.S.–Colombia Free Trade Agreement: Will the U.S. Miss a Historic Opportunity? FTAs with South Korea, Colombia, and Panama Would Create U.S. Jobs and Exports Enhance U.S. Security: Pass Free Trade Agreements with Colombia, Panama, and South Korea](http://www.heritage.org/issue/colombia-fta)

Additional information from the U.S. Chamber of Commerce can be found here: [Myths and Facts: Trade Agreements, Deficits, Jobs, and Growth.](http://www.uschamber.com/Trade/Trade-Agreements-Deficits-Jobs-and-Growth)

**State-by-State Impact:** The below outside groups have released state-by-state data below regarding the impact of the pending free trade agreements.

The **U.S. Chamber of Commerce** launched [Trade Supports Jobs](#). This website gives a state-by-state breakdown of U.S. exports and the jobs they support.

The **Business Roundtable** unveiled the [Impact of Trade in the United States](#) which tracks U.S. exports on a state-by-state basis. It also individually lists exporting businesses, their products, and the foreign markets they export to.

The **American Farm Bureau** launched [this page](#) that details on a state-by-state basis the impact of these three agreements on U.S. agricultural exports. This website lists the states' individual agricultural products and their impact under the agreements.

The **International Trade Administration** released state-by-state data towards the bottom of [this page](#).

### **Sector by Sector Impact:**

**Agriculture:** According to [House Report 111-237](#): “U.S. agriculture exports to Colombia currently face an average tariff of 20 percent, whereas only two Colombian agricultural exports to the United States face tariffs above three percent. The Agreement would remedy this by providing immediate duty-free treatment for 77.5 percent of Colombia's agricultural tariff lines, including U.S. exports of soybeans, cotton, wheat, barley, peanuts, bacon, high-quality beef, the vast majority of processed products, and almost all fruit and vegetable products, with tariffs eliminated on almost 93 percent of agricultural tariff lines within 10 years. The Agreement would immediately eliminate Colombia's separate ‘price band’ variable tariffs for U.S. exports, which the European Union's trade agreement with Colombia does not eliminate for EU exports.”

“As a result, the ITC estimates significant gains in U.S. agricultural exports. For example, the ITC estimates that U.S. exports of grains could increase by 55 to 77 percent and soybeans, soybean products, and animal feeds by 30 to 50 percent. The Agreement would also provide guarantees against key non-tariff barriers. For example, Colombia has committed to continuing to recognize the equivalence of the U.S. food safety system for meat and poultry and would provide access for all U.S. beef and beef products consistent with international norms.”

**Manufacturing:** “According to [House Report 111-237](#): The Agreement would significantly lower both tariff and non-tariff barriers to U.S. exports of manufactured goods. Tariffs on U.S. manufactured goods exported to Colombia average over nine percent, with tariffs on auto and auto parts at 17.4 percent, consumer goods at 15 percent, and building products at 13.2 percent. Upon implementation, over 80 percent of U.S. exports of consumer and industrial products to Colombia would immediately become duty-free, with remaining tariffs phased out over ten years. Key U.S. export sectors that would receive immediate duty-free treatment include aircraft and auto parts; agricultural and construction equipment; agro-chemicals; and medical, scientific, and information technology equipment. The Agreement would also guarantee access to Colombia for U.S. exports of remanufactured products, such as industrial machinery and consumer electronics.”

“As a result, the ITC estimates significant gains in U.S. exports in key sectors and products. For example, the ITC estimates that exports of motor vehicles and parts would be likely to increase by 43.8 percent. Exports of miscellaneous machinery would be likely to increase by 14.9 percent and electronics by 8 percent. Colombia also agreed in the Agreement to become a full participant under the WTO Information Technology Agreement, which would further open Colombia's market to U.S. high-tech exports. The Agreement would provide U.S. firms with lower tariff barriers than major competitors from countries that do not have trade agreements with Colombia in effect.”

**Services:** According to [House Report 111-237](#): “The services sector accounts for over half of Colombia's GDP, making improved market access for U.S. services critical. The Agreement would provide U.S. service firms with market access, national treatment, and regulatory transparency exceeding that afforded by the WTO General Agreement on Services. The Agreement would eliminate significant restrictions on the ability of U.S. firms to compete in the engineering, architecture, real estate, telecommunications, computer, and financial services markets. U.S. nationals would be allowed to serve in key executive and professional posts, which Colombia now prohibits. The ITC estimates, based on tariff equivalents, that the Agreement would reduce barriers in the banking sector by more than half. Significant restrictions on U.S. asset managers would be eliminated four years after the Agreement's entry into force. U.S. service providers that establish a local presence in Colombia would benefit from strong investor protections included in the Agreement.”

**Government Procurement:** According to [House Report 111-237](#): “The government procurement provisions of the Agreement are essential to guaranteeing non-discriminatory access for U.S. goods, services, and suppliers to 28 key Colombian central government agencies, all state-level governments, and certain significant government enterprises, including ECOPETROL (national oil company), ISS (public healthcare provider), and ADPOSTAL (postal service). These provisions are particularly important because Colombia is not a member of the WTO Government Procurement Agreement and is only an observer. The procurement provisions would grant U.S. entities greater access and protection than they currently have to Colombia's government procurement market, which, by one measure, is \$28.3 billion to \$42.4 billion annually. (Government procurement is generally 10 to 15 percent of a country's gross domestic product (GDP), and Colombia's 2010 GDP was over \$283 billion.)”

**Intellectual Property Rights:** According to [House Report 111-237](#): “Under the Agreement, Colombia would adopt higher and extended standards for the protection of intellectual property rights, such as copyrights, patents, trademarks, and trade secrets. The Agreement would also provide enhanced means for enforcing those rights. Under the Agreement, each partner country would be required to grant national treatment to nationals of the other, and all laws, regulations, procedures, and final judicial decisions would need to be in writing and published or made publicly available. The Agreement would lengthen terms for copyright protection, cover electronic and digital media, and increase enforcement to go beyond the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. Both parties would be obliged to provide appropriate civil and criminal remedies for willful violators of intellectual property rights.”

**Textile and Apparel:** According to [House Report 111-237](#): “All U.S. textiles and apparel products meeting the Agreement's rules of origin would immediately become duty-free and quota-free when exported to Colombia. The Agreement's rules of origin are generally based on the `yarn-

forward' standard. A 'de minimis' provision would allow limited amounts of specified third-country content to go into U.S. and Colombian apparel, giving producers in both countries needed flexibility. The Agreement would allow the use of 'short supply' fabrics, yarns, and fibers (that is, fabrics, yarns, and fibers not made in Colombia or the United States that have been determined not to be commercially available in either country) as inputs. The Parties agreed to a list of short supply fabrics, and the Agreement includes a process for adding more.”

“Customs cooperation commitments between the United States and Colombia would allow for verification of claims of origin or preferential treatment, and denial of preferential treatment or entry if claims cannot be verified. A special textile safeguard would provide for temporary tariff relief if increased imports under the Agreement prove to cause serious damage to U.S. producers.”

**Investment:** According to [House Report 111-237](#): “The Agreement would ensure a stable legal framework for U.S. investors operating in Colombia. All forms of investment would be protected under the Agreement, including enterprises, debt, concessions and similar contracts, and intellectual property. With very few exceptions, U.S. investors would be treated as well as Colombian investors in the establishment, acquisition, and operation of investments in Colombia.”

“The Agreement draws from U.S. legal principles and practices to provide U.S. investors in Colombia with a basic set of substantive and procedural protections that Colombian 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 Agreement includes recourse to an investor-state dispute settlement mechanism for certain types of claims.”

**Andean Trade Preference Act (ATPA) Background:** This legislation was originally enacted December 4, 1991 and aided certain Andean countries in fighting drug production and trafficking. The original countries included were Bolivia, Peru, Colombia, and Ecuador. Bolivia was suspended as an ATPA beneficiary country on December 15, 2008. The United States-Peru Trade Promotion Agreement became effective February 1, 2009, and Peru’s trade preferences were therefore not renewed in 2010. The ATPA provided these countries duty-free access to the U.S. market, in hopes that that will discourage producers in those countries from drug trafficking. This legislation expired February 12, 2011. For more information, see [this report](#) from the U.S. Trade Representative’s office.

**National Security:** As the [U.S. Chamber](#) has submits, implementing free trade agreements deepens out relationship with global partners. President Obama's National Security Adviser, Tom Donilon has stated in the [Wall Street Journal](#), “passing them is a matter of national security... These agreements will also help strengthen our economic and commercial presence in Asia and Latin America, two regions where we have been strategically underweighted. We have fought to reinvigorate our partnerships with countries in these regions over the past few years, and closer economic ties are a key component of this effort.”

**Committee Action:** On July 7, 2011, the House Ways and Means Committee held a non-markup considering the draft implementation of this agreement. The non-markup provided the committee the opportunity to relay the views of the Committee to the Administration so that issues and concerns can be addressed before President Obama’s Administration formally submitted to Congress legislation implementing the trade agreements.



The Administration submitted this trade agreement to Congress on October 3, 2011. The legislation to implement the trade agreement was introduced as H.R. 3078 and was referred to the House Ways and Means Committee. On October 5, 2011, the House Ways and Means Committee held a markup of H.R. 3078, and the legislation was approved by a [vote of 24-12](#).

**Outside Groups Supporting:**

The Club for Growth – [scoring as a key vote](#)

Heritage Action for America – [scoring as a key vote](#)

U.S. Chamber of Commerce – [scoring as a key vote](#)

Council for Citizens Against Government Waste – *scoring as a key vote*

**Outside Groups:** On October 3, 2011, the following groups [sent this letter](#) to House and Senate Leadership urging passage of the Colombia-U.S. Free Trade Agreement:

American Farm Bureau Federation	National Council of Farmer Cooperatives
American Feed Industry Association	National Grain and Feed Association
American Frozen Food Institute	National Grape Cooperative Association Inc.
American Meat Institute	National Meat Association
American Peanut Product Manufacturers, Inc.	National Milk Producers Federation
American Potato Trade Alliance	National Oilseed Processors Association
American Seed Trade Association	National Pork Producers Council
American Soybean Association	National Potato Council
Blue Diamond Growers	National Renderers Association
California Cherry Export Association	National Sorghum Producers
California Pear Growers	National Sunflower Association
California Table Grape Commission	National Turkey Federation
Cargill, Incorporated	North American Equipment Dealers Association
Campbell Soup Company	North Dakota Grain Growers Association
Commodity Markets Council	Northwest Dairy Association/Darigold
ConAgra Foods, Inc.	Northwest Horticultural Council
Corn Refiners Association	Ocean Spray Cranberries, Inc.
Dairylea Cooperative Inc.	Oklahoma Wheat Growers Association
Distilled Spirits Council of the United States	Pet Food Institute
Equity Cooperative Livestock Sales Association	Produce Marketing Association
Grocery Manufacturers Association	Seaboard Foods
Hormel Foods Corporation	Smithfield Foods
International Dairy Foods Association	South Dakota Wheat Inc.
Idaho Barley Commission	Texas Wheat Producers Association
Idaho Grain Producers Association	Tyson Foods, Inc.
JBS USA	U.S. Apple Association
Kansas Association of Wheat Growers	U.S. Canola Association
Kentucky Small Grain Growers Association	U.S. Dairy Export Council
Kraft Foods	U.S. Meat Export Federation
Land O'Lakes, Inc.	U.S. Premium Beef
Montana Grain Growers Association	Unilever United States
National Association of State Departments of Agriculture	United Egg Association
National Association of Wheat Growers	United Egg Producers
National Barley Growers Association	United Producers, Inc.
National Cattlemen's Beef Association	US Dry Bean Council
National Chicken Council	US Wheat Associates
National Confectioners Association	USA Dry Pea & Lentil Council
National Corn Growers Association	USA Poultry & Egg Export Council
	Washington State Potato Commission

Additionally, the Latin America Trade Coalition has combined [this list of over 1,200 organizations](#) supporting the U.S. Colombia and Panama Trade Agreements.

**Administration Position:** The Administration strongly supports H.R. 3078, which approves and implements the United States-Colombia Trade Promotion Agreement, signed by the United States and Colombia on November 22, 2006, and amended through a protocol on June 28, 2007.

**Trade Promotional Authority (TPA):** These trade agreements are coming to the House floor under the Trade Promotional Authority (TPA). TPA is a fast-track authority that allows the Administration to negotiate the trade agreements, prohibits Congress from amending the agreements, and calls for limited floor debate. These agreements need a simple majority to pass both the House and the Senate. TPA expired on July 1, 2007, but because these agreements were signed before the expiration they are allowed to come to the Congress under that authority.

While Congress cannot be alter trade agreements negotiated between foreign nations and the Administration after the Administration submits them for congressional consideration, it is responsible for defining trade negotiation objectives in TPA legislation. These objectives are definitive statements of U.S. trade policy, and the Administration is expected to pursue these objectives during trade negotiations if they intend to have the trade agreement brought to Congress under this expedited procedure. For more information on Trade Promotion Authority and the Role of Congress in Trade Policy, see this [CRS Report](#).

**Cost to Taxpayers:** The Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT) estimate that enacting H.R. 3078 would reduce revenues by \$139 million in 2012 and by about \$1.5 billion over the 2012-2021 period. CBO estimates that enacting H.R. 3078 would decrease direct spending by \$68 million in 2012 and by about \$1.5 billion over the 2012-2021 period. The net impact of those effects is an estimated reduction in deficits of \$22 million over the 2012-2021 period. CBO's report can be [viewed here](#).

**Does the Bill Expand the Size and Scope of the Federal Government?:** No, the legislation would implement free trade agreements that would reduce government involvement in, and taxation of, trade between the United States and Colombia.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** [House Report 111-237](#) states that CBO has determined that the nontax provisions of H.R. 3078 would impose private-sector mandates, as defined in UMRA, by extending the customs user fees, increasing merchandise processing fees, and by enforcing new record-keeping requirements. CBO estimates that the aggregate costs of those mandates would exceed the annual threshold established in UMRA for private-sector mandates (\$142 million in 2011, adjusted annually for inflation). JCT has determined that the tax provision of H.R. 3078 contains no private-sector mandates as defined in UMRA.



**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** [House Report 111-237](#) states that the bill does “not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.”

**Constitutional Authority:** Rep. Cantor’s statement of constitutional authority, found in the [Congressional Record](#), states: “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 1 (the power to lay and collect duties and imposts) and Article I, Section 8, Clause 3 (the power to regulate commerce with foreign nations).”

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