

United States International Trade Commission

U.S.-Colombia Trade Promotion Agreement: Potential Economy- wide and Selected Sectoral Effects

Investigation No. TA-2104-023
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U.S. International Trade Commission

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PREFACE

The United States and Colombia concluded negotiations for a free trade agreement on February 27, 2006. On August 8, 2006, President Bush notified Congress of his intent to enter into the U.S.-Colombia Trade Promotion Agreement (TPA). In a letter dated August 25, 2006, the United States Trade Representative requested this investigation under section 2104(f) of the Trade Act of 2002 (Trade Act), which requires that the U.S. International Trade Commission (the Commission) submit a report to the President and the Congress not later than 90 calendar days after the President enters into a trade agreement.

Section 2104(f)(2) of the Trade Act requires that the Commission prepare a report assessing the likely effects of the U.S.-Colombia TPA on the U.S. economy as a whole and on specific industry sectors, and section 2104(f)(3) requires that the Commission, in preparing its assessment, review available economic assessments regarding the agreement.

A copy of the request letter for this investigation is in appendix A; the Commission's notice of institution, published in the *Federal Register* of September 19, 2006, is in appendix B. The Commission held a public hearing for this investigation on October 5, 2006. A calendar of the hearing is included in appendix C of this report, and a summary of hearing testimony and written submissions is provided in chapter 7.

ABSTRACT

This report assesses the likely effects of the U.S.-Colombia Trade Promotion Agreement (TPA) on the U.S. economy as a whole and on specific industry sectors, including the effects on U.S. gross domestic product (GDP), exports and imports, employment, and consumers.

Colombian exporters generally face substantially lower tariffs in the U.S. market than do U.S. exporters in the Colombian market because most U.S. imports from Colombia enter free of duty either unconditionally or under other duty-free provisions. Because of this tariff asymmetry, the primary effects of the TPA will be improved U.S. access to the Colombian market and an increase in U.S. exports to Colombia. Nevertheless, the overall effect of the U.S.-Colombia TPA on the U.S. economy is likely to be small because of the small size of the Colombian market relative to total U.S. trade and production.

The economy-wide model used by the Commission indicates that, after full implementation of the market access provisions (tariff and tariff-rate quota (TRQ) elimination) of the TPA, U.S. exports to Colombia may be higher by approximately \$1.1 billion, U.S. imports from Colombia may be higher by \$487 million, and U.S. GDP higher by about \$2.5 billion, representing an increase of less than 0.05 percent of U.S. GDP. Only the U.S. sugar sector is estimated to experience a decline in output, revenue, or employment of more than 0.1 percent. The Commission's findings are similar to those in other studies using similar quantitative techniques.

The Commission analyzed the impact of both the immediate and the phased elimination of tariffs and TRQs of the TPA using a sector-specific analysis of selected U.S. product sectors. The sectors analyzed were meat (beef and pork); grain (wheat, rice, and corn); soybeans, soybean products, and animal feeds; chemical, rubber, and plastic products; machinery, electronics, and transportation equipment; textiles and apparel; sugar and sugar-containing products; and cut flowers. For most of these sectors, the TPA will provide small but positive benefits to U.S. exports.

Finally, the TPA also may increase trade and investment through trade facilitation, such as the reduction of impediments in customs processing; improved regulatory environment, such as enhanced investor protections; and increased regulatory transparency. The effects of such measures on bilateral trade and investment flows may become more significant in the medium to long term.

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ABBREVIATIONS AND ACRONYMS

ATC	Agreement on Textiles and Clothing
ATPA	Andean Trade Preference Act
ATPDEA	Andean Trade Promotion and Drug Eradication Act
AVE	ad valorem equivalent
BEA	Bureau of Economic Analysis (U.S. Department of Commerce)
BSE	bovine spongiform encephalopathy
CAFTA-DR	U.S. Free Trade Agreement with Central America and the Dominican Republic
CET	common external tariff
CGE	computable general equilibrium
ERS	Economic Research Service (USDA)
FDI	foreign direct investment
FMD	foot and mouth disease
FTA	free trade agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GSP	Generalized System of Preferences
GTAP	Global Trade Analysis Project
HS	Harmonized System
HTS	Harmonized Tariff Schedule of the United States
IPR	intellectual property rights
ITA	Information Technology Agreement
kg	kilogram
MFN	most-favored-nation
mt	metric tons
NAFTA	North American Free Trade Agreement
n.e.c.	not elsewhere classified
NTR	normal trade relations (same as MFN)
OIE	World Organization of Animal Health
SCP	sugar-containing products
SPS	sanitary and phytosanitary
TBT	technical barriers to trade
TPA	trade promotion agreement
TPL	tariff preference level
Trade Act	Trade Act of 2002
TRE	tariff rate equivalent
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TRQ	tariff-rate quota
UN	United Nations
USCS	U.S. Commercial Service
USDA	U.S. Department of Agriculture
USITC	United States International Trade Commission
USTR	United States Trade Representative
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

ABBREVIATIONS AND ACRONYMS–

Continued

U.S. Trade Advisory Groups

ACTPN	Advisory Committee for Trade Policy and Negotiations
APAC	Agricultural Policy Advisory Committee for Trade
ATAC	Agricultural Technical Advisory Committee
IGPAC	Intergovernmental Policy Advisory Committee
ITAC 2	Industry Trade Advisory Committee on Automotive Equipment and Capital Goods
ITAC 3	Industry Trade Advisory Committee for Chemicals, Pharmaceuticals, Health/Science Products and Services
ITAC 4	Industry Trade Advisory Committee on Consumer Goods
ITAC 6	Industry Trade Advisory Committee on Energy and Energy Services
ITAC 8	Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce
ITAC 10	Industry Trade Advisory Committee on Services and Finance Industries
ITAC 12	Industry Trade Advisory Committee on Steel
ITAC 13	Industry Trade Advisory Committee on Textiles and Clothing
ITAC 14	Industry Trade Advisory Committee on Customs and Trade Facilitation
ITAC 15	Industry Trade Advisory Committee on Intellectual Property
ITAC 16	Industry Trade Advisory Committee on Standards and Technical Trade Barriers
LAC	Labor Advisory Committee for Trade Negotiations and Trade Policy
TEPAC	Trade and Environment Policy Advisory Committee

EXECUTIVE SUMMARY

This report assesses the likely effects of the U.S.-Colombia Trade Promotion Agreement (TPA) on the U.S. economy as a whole and on specific industry sectors, including the effects on U.S. gross domestic product (GDP); exports and imports; employment; specific industry sectors; and U.S. consumers.

About the Agreement

The text of the U.S.-Colombia TPA is modeled on other recent U.S. free trade agreements, particularly the U.S.-Peru TPA. The market access provisions of the TPA provide for the eventual elimination of duties on bilateral trade in all eligible goods with the exception of sugar.

- **U.S. exports to Colombia:** For U.S. products entering Colombia, almost 76 percent of industrial goods and textile tariff lines and 77 percent of agricultural tariff lines will be duty free upon implementation of the TPA. Duties on many other tariff lines will be phased out over a 5- or 10-year period, with some agricultural tariff rate quotas (TRQs) being phased out over a period of up to 19 years.
- **U.S. imports from Colombia:** For Colombian products entering the United States, 99 percent of qualifying industrial goods and textile tariff lines and 89 percent of agricultural tariff lines will become duty free upon implementation of the TPA. Duties on other tariff lines will be phased out over a period of up to 15 years, with some agricultural TRQs (except for sugar) being phased out over a period of up to 15 years. Although Colombia is expected to fill its new sugar TRQ, the TPA is likely to have a minor effect on U.S. imports and production of sugar and sugar-containing products.

The TPA also has provisions with respect to trade in services, trade facilitation (including customs administration, technical barriers to trade, and electronic commerce), and the regulatory environment (including government procurement, investment, competition policy, intellectual property rights, labor, the environment, and dispute settlement).

Summary of Findings on Market Access

The primary impact of the U.S.-Colombia TPA will be increased U.S. exports to Colombia as a result of enhanced U.S. access to the Colombian market. U.S. imports from Colombia are not expected to grow significantly as a result of trade liberalization under the TPA because most Colombian products already enter the U.S. market free of duty. In 2005, approximately 90 percent of the value of U.S. imports from Colombia entered free of duty either unconditionally or under the Andean Trade Preference Act (ATPA) or other U.S. provisions. Nevertheless, by making ATPA duty-free treatment permanent, the TPA could create additional incentives for investment in export-oriented industries in Colombia.

Economy-wide Estimates

The U.S.-Colombia TPA may have a small, positive effect on the U.S. economy. The benefits will likely be moderated by the small size of Colombia's economy relative to that of the United States, Colombia's small share of U.S. trade (about 0.5 percent of total U.S. goods trade in 2005), and the duty-free access most Colombian products already receive.

Key findings from the Commission's analysis are:

- U.S. exports to Colombia are estimated to be \$1.1 billion higher with the fully implemented TPA, an increase of 13.7 percent.
- U.S. imports from Colombia are estimated to be \$487 million higher with the fully implemented TPA, an increase of 5.5 percent.
- U.S. GDP will increase by about \$2.5 billion (by less than 0.05 percent).
- There is likely to be minimal to no effect on output or employment for most sectors in the U.S. economy. The U.S. processed rice, cereal grains (e.g., corn), and wheat sectors are estimated to experience the largest increases in output and employment as a result of the TPA. Only the U.S. sugar sector is estimated to decline by more than 0.1 percent in output or employment.

The Commission's findings from its quantitative assessment of the effect of tariff elimination on trade in goods are similar to those from other studies using similar quantitative techniques.

Sectoral Estimates

The Commission conducted sector-specific analysis of the impact of the TPA for the following sectors: meat (beef and pork); grain (wheat, rice, and corn); soybeans, soybean products, and animal feeds; chemical, rubber, and plastic products; machinery, electronics, and transportation equipment; textiles and apparel; sugar and sugar-containing products; cut flowers; and services. Key findings from the Commission's analysis are:

- The removal of tariff and nontariff barriers under the TPA is likely to result in a higher level of U.S. exports of meat (beef and pork) to Colombia. Imports of meat from Colombia could eventually increase, but are currently restricted by Colombia's lack of certification to export fresh, chilled, or frozen beef or pork to the United States.
- Colombia's elimination of its tariff and nontariff barriers and certain government support measures under the TPA will likely result in increased U.S. grain exports. Rice accounts for most of the increase, with yellow corn and wheat accounting for the remaining balance.
- U.S. exports to Colombia of soybeans, soybean products, and animal feeds are likely to increase under the TPA as a result of Colombia's removal of its tariff and nontariff barriers and government support measures.

- U.S. exports of chemical, rubber, and plastic products are likely to increase as a result of tariff elimination under the TPA.
- U.S. exports to Colombia of machinery, electronics, and transportation equipment are likely to increase as a result of the TPA. Colombia's elimination of tariff and nontariff barriers will create new market access opportunities for U.S. exports of motor vehicle parts, oil and gas equipment, construction and mining equipment, pollution control equipment, power generation equipment, radiology equipment, food and beverage processing equipment, information technology equipment, and remanufactured goods.
- A small increase is likely for both U.S. exports to Colombia and U.S. imports from Colombia of textiles and apparel as a result of tariff elimination under the TPA. In addition, by making ATPA benefits permanent, and thereby generating market certainty, the TPA could result in greater investment in the Colombian textile and apparel sector that could lead to increased Colombian exports of textiles and apparel.
- Tariff elimination and quota expansion under the TPA will likely have only a minor effect on U.S. imports and production of sugar and sugar-containing products. Although Colombia is expected to fill its new sugar TRQ, TPA provisions will limit Colombian sugar exports to the U.S. market.
- U.S. imports of cut flowers from Colombia could eventually increase if the TPA encourages increased investment in Colombia's flower sector and diverts trade away from other South American flower-exporting countries.
- U.S. exports of services (including financial services and telecommunications services) to Colombia are likely to increase slightly as a result of improved levels of market access, national treatment, and regulatory transparency that will enhance Colombia's commitments under the WTO General Agreement on Trade in Services. The Commission's estimate of the tariff rate equivalent of Colombia's commitments under the TPA in the banking sector indicates that U.S.-based financial institutions are likely to benefit from lower barriers to entry and reduced costs of investing in Colombia as a result of the TPA. As the U.S. services market is already generally open to foreign firms and as the Colombian industries are small, the TPA is not likely to have a measurable effect on U.S. imports of services from Colombia.

Summary of Findings on Trade Facilitation and the Regulatory Environment

The overall effects on the U.S. economy and U.S. industries of the trade facilitation and the regulatory environment provisions of the U.S.-Colombia TPA are likely to be small, primarily reflecting the relatively small size of Colombia's economy and market compared to that of the United States, and the generally open U.S. market.

U.S.-based firms are likely to benefit from the application of the TPA trade facilitation provisions by Colombia, which are intended to establish a secure, predictable legal framework and a more stable and reliable trading environment for U.S. firms operating in

Colombia. The provisions on trade facilitation are likely to expand export opportunities for U.S. firms, particularly for goods subject to technical and regulatory standards and requirements. The trade facilitation provisions of the TPA, designed to expedite the movement of goods and the provision of services between the United States and Colombia, include those related to technical barriers to trade, customs administration, and sanitary and phytosanitary measures, as well as facilitation of electronic commerce.

The regulatory-related provisions of the TPA are likely to enhance the environment for bilateral trade and investment, particularly over the medium and long term. U.S.-based firms are likely to benefit from Colombia's commitments with respect to transparency, trade remedies, government procurement, investment, the protection of intellectual property rights, and dispute settlement.

CHAPTER 1

Introduction

Scope and Approach of the Report

This report assesses the likely effects of the U.S.-Colombia Trade Promotion Agreement (TPA) on the U.S. economy as a whole and on specific industry sectors, including the effects of the TPA on U.S. gross domestic product (GDP); exports and imports; aggregate employment and employment opportunities; and the production, employment, and competitive position of industries likely to be significantly affected by the TPA. The report also assesses the likely effect of the TPA on U.S. consumers. The assessment is based on a review of all 23 chapters of the final text of the U.S.-Colombia TPA, including its annexes and associated side letters. A chapter-by-chapter summary of the TPA provisions is presented in appendix D of this report.

To assess the economy-wide effects of the market access provisions of the TPA, the U.S. International Trade Commission (Commission) employed a global computable general equilibrium (CGE) model.¹ The use of a model permits the Commission to estimate the possible incremental effects of the negotiated liberalization of tariffs and tariff-rate quotas (TRQs) in the TPA. The static nature of the model assumes that the TPA is fully implemented on January 1, 2007, and not phased in over time;² therefore, the estimated effects reflect long-term adjustments to a fully implemented TPA. Other policy assumptions about the model are discussed in chapter 2 and in appendix G of this report.

The Commission supplemented the economy-wide analysis with sector-specific analysis of the economic effects of specific market access provisions, including the impact of the staged reductions of certain tariffs and TRQs. The U.S. product sectors analyzed were meat (beef and pork); grain (wheat, rice, and corn); soybeans, soybean products, and animal feeds; chemical, rubber, and plastic products; machinery, electronics, and transportation equipment; textiles and apparel; sugar and sugar-containing products; and cut flowers. These sectors were selected for analysis according to a number of criteria, including the importance of the sector or key sector components in terms of bilateral trade, the extent of trade liberalization under the TPA, the potential for increased bilateral trade as a result of the TPA, and industry and Commission views regarding the TPA commitments or the U.S.-Colombia trade relationship in that sector.

The Commission also assessed the effects of the TPA's provisions with respect to trade in services, trade facilitation (e.g., customs administration, technical barriers to trade, and electronic commerce), and the regulatory environment (e.g., government procurement, investment, competition policy, intellectual property rights, labor, the environment, and dispute settlement). With the exception of financial services, the effects of these provisions

¹ The Global Trade Analysis Project (GTAP) model and database were used in this investigation. GTAP is a multicountry CGE model with economy-wide coverage of merchandise and service sectors. The GTAP model framework is described in app. G of this report.

² Under this TPA, duty elimination on some tariff lines is to be phased in over a period of up to 15 years, with some agricultural TRQs (except for sugar) phased out over a period of up to 19 years for U.S. exports, and 15 years for U.S. imports. Information on the tariff commitments of the United States and Colombia is provided in chap. 2 of this report.

were not quantified because of limited data availability;³ however, these provisions can have effects on U.S. GDP, exports and imports, employment, production, and U.S. consumers. Data and other information for the study were obtained from industry reports, interviews with government and industry contacts, official reports of the trade advisory committees, written submissions received in response to the Commission's *Federal Register* notice of institution for this investigation,⁴ and testimony at the public hearing held by the Commission in connection with this investigation.⁵ Other sources include the U.S. Department of Agriculture, the U.S. Department of Commerce, the U.S. Department of State, the Office of the United States Trade Representative, the World Bank, the World Trade Organization (WTO), the GTAP database, and the Global Trade Atlas database.

This report is organized as follows: the remainder of chapter 1 provides overviews of the TPA and U.S.-Colombia bilateral trade; chapter 2 provides a summary of the TPA market access provisions for goods and presents the Commission's economy-wide analysis of the effects of the TPA; chapter 3 presents analyses for selected sectors; chapter 4 covers the effect of market access for services provisions; chapter 5 covers the effect of trade facilitation provisions; chapter 6 covers the effects of regulatory-related provisions, including investment; and chapter 7 presents a literature review and summarizes the views of interested parties. Additional information is provided in appendices to the report.

Overview of the U.S.-Colombia TPA

Like other free trade agreements (FTAs) to which the United States is a party,⁶ the U.S.-Colombia TPA will create a preferential trade regime within a negotiated range of goods and services, with commitments covering other trade-related matters such as trade in services, trade facilitation (including customs administration, technical barriers to trade, and electronic commerce), and the regulatory environment (including government procurement, investment, competition policy, intellectual property rights, labor, the environment, and dispute settlement). Under this TPA, duties on categories of originating goods are to be eliminated immediately or phased out over periods of up to 19 years.⁷ The TPA contains commitments on matters that were not previously included within the WTO regime or other agreements to which the United States and Colombia are both parties. The TPA does not cover every aspect of bilateral trade or give preferences for all goods under any tariff category, but accords benefits to originating goods. The TPA's rules of origin grant special tariff treatment to qualified goods upon importer claim, and certain sensitive agricultural products are subject to TRQs for a specific time period. Among the TPA's objectives, the preamble states that the pact is meant to encourage broad-based economic development to

³ The Commission estimated the tariff rate equivalent of Colombia's banking sector commitments under the TPA. This analysis is described in chap. 4 and in app. J of this report.

⁴ A copy of the *Federal Register* notice is in app. B of this report.

⁵ The Commission held a public hearing for this investigation on October 5, 2006. A calendar of the hearing is included in app. C of this report, and a summary of hearing testimony and written submissions is provided in chap. 7 of this report.

⁶ To date, the United States has implemented FTAs with Israel, Canada, Mexico, Jordan, Singapore, Chile, Australia, Morocco, Central America and the Dominican Republic (as of the date of this report, El Salvador, Guatemala, Honduras, and Nicaragua have implemented CAFTA-DR), Bahrain, and Oman. Although signed on April 12, 2006, Congress has not approved implementing legislation for the U.S.-Peru TPA. In addition, the United States is negotiating FTAs with Korea, Malaysia, Panama, Thailand, and the United Arab Emirates.

⁷ Information on the tariff commitments of the United States and Colombia is available in chap. 2 of this report.

replace drug crop production, strengthen cooperation, help expand trade within a structure of rules, and simplify regional trade.

The text of the TPA⁸ is modeled on other recent U.S. FTAs, particularly the U.S.-Peru TPA and, to a lesser extent, the U.S. FTA with Central America and the Dominican Republic (CAFTA-DR). The TPA contains the particular commitments of each party set forth in schedules and annexes on market access, rules of origin, services, and procurement, as well as general disciplines that apply to both parties. Some provisions also draw upon multilateral instruments of the WTO or other treaties, or state that the same obligations apply under this TPA. These obligations will exist separately, even if the corresponding WTO agreement provision were eliminated. Some TPA commitments deal with specific aspects of trade relations between the parties, and side letters provide for ongoing cooperation or cover other specific matters. Appendix D provides a chapter-by-chapter summary of the text of the U.S.-Colombia TPA. Table 1-1 identifies the chapters of the TPA and where they are analyzed in this report.⁹

U.S.-Colombia Trade Overview

In 2005, most U.S. imports from Colombia (approximately 90 percent, by value) entered the United States free of duty. Consequently, it is expected that the main impact of the U.S.-Colombia TPA will be to increase U.S. exports as a result of enhanced access to a more open market in Colombia. This section presents an overview of U.S.-Colombian bilateral merchandise trade in 2005.

U.S. Exports

U.S. merchandise exports to Colombia were valued at \$5.0 billion in 2005, ranking Colombia as the 28th largest market for U.S. exports.¹⁰ Colombia accounted for less than 1 percent of total U.S. exports of \$804.0 billion in 2005. U.S. exports to Colombia have increased at a compound annual growth rate of approximately 7 percent since 1991, and at a compound annual growth rate of 10 percent since 2002 (figure 1-1). Appendix table E-1 shows the leading U.S. exports to Colombia in 2005. Corn ranked as the single largest U.S. export to Colombia in 2005, with exports valued at \$228 million. Other leading U.S. exports to Colombia were chemicals (including vinyl chloride, petroleum oils, propene, styrene, and fertilizers), parts for drilling/earthmoving machines, and machinery-related equipment (including computers and computer parts and communications equipment). Wheat ranked as the 4th leading U.S. export to Colombia, valued at \$127 million; the United States supplied 58 percent of Colombia's wheat purchases by value in 2005.¹¹

⁸ The text of the U.S.-Colombia TPA is available at <http://www.ustr.gov>.

⁹ Summaries are not intended to interpret the text or to identify the negotiators' intent. Chapters of the TPA that address primarily administrative and legal matters (TPA chaps. 1, 20, 22, and 23) are not further analyzed in this report. Other chapters of the TPA are summarized and analyzed in chaps. 2–6 of this report.

¹⁰ The term “exports” refers to domestic merchandise exports.

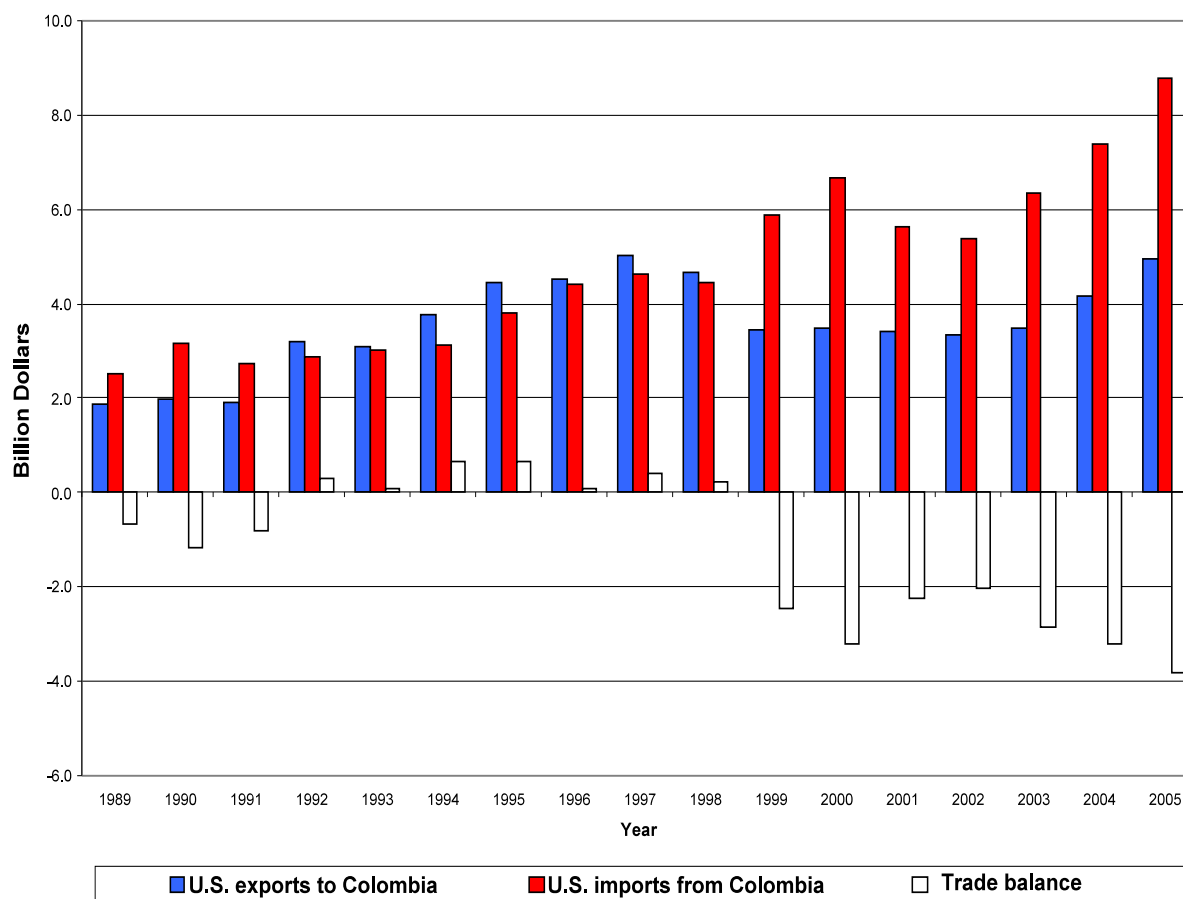
¹¹ The impact of the TPA on U.S. wheat exports to Colombia is discussed in more detail in chap. 3 of this report.

Table 1-1 U.S.-Colombia TPA: Location of analysis of TPA chapters in the Commission's report^a

TPA chapter	Chapter of Commission's report where analyzed
1. Initial Provisions and General Definitions	Appendix D
2. National Treatment and Market Access for Goods	Chapter 2
3. Textiles and Apparel	Chapter 2
4. Rules of Origin Procedures	Chapter 2
5. Customs Administration and Trade Facilitation	Chapter 5
6. Sanitary and Phytosanitary Measures	Chapter 5
7. Technical Barriers to Trade	Chapter 5
8. Trade Remedies	Chapter 6
9. Government Procurement	Chapter 6
10. Investment	Chapter 6
11. Cross-Border Trade in Services	Chapter 4
12. Financial Services	Chapter 4
13. Competition Policy	Chapter 6
14. Telecommunications	Chapter 4
15. Electronic Commerce	Chapter 5
16. Intellectual Property Rights	Chapter 6
17. Labor	Chapter 6
18. Environment	Chapter 6
19. Transparency	Chapter 6
20. Administration of the Agreement and Trade Capacity Building	Appendix D
21. Dispute Settlement	Chapter 6
22. Exceptions	Appendix D
23. Final Provisions	Appendix D
Annex I Non-Conforming Measures for Services and Investment	Chapters 4 and 6
Annex II Non-Conforming Measures for Services and Investment	Chapters 4 and 6
Annex III Non-Conforming Measures for Financial Services	Chapters 4 and 6
Understanding Regarding Biodiversity and Traditional Knowledge	Chapter 6 (included with IPR)

^aChaps. 1, 20, 22, and 23 of the U.S.-Colombia TPA address primarily administrative and legal matters with respect to the agreement and, hence, are summarized in app. D but not analyzed in this report.

Figure 1-1 U.S. merchandise trade with Colombia, 1989-2005



Source: U.S. Department of Commerce.

Colombia is a member of the Andean Community and applies the Andean common external tariff (CET) to U.S. and other non-Andean goods.¹² In addition to the Andean Community, Colombia has preferential trade agreements with a number of other Latin American countries.¹³ As a result, most U.S. goods face higher tariffs upon entry into Colombia than do goods of some of Colombia's leading trade partners.

Table 1-2 summarizes Colombian tariff rates applied to U.S. exports. This table shows that more than 97 percent of Colombian tariff rate lines on imports from the United States currently have base tariff rates exceeding 0 percent, and that approximately one-half of Colombian tariff rate lines on imports from the United States currently have base rates exceeding 10 percent. Table 1-3 presents a list of selected nontariff impediments to trade that Colombia will eliminate under the TPA.

¹² The Andean Community is a free trade area among its members and a customs union that applies a common external tariff (CET) on goods from nonmembers. Other Andean Community members are Bolivia, Ecuador, Peru, and Venezuela. The basic CET tariff rates are 5, 10, 15, and 20 percent.

¹³ Colombia's preferential trade agreements are summarized in the economic profile in app. E. of this report.

Table 1-2 Applied Colombian tariff rates on U.S. exports

Tariff base rate (percent)	Number of tariff lines	Percent of total tariff lines
0	173	2.5
>0 to 5	2,083	30.2
>5 to 10	1,225	17.7
>10 to 20	3,282	47.5
>20 to 35	97	1.4
>35	46	0.7
Total ^a	6,906	100.0

Source: *U.S.-Colombia TPA*, Colombia Tariff Schedule.

Note: Does not include tariff lines with base rate values of blanks.

^aTotal of 6,906 tariff lines includes 5,986 industrial and textile tariff lines and 920 agricultural tariff lines, as described in more detail in chap. 2 of this report. See tables 2-1 and 2-2 for summaries of Colombian tariff commitments under the TPA.

Table 1-3 Colombia: Selected nontariff impediments

Topic	Selected nontariff issue	Source year (latest)	TPA-relevant chapter(s) ^a
Agriculture	Discretionary import licensing used to ban imports of milk powder and poultry parts.	2006 ^b	2
Agriculture	Implementation of price-band scheme on various agricultural commodities and substitutes.	2006 ^{f, g}	2
Automotive products	Colombia, via the Andean Community's common automotive policy, favors local investment through minimum local content requirements for reduced import duties.	2006 ^{c, f, g}	2, 4
Discriminatory taxes	Colombia assesses a value-added tax of 35 percent on whiskey aged for less than 12 years, which is more characteristic of U.S. whiskey, compared to a rate of 20 percent for whiskey aged for 12 or more years, most of which comes from Europe. The consumption tax regime discriminates against imported distilled spirits by applying arbitrary breakpoints.	2006 ^b	2
Government procurement	A number of provisions favor domestic suppliers in government procurement.	2006 ^b	9
Government procurement	Lack of transparency in exemption regimes	2006 ^{b, d}	9
IPR	Infringement of IPR remains a serious problem in Colombia, especially in the area of trafficking and producing counterfeit goods. Issues concern lack of uniformity and consistency in IPR registration and oversight procedures, lax customs enforcement, and the inability to conclude legal cases.	2006 ^b	16, 19
Professional services	Economic needs tests and labor composition requirements hamper provision of professional services.	2006 ^{b, d}	11
Regulatory	Labeling requirement for textile products.	2006 ^b	2, 3
	Sanitary registration required for imports of processed foods, pharmaceuticals, cosmetics, and household insecticides.	2006 ^f	
Remanufactured goods	Colombia treats remanufactured goods as used goods, thereby limiting the market access for major U.S. makers of high-quality remanufactured goods.	2006 ^{b, e}	2, 4
Remanufactured goods	Colombia maintains prohibition on various remanufactured items, including agricultural equipment, aircraft and related goods, automotive/transportation and related parts, construction equipment, environmental goods, infrastructure and machinery goods, and medical and scientific equipment.	2006 ^{e, g}	2, 4

Table 1-3 Colombia: Selected nontariff impediments—*Continued*

Topic	Selected nontariff issue	Source year (latest)	TPA-relevant chapter(s) ^a
Services	Services barriers include restricted transborder transportation and requirement that natural or legal persons provide land cargo transportation.	2006 ^b	
SPS	SPS measures banning U.S. exports of cattle and beef.	2006 ^b	6
Telecommunications services	Substantial barriers to entry stemming from government regulations.	2006 ^{b, d}	14
Textiles, apparel, and footwear	Various restrictions such as requirement that importer present a list of suppliers, buyers, and clients to Colombian Customs and restrictions on number of tariff subheadings and import value.	2006 ^b	2, 3, 5

Sources: As cited.

Note: Examples selected based on survey of standard sources regarding nontariff trade impediments. Citations represent the Colombian environment in the year of publication; no assumptions are made as to whether these represent the current environment.

^aIncluding annexes and side letters. U.S.-Colombia TPA, available at <http://www.ustr.gov>.

^bUSTR, "Colombia," *2006 National Trade Estimate Report on Foreign Trade Barriers*.

^cEuropean Commission, *EU Market Access Sectoral and Trade Barriers Database*.

^dU.S. Commercial Service and U.S. Department of State, *Doing Business in Colombia*.

^eU.S. Department of Commerce, ITA, Industry Trade Policy reports.

^fEIU, *Colombia: Country Commerce*.

^gWTO, *Trade Policy Review: Colombia*.

U.S. Imports

U.S. merchandise imports from Colombia were valued at approximately \$8.8 billion in 2005, ranking Colombia as the 31st largest U.S. import supplier.¹⁴ Colombia accounted for less than 1 percent of the \$1.6 trillion in total U.S. imports in 2005. Imports were fairly concentrated in a few product categories, primarily petroleum oils and related products, coal, coffee, gold, men's and boys' trousers and shorts, fresh cut flowers, and bananas (appendix table E-3). Fossil fuels accounted for more than one-half of U.S. imports from Colombia in 2005. Coffee was the only nonmineral to account for more than 5 percent of total U.S. imports from Colombia. In 2005, Colombia supplied more than one-half of total U.S. imports of coal, chrysanthemums, roses, and plantains.

Colombia is a designated beneficiary of the Andean Trade Preference Act (ATPA) and of the U.S. Generalized System of Preferences (GSP) program.¹⁵ In 2005, approximately 90 percent of U.S. imports from Colombia, valued at \$7.7 billion, entered the United States free of duty either unconditionally under normal trade relations (NTR)¹⁶ or under ATPA, GSP, or other duty-free provisions. Approximately 60 percent of all U.S. duty-free imports from Colombia in 2005 were entered under ATPA (appendix table E-4).

¹⁴ The term "imports" refers to merchandise imports for consumption.

¹⁵ ATPA was enacted in 1991 and was amended in 2002 by the Andean Trade Promotion and Drug Eradication Act (ATPDEA). ATPDEA renewed and enhanced ATPA benefits. Use of the acronym "ATPA" in this report refers to ATPA as amended by ATPDEA. ATPA and GSP are discussed in more detail in appendix of this report.

¹⁶ This is nondiscriminatory tariff treatment, which is commonly and historically called "most-favored nation" (MFN) status in international trade circles and is called "normal trade relations" (NTR) status in the United States. The two terms are used interchangeably in this report.

Between 1991 (when ATPA was signed into law) and 2005, U.S. imports from Colombia increased at a compound annual growth rate of almost 9 percent (figure 1-1). Imports—especially of apparel articles—from Colombia have increased even more rapidly since ATPA was renewed and expanded in 2002. Since the expansion of these trade preferences, U.S. imports from Colombia increased at a compound annual growth rate of approximately 13 percent between 2002 and 2005.

Based on the current U.S. tariff schedule summarized in table 1-4, 62 percent of U.S. tariff rate lines on imports from Colombia have a base rate of other than free (not including any tariff lines now eligible for ATPA or GSP duty-free entry), and 11 percent of U.S. tariff rate lines on imports from Colombia have base rates exceeding 10 percent.

Table 1-4 Applied U.S. tariff rates on imports from Colombia

Tariff base rate (percent)	Number of tariff lines	Percent of total tariff lines
0	4,038	38.0
>0 to 5	3,166	30.0
>5 to 10	2,267	21.3
>10 to 20	848	8.0
>20 to 35	208	2.0
>35	107	1.0
Total ^a	10,634	100.0

Source: *U.S.-Colombia TPA*, U.S. Tariff Schedule.

Note: Table does not reflect duty-free status available for tariff lines on imports from Colombia under ATPA or GSP.

^aTotal of 10,634 tariff lines includes 8,817 industrial and textile tariff lines and 1,817 agricultural tariff lines, as described in more detail in chap. 2 of this report. See tables 2-1 and 2-2 for summaries of U.S. tariff commitments under the TPA.

Trade Balance

The U.S. balance of trade with Colombia has moved from a surplus of \$216 million in 1998 (the most recent year in which a surplus occurred) to a record high deficit of \$3.8 billion in 2005 (figure 1-1). The U.S. trade deficit with Colombia has averaged more than \$2.8 billion annually since 1999, reflecting in part the significant share of total U.S. imports from Colombia accounted for by fuel-related products.

CHAPTER 2

Goods Market Access and Economy-Wide Analysis

The main impact of the market access provisions of the U.S.-Colombia TPA will occur through increased U.S. exports as a result of enhanced access to a more open market in Colombia. U.S. imports are not expected to grow significantly because most Colombian products already enter the U.S. market free of duty.

This chapter presents an economy-wide analysis of the potential effects of the U.S.-Colombia TPA with respect to market access for goods.¹ It begins with a summary and assessment of the tariff commitments made by the United States and Colombia in the TPA. That assessment is followed by an economy-wide analysis of the TPA. Using a general equilibrium model, the Commission estimates the potential effects of the elimination of tariffs and quotas under the agreement on the U.S. economy as a whole, including the effects on GDP, exports and imports, production, employment, the competitive position of industries, and consumers.

Summary of Assessments

Goods Market Access

The U.S.-Colombia TPA provides for the elimination of tariffs on bilateral trade in all eligible goods. As discussed in chapter 1 of this report, most U.S. exports to Colombia are subject to tariffs, while most U.S. imports from Colombia enter free of duty either unconditionally under MFN, or under ATPA, GSP, or other duty-free provisions.² Consequently, the main effect of the TPA will be associated with Colombia's tariff reductions on U.S. exports. The staging of tariff elimination varies from immediate for the majority of tariff lines to a 5- to 10-year period for most remaining tariff lines, with some agricultural TRQs phased out over periods of up to 19 years. Key goods market access provisions of the agreement are:

- **Industrial and textile tariffs:** Upon implementation of the TPA, more than 99 percent of U.S. and almost 76 percent of Colombian industrial and textile tariff lines will be free of duty. Virtually all industrial and textile tariff lines for both parties will be duty free by year 10 of the agreement.
- **Textiles and apparel provisions:** The TPA will immediately eliminate all tariffs on bilateral trade in textiles and apparel that meet the TPA rules of origin, thereby making permanent the duty-free benefits currently available under ATPA for almost all U.S. imports of Colombian apparel. The TPA will result in duty-free treatment

¹ Although most chapters of the U.S.-Colombia TPA deal with improving market access by addressing trade facilitation, investment, and regulatory environment aspects, market access provisions described in this chapter specifically refer to chaps. 2, 3, and 4 of the TPA (and related annexes and side letters).

² ATPA and GSP are described in more detail in app. F of this report.

for the first time for U.S. imports of originating textiles from Colombia and for U.S. exports of textiles and apparel to Colombia.

- **Agricultural tariffs:** More than 89 percent of U.S. and 77 percent of Colombian agricultural tariff lines are already duty free or will become duty free immediately upon TPA implementation. Virtually all in-quota agricultural tariff lines for both parties will be duty free by year 15 of the agreement.
- **National treatment and rules of origin:** The commitments on national treatment and market access are similar in form to the corresponding provisions of the multilateral trade provisions administered by the WTO. The parties agree to eliminate their customs duties on “originating goods,” unless otherwise provided, and to refrain from increasing any duty rate, imposing a new rate, or imposing or expanding performance requirements to obtain a TPA benefit.

Economy-wide Analysis

The Commission’s simulation of the economy-wide effect of tariff and quota elimination under the TPA estimates that U.S. GDP will increase by about \$2.5 billion, an increase of less than 0.05 percent. These effects are driven mainly by the removal of Colombian tariffs and the subsequent improvement in the U.S. terms of trade.

- **Tariff asymmetry:** As a result of Colombia’s status as an ATPA beneficiary, Colombian exporters generally face substantially lower tariffs in the U.S. market than do U.S. exporters in the Colombian market. With few exceptions, Colombia’s average ad valorem tariff equivalent rates in the economy-wide model range from 10 to 20 percent, whereas almost all U.S. sector average tariff rates in the model are zero or near zero, with only one exceeding 3 percent (sugar). Given this tariff asymmetry, the TPA is likely to result in a much larger increase in U.S. exports to Colombia than in U.S. imports from Colombia.
- **U.S. exports to Colombia:** Based on the results of the economy-wide model simulation, U.S. exports to Colombia are estimated to be \$1.1 billion higher with the fully implemented TPA. The largest estimated increases in U.S. exports, by value, are in chemical, rubber, and plastic products; machinery and equipment; and motor vehicles and parts. The largest estimated increases in U.S. exports, by percent, are in rice (processed and unprocessed) and dairy products.
- **U.S. imports from Colombia:** Based on the results of the economy-wide model simulation, U.S. imports from Colombia are estimated to be \$487 million higher with the fully implemented TPA. The largest estimated increases in imports, by value, are in sugar and crops not elsewhere classified (n.e.c.); the largest estimated increases in U.S. imports, by percent, are in dairy products and sugar.
- **U.S. industries:** The TPA is likely to result in minimal to no effect on output or employment for most sectors of the U.S. economy. The processed rice, cereal grains, and wheat sectors are estimated to experience the largest increases in output and employment. Only the U.S. sugar sector is estimated to register a decline of more than 0.1 percent in output or employment.

Goods Market Access: TPA Tariff Commitments

The TPA will eliminate duties on a wide range of the partner countries' originating goods immediately, while phasing out duties on other originating goods over differing transition periods and providing for preferential TRQs on certain sensitive (primarily agricultural) goods (with the exception of sugar). Many originating goods from Colombia under the TPA's rules of origin are guaranteed continued duty-free access or receive immediate duty-free entry into the United States, corresponding to the duty-free status currently available for most tariff rate lines under ATPA or GSP. The U.S. and Colombian industrial and textile and agricultural products tariff schedules (with annexes and notes) cover all goods. For the most part, U.S. tariff commitments in the TPA make permanent the duty-free entry the United States currently affords to products of Colombia under ATPA and GSP.

Tables 2-1 and 2-2 summarize the U.S. and Colombian tariff commitments.³ Of the more than 8,800 U.S. and 5,900 Colombian industrial and textile tariff lines, more than 99 percent of U.S. tariff lines and almost 76 percent of Colombian tariff lines are already free of duty or will become so immediately upon entry into force of the TPA. More than 89 percent of U.S. agricultural tariff lines and 77 percent of Colombian agricultural tariff lines are already free of duty or will become so immediately upon implementation of the TPA. While the United States has a relatively large share of tariff lines categorized as already free of duty, very few (less than 3 percent) of Colombia's industrial and textile tariff lines and none of Colombia's agricultural tariff lines are categorized as already free of duty. Because of this tariff asymmetry, the primary effects of the TPA will be improved U.S. access to the Colombian market and an increase in U.S. exports to Colombia.

Economy-wide Simulation: Effects on U.S. Imports, Exports, Employment, and Welfare

To illustrate the economy-wide effects on the United States of the TPA, the Commission estimated the effects of implementing the agreement's tariff elimination using a computational simulation of the U.S. economy. This analysis ties together many of the interrelated effects of the agreement. It shows, among other things, how increased U.S. exports to Colombia of some commodities are linked to increased U.S. imports, how industries that grow in response to increased export opportunities draw resources from other industries, and how all of these effects can be summarized in a measure of the net benefit to the U.S. economy resulting from the tariff elimination. Because of data limitations, the analysis only captures the benefits resulting from tariff elimination on goods. It does not take into account benefits that may accrue as a result of services liberalization, or as a result of the agreement's trade facilitation and regulatory provisions.

³ The market access provisions of the TPA—chap. 2 (national treatment and market access for goods), chap. 3 (textiles and apparel), and chap. 4 (rules of origin)—are summarized in app. D of this report.

Table 2-1 U.S.-Colombia TPA: Summary of industrial and textile tariff commitments

Staging	U.S. commitments (8,817 tariff lines)		Colombia commitments (5,986 tariff lines)	
	Number of lines	Percent	Number of lines	Percent
Already free of duty (MFN)	3,603 tariff lines included in 77 HS chapters	40.9	160 tariff lines included in 14 HS chapters	2.7
Immediate duty-free entry	5,176 tariff lines included in 71 HS chapters	58.7	4,383 tariff lines included in 75 HS chapters	73.2
Subtotal of already free of duty and immediate duty-free entry	8,779 tariff lines	99.6	4,543 tariff lines	75.9
Free without bond	17 tariff lines in HS chapter 98 (e.g., articles for exhibition, shows, contests, repair or testing; models; order samples)	0.2	None	0.0
5-year linear staging	None	0.0	287 tariff lines included in 31 HS chapters	4.8
5-year nonlinear staging	None	0.0	83 tariff lines included in HS chapter 48 (paper products)	1.4
7-year linear staging	None	0.0	52 tariff lines included in HS chapters 29, 32, 39, and 85 (mostly plastic products)	0.9
10-year staging	20 tariff lines included in HS chapters 16 and 64 (certain tuna and footwear products)	0.2	952 tariff lines included in 52 HS chapters	15.9
Duty free in year 10 ^a	1 tariff line included in HS chapter 98 (certain metals imported for processing to be re-exported for further processing)	0.0	69 tariff lines covering remanufactured products included in HS chapters 84, 85, and 87 (machinery and motor vehicle parts)	1.2
Total tariff lines	8,817 tariff lines	100.0	5,986 tariff lines	100.0

Source: *U.S.-Colombia TPA*, "U.S. Tariff Schedule (Industrial and Textiles)" and "Colombia Tariff Schedule (Industrial and Textiles)."

Note: U.S. tariff schedules include only 8-digit HS tariff numbers; Colombia's tariff schedules include both 8- and 10-digit HS tariff numbers. Industrial and textiles tariff schedules include fish and seafood. U.S. schedule does not reflect duty-free status available for tariff lines under ATPA or GSP. Zero values indicate less than 0.1 percent. Percent figures may not sum to 100.0 because of rounding.

^aAll industrial and textiles tariff lines are free of duty for both parties by year 10 of the agreement.

Table 2-2 U.S.-Colombia TPA: Summary of agricultural tariff commitments

Staging	U.S. commitments (1,817 tariff lines)		Colombia commitments (920 tariff lines)	
	Number of lines	Percent	Number of lines	Percent
Already free of duty (MFN)	388 tariff lines included in 31 HS chapters	21.4	None	0.0
Immediate duty-free entry	1,233 tariff lines included in 33 HS chapters	67.9	713 tariff lines included in 33 HS chapters	77.5
Subtotal of already free of duty and immediate duty-free entry	1,621 tariff lines	89.3	713 tariff lines	77.5
Immediate duty-free entry or as of Jan. 1, 2009, whichever is later	None	0.0	1 tariff line included in HS chapter 10 (barley)	0.1
3- to 5-year linear staging	2 tariff lines, both 5-year linear, included in HS chapter 51 (processed fine animal hair such as cashmere)	0.1	112 tariff lines included in 16 HS chapters	12.2
8- to 10-year linear and nonlinear staging	9 tariff lines, all 10-year linear, included in HS chapters 04, 07, 20, and 51 (milk and cream, olives, and wool products)	0.5	28 tariff lines included in HS chapters 02, 04, 07, 11, 16, 17, 20–23, and 35 (including beef, lentils, fructose, and glucose) (2.9 percent)	2.9
12- to 15-year linear and nonlinear staging	35 tariff lines, all 15-year linear, included in HS chapters 04, 12, 18, 20, 22, and 23 (milk and dairy, peanuts, cocoa and chocolate, and rum and tafia products)	1.9	6 tariff lines included in HS chapters 10 and 17 (corn and sugar products)	0.7
Tariff-rate quotas	150 tariff lines included in HS chapters 02, 04, 15, 17–19, 21, 22, and 24 covering milk and dairy, beef, tobacco, and sugar products; in-quota items are free of duty; TRQs are liberalized over 10–15 years and ended thereafter, except for sugar	8.3	60 tariff lines in HS chapters 02, 04, 05, 07, 10, 15–17, 19, 21, and 23 covering milk and dairy products, corn, sorghum, rice, beans, soybean, sugar, glucose, pet and animal food, chicken, beef, and variety meat products; in-quota items are free of duty; TRQs are liberalized over 8–19 years and ended thereafter	6.5
Total tariff lines	1,817 tariff lines	100.0	920 tariff lines	100.0

Source: U.S.-Colombia TPA, "U.S. Tariff Schedule (Agriculture)" and "Colombia Tariff Schedule (Agriculture)."

Note: U.S. tariff schedules include only 8-digit HS tariff numbers; Colombia's tariff schedules include both 8- and 10-digit HS tariff numbers. U.S. schedule does not reflect duty-free status available for tariff lines under ATPA or GSP. Percent figures may not sum to 100.0 because of rounding.

Analytical Framework

Results of the Commission's analysis of the possible economy-wide effects of the removal of tariffs and TRQs under the TPA include a number of measures of U.S. economic activity, including the possible effects on U.S. exports, imports, production, and employment. The method chosen for quantitative analysis is a CGE simulation. The specific CGE model used for this analysis is the GTAP model, described more fully in appendix G. The model reflects domestic economic activity and trade patterns for multiple regions of the world economy and for multiple products produced in those regional economies.

The use of a CGE model permits the Commission to measure the possible incremental effect of negotiated TPA tariff and quota elimination on exports and imports, aggregate economic sectors, and labor markets. The model estimates the effects of a simplified version of the agreement on an economy that resembles a U.S. economy in 2007. In its standard configuration, the GTAP model begins with data reflecting conditions in 2001, but for the present analysis the standard model has been modified, as described in appendix G. The model describes production and trade in 56 aggregate industry sectors, including 42 merchandise sectors and 14 service sectors.

Understanding the model's role in providing estimated marginal effects is essential in accurately interpreting its results. For example, a negative effect, such as a decrease in a commodity price or decrease in a sector's output, does not imply that the overall value will be negative as a result of the TPA. Rather it implies that the marginal effect of the TPA could be to accelerate or suppress existing economic trends.⁴ Additional information for interpreting the model results is presented in box 2-1. It is important to note, however, that model results reflect long-term adjustments to supply, demand, and resource allocations to the TPA. The model does not consider interim effects that might be felt as different provisions of the agreement enter into force, nor does it consider various adjustment costs (such as temporary unemployment or changes in asset prices) that may occur over time. The model results are not intended as a forecast of what will happen to trade and output in 2007, or after full implementation of the TPA. Rather, they are estimates of the marginal effect on the economy, relative to the constructed baseline, of the removal of tariffs specified in the TPA. The model is static, not dynamic, and therefore does not reflect overall growth in the U.S. economy.

Appendix table G-2 reports current average ad valorem tariff equivalents (AVEs) for aggregate industry sectors.⁵ While most of Colombia's average AVEs for imports from the United States range from 10 to 20 percent, most of the U.S. average AVEs for imports from Colombia are zero (due in part to ATPA and GSP preferences already received by Colombia), with only two—dairy products, 16.5 percent, and sugar, 38.1 percent—exceeding 3 percent. This tariff asymmetry drives most of the estimated effects of the TPA.

The specific policy assumptions are that the bilateral tariffs listed in appendix table G-2 are all reduced to zero,⁶ with the exception of restrictions on U.S. imports of sugar from Colombia. In the case of sugar, the policy simulated is an increase of 200 percent in U.S. import quota quantity from Colombia, approximating the increase in U.S. sugar imports from Colombia over the first 15 years of the agreement. In addition, the Commission did not explicitly model the effect of rules of origin. The model includes assumptions that limit the extent to which commodities (including inputs) from different countries can be substituted for each other, which is consistent with rules of origin. However, such rules may cause import effects to be lower than those modeled in some cases.

⁴ In addition, the model results presented in the discussion below depend on a wide array of assumptions about the economic structure and relationship of variables (parameters) in the model. Altering these variables, and the underlying assumptions they reflect, would change the resulting estimated effects.

⁵ The U.S. AVE tariffs for some Colombian products such as sugar and dairy products include the estimated effect of TRQs. Colombian AVE tariffs on some U.S. agricultural products include the effects of agricultural price support programs.

⁶ In the policy scenario that is presented, it is assumed that ATPA preferences for Bolivia and Ecuador will expire upon implementation of the U.S.-Colombia TPA, and that the U.S.-Peru TPA is fully implemented.

Box 2-1 Interpreting the model results

The analysis uses an economic model that compares a depiction of a world in equilibrium without a U.S.-Colombia TPA to a world in equilibrium with the TPA. The latter situation is a world in which the TPA is fully implemented, all markets have fully adjusted to it, and all other things are held equal.

The Commission recognizes that the model used in this investigation reflects, among other things, the underlying data in the analysis. While the Commission adjusts the base data as much as possible, inevitably such data may not fully account for certain industry trends. In addition, the model does not show the adjustment path the economy might take in moving from the pre-TPA condition to the post-TPA condition. It is comparative static model that portrays the effects of a fully-implemented TPA in the year 2007. It maintains a balance in the factors of production—labor, capital, and natural resources—so that if some sectors expand and need more labor, other sectors must contract and release that much labor. In contrast, in the real world there is a dynamic process of adjustment to the policy changes inherent in a trade agreement. In growing economies, the expansion of certain sectors does not require the absolute contractions of other sectors, and the overall supply of labor may increase or resources may remain unemployed.

In addition, the model's depiction of industry sectors is highly aggregated—for example, it does not portray sufficient detail to show the cut flowers industry (which is part of “other crops”). Nor does it incorporate the myriad of world events or economic trends that could counter or enhance the estimated effects of this analysis. For instance, it does not take into account numerous factors such as the effect of increasing demand on commodity markets, changes in interest rates, or other factors that may affect the expansion or contraction of sectors.

Results identified in the analysis are illustrative. They are useful for showing the direction of sectoral change and factor movement in a world in which trade policy changes and in which these changes work their way through the interlinked sectors of the economy, but nothing else besides the policy change is having an independent effect on the economy. The results are not a forecast of what will actually occur. They are best interpreted in the context of actual domestic and international economic trends. For example, the substantial reduction of Colombian tariffs on U.S. goods means Colombia will import more from the United States. To pay for this, Colombia must acquire more foreign exchange. It must either borrow more (or receive more foreign investment) or it must export more to earn foreign currency. The simulation model, focused on trade, assumes most of the foreign exchange comes from increased exports as opposed to increased investment. Furthermore, much of the increase in Colombia's imports from the United States comes as imports are diverted from other countries that do not receive the preferential liberalization of duties on their products in the Colombian market. These products, formerly imported by Colombia, must find new buyers in the world market and exert downward pressure on their world market prices. The model captures this price effect and, untouched by actual global trends, calculates the effect of a drop in world prices on terms of trade and U.S. imports.

The effect of removing import barriers related to services was not estimated in this simulation. The reported changes in trade and output in services arise from secondary (general equilibrium) effects, including trade balance effects, changes in demand for services by other sectors, and changes in supply of services resulting from the reallocation of labor and capital resources to other sectors that are growing more strongly as a result of the policy changes. Thus, while the reported results for services sectors reflect effects of some parts of the TPA, they are indirect effects, and do not result from TPA-negotiated policy changes in services trade. A detailed discussion of the changes in trade in services that might be expected from provisions of the TPA is presented in chapter 4 of this report. The model analysis presented in this section does not consider effects of all provisions of the TPA discussed elsewhere in this report; for example, it does not consider changes in the investment or regulatory environments in Colombia because of the lack of data on the scope of these changes that can be incorporated into the model.

Simulation Results

Table 2-3 presents the simulated welfare and GDP effects of tariff and TRQ elimination under the TPA.⁷ The change in economic welfare provides a measure of the comprehensive effect of the simulated TPA. It summarizes the benefits to consumers, as well as the effects on households in their roles as providers of labor, owners of capital, and taxpayers. The

⁷ Unlike the change in welfare, measures of changes to GDP include both price and quantity changes.

Table 2-3 U.S.-Colombia TPA: Simulated effects of trade liberalization on U.S. welfare and GDP (relative to projected 2007 baseline)

Indicator	Change	
	<i>Million dollars</i>	<i>Percent</i>
Welfare	419	0.0
Efficiency ^a	15	0.0
Terms of trade ^b	403	0.0
GDP	2,539	0.0
Payments to factors		
Land	46	0.2
Unskilled labor	924	0.0
Skilled labor	645	0.0
Capital	956	0.0
Natural resources	-18	-0.1

Source: Commission calculations and GTAP version 6.1.

Note: Zero values indicate values less than 0.05 percent in absolute value.

^aGain in efficiency as a result of the removal of market distortions due to tariffs.

^bEffect of the decrease in average import prices relative to average export prices.

Commission simulation of these components of the TPA estimates that the welfare value to the United States of the tariff and quota elimination under the TPA to be \$419 million, significantly less than 0.05 percent of projected U.S. GDP in 2007. This effect can be interpreted as stating that, when fully implemented, the removal of tariffs and quotas specified in the TPA will provide annual benefits to U.S. consumers worth \$419 million in the economy of 2007.⁸ As a result of this tariff removal, U.S. GDP will be higher by approximately \$2.5 billion (or by less than 0.05 percent).

The analysis decomposes the change in welfare into changes resulting from efficiency gains and changes resulting from the relative price of imports and exports.⁹ Efficiency gains are the gain to the economy as a result of removing distortions imposed by taxes, tariffs, or subsidies on particular activities, which cause those activities to be engaged in or avoided in ways that are economically inefficient. The model finds a small allocative efficiency gain.

The model depicts a \$403 million welfare gain resulting from changes in the relative world prices of exports and imports. A gain means that the price of a country's exports increases relative to the price of its imports. In this case, this effect is a result of a slight upward pressure on the prices of products exported by the United States, particularly wheat and cereal grains, as a result of increased demand from Colombia, as well as downward pressure on the prices of products imported by the United States resulting from a combination of the elimination of some U.S. tariffs, and more significantly, from a downward pressure on the world price of many items Colombia imports from other countries, as Colombia imports more of these products from the United States.

⁸ This welfare measure is often referred to as the "equivalent variation."

⁹ This effect is known as a "terms of trade effect."

As a result of the removal of tariffs specified in the TPA, payments in the United States to land owners are higher by \$46 million, an increase of about 0.2 percent (mainly reflecting the increase in production of grains). Payments to unskilled labor and skilled labor are higher by \$924 million and \$645 million, respectively. Payments to capital owners are higher by \$956 million. Payments for natural resource owners are lower by \$18 million, reflecting slight declines in output for various energy sectors.

Estimated Changes in Trade Flows

The tariff asymmetry between the United States and Colombia suggests that the TPA is likely to result in a much greater increase in U.S. exports to Colombia (because of the effect of reducing Colombia's relatively higher trade barriers) than in U.S. imports from Colombia (because the U.S. economy is already relatively open to Colombia's imports).

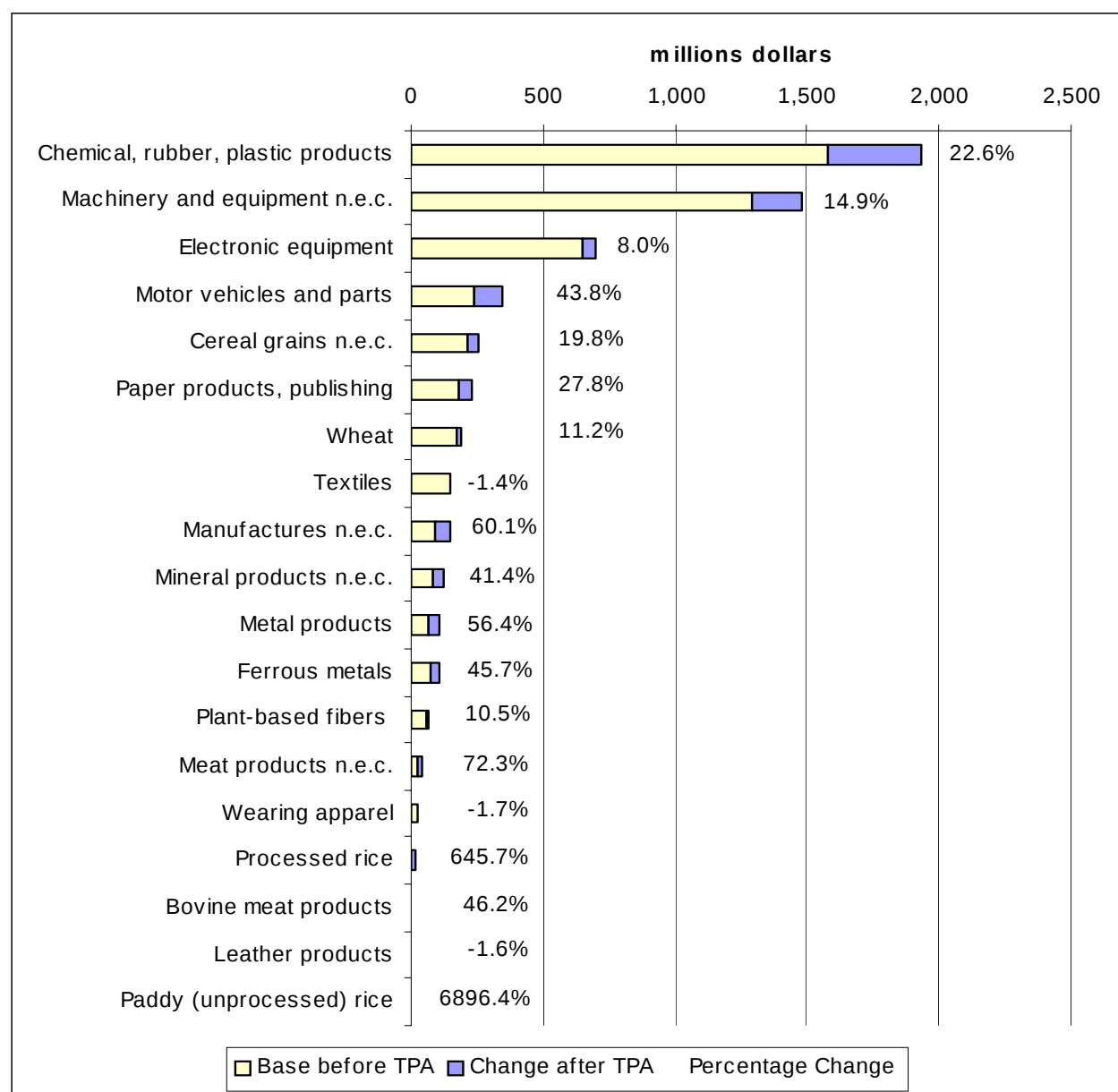
Figure 2-1 and table 2-4 show the simulated changes in U.S. exports to Colombia for selected sectors as a result of the immediate removal of the tariffs specified in the TPA (see appendix table G-3 for results for all model sectors). The trade effects are reported on a landed, duty-paid value basis, relative to the projected 2007 base, and thus reflect changes in the value of trade including tariff payments. U.S. exports to Colombia are estimated to be \$1.1 billion higher with the fully implemented TPA. U.S. imports from Colombia are estimated to be \$487 million higher with the fully implemented TPA.

In general, the sectors facing the highest tariffs are the ones experiencing the greatest effects of eliminating the tariffs. As shown in table 2-4, the largest increases in U.S. exports to Colombia, by value, as a result of the TPA tariff and quota elimination are in chemical, rubber, and plastic products and in machinery and equipment (\$357 million and \$191 million, respectively), with substantial increases in motor vehicles and parts, electronic equipment, manufactures n.e.c., paper products, metal products, mineral products n.e.c., ferrous metals, and wheat (see appendix table G-3 for data on effects for all sectors). As has been noted, the high level of tariff protection on many of Colombia's products suggests that the removal of tariffs under the TPA would have significant effects on Colombia's imports from the United States. Many of these increases in U.S. exports, such as those in processed and unprocessed rice, represent changes from small initial levels.¹⁰ In other cases, moderate increases in exports represent large percentage changes because of the reduction of high levels of protection.

In textiles, apparel, and leather products, U.S. exports to Colombia are already virtually free of duty, with most entering Colombia either into duty-free export processing zones or with duty drawback provisions under production sharing arrangements (these provisions are

¹⁰ As discussed in app. G of this report, changes in the variables are calculated as percentage deviations from the baseline data, and are quite stable with respect to changes in the baseline. For rice, the model indicates that very high proportional increases in U.S. exports to Colombia might be expected, started from negligible initial levels. Because Colombia currently prohibits nearly all rice imports (and would permit imports under the TPA) and because the model does not neglect this ban, it is likely that TPA will lead to somewhat higher increases in U.S. exports than are reflected in the model. See the partial equilibrium results in chap. 3 of this report. Based on the Commission's sector-specific assessment, U.S. rice exports to Colombia are likely to increase from 4,000 mt, valued at \$1 million in 2005, to volumes valued at \$110 million to \$200 million annually as a result of tariff elimination under the TPA (an increase of 11,000 to 20,000 percent).

Figure 2-1 U.S.-Colombia TPA: Simulated effects on U.S. exports to Colombia in selected sectors (landed, duty paid) from a projected 2007 baseline



Source: Commission calculations and GTAP version 6.1.

Note: See app. table G-3 for data on effects for all sectors.

Note: The results of the sector-specific analysis presented in chap. 3 of this report differs from the GTAP model results for textiles and for paddy (unprocessed) rice.

Table 2-4 U.S.-Colombia TPA: Simulated effects on U.S.-Colombia bilateral trade for selected sectors,^a from a projected 2007 baseline

GTAP sector	U.S. exports to Colombia ^b			U.S. imports from Colombia		
	Base before TPA	Change after TPA		Base before TPA	Change after TPA	
	Million dollars		Percent	Million dollars		Percent
Paddy (unprocessed) rice	0	1	6,896.4	0	0	12.5
Wheat	170	19	11.2	0	0	0.0
Cereal grains n.e.c.	211	42	19.8	0	0	14.5
Vegetables, fruit, nuts	26	8	31.6	193	8	3.9
Sugar cane, sugar beet	0	0	0.0	0	0	5.4
Plant-based fibers	60	6	10.5	0	0	5.7
Crops n.e.c.	14	3	18.5	1,414	73	5.2
Oil	0	0	-0.7	2,969	51	1.7
Bovine meat products	6	3	46.2	1	0	33.1
Meat products n.e.c.	23	16	72.3	33	4	13.4
Dairy products	4	5	110.2	3	5	188.6
Processed rice	2	14	645.7	0	0	10.2
Sugar	1	1	97.3	73	105	142.7
Textiles	152	-2	-1.4	144	0	0.0
Wearing apparel	26	0	-1.7	676	0	0.0
Leather products	7	0	-1.7	58	0	0.0
Paper products, publishing	180	50	27.9	101	8	8.4
Chemical, rubber, plastic products	1,575	357	22.6	104	26	24.6
Mineral products n.e.c.	86	36	41.4	384	24	6.2
Ferrous metals	73	33	45.7	188	15	7.8
Metal products	69	39	56.4	117	12	10.4
Motor vehicles and parts	241	106	43.8	14	2	10.7
Electronic equipment	646	51	8.0	2	0	14.6
Machinery and equipment n.e.c.	1,289	191	14.9	140	19	13.2
Manufactures n.e.c.	90	54	60.1	169	19	11.1
Other sectors	2,765	28	1.0	2,056	118	5.7
Total	7,714	1,060	13.7	8,840	487	5.5

Source: Commission calculations and GTAP version 6.1.

Note: Benchmark tariffs include tariff equivalents of agricultural TRQs facing both U.S. and Colombian imports. The abbreviation "n.e.c." stands for "not elsewhere classified." Zero values for million dollars indicate values less than \$500,000. Zero values for percent indicate values less than 0.05 percent in absolute value. See app. table G-3 for a list of effects for all sectors.

^aOn a landed, duty-paid basis.

^bData represent Colombian imports from the United States.

^cColombia's tariff on unprocessed and processed rice were adjusted to account for Colombia's domestic price support programs.

^dTreatment of sugar and sugar-containing products is discussed in more detail in chapter 3 of this report. In the model analysis, the U.S. duty on imports of sugar from Colombia was not directly removed, but rather the quota level was adjusted.

^eColombia's tariffs on textiles, apparel, and leather products were adjusted for the duty-free treatment accorded to most of Colombia's imports of those goods.

discussed in more detail in chapter 3).¹¹ Because most U.S. exports to Colombia benefit from larger tariff reductions under the TPA than do textiles and apparel, the domestic price in Colombia of imported textile products would rise relative to the other imports. Therefore, U.S. exports of textiles, apparel, and leather products might decline slightly. The static model does not include effects of the agreement on these industries that might derive from long-term increases in investment, or other benefits that the Colombian sectors may gain from the agreement.

Table 2-4 shows that the largest increase in U.S. imports from Colombia in value terms is in sugar (an increase of \$105 million, or 142.7 percent), which would benefit from an expansion of the U.S. quota under the TPA. U.S. imports of crops n.e.c. (which includes coffee and cut flowers) from Colombia would increase by \$73 million, or 5.2 percent. Other increases are in chemical, rubber, and plastic products (\$26 million, or 24.6 percent), oil (\$51 million, which is only a 1.7 percent increase), and dairy products (which currently face a high U.S. tariff, increasing by 188.6 percent from a very small base). Textile and apparel imports would remain relatively constant, reflecting both the low duty they face in the United States prior to the TPA, and the slight decrease in imports from the United States of goods used as inputs to produce Colombia's exports to this country. Rules of origin are likely to limit Colombia's ability to export goods made from third country imports under provisions of the TPA.

The effect of the removal of the tariffs specified in the TPA on total U.S. trade by sector for selected sectors is reported in appendix table G-4. Total U.S. imports of crops n.e.c. (including cut flowers and coffee) increase by \$10 million, which means that a large share of the increase in imports from Colombia (\$73 million) is diverted from imports from other countries. In particular, in part because of the assumption that Bolivia and Ecuador lose ATPA preferences at the time that the U.S.-Colombia TPA is implemented, there would likely be diversion of U.S. imports of these crops from Ecuador.¹² Trade diversion in imports of sugar and oil also occurs.

Aggregate U.S. trade with the world may increase by a small amount as a result of the increased market access under the TPA. The last row in appendix table G-4 reports the simulated changes in total U.S. trade in sectors analyzed in this simulation. Total U.S. exports of these commodities are estimated to increase by \$645 million, and total U.S. imports of these commodities in this analysis are estimated to increase by \$711 million, an increase of less than 0.05 percent increase in both cases. It should be noted that, without a full analysis of services trade and international investment patterns beyond the scope of this report, these should not be interpreted as changes in total imports and exports, or as implying meaningful information about the overall balance of trade.

¹¹ Duty drawback is a refund of duties paid on inputs imported into a country and incorporated into goods for export. Colombia's imports of U.S. materials are currently eligible for duty drawback upon exportation of the finished goods from Colombia to the United States. As is stated in the section on "Textiles and Apparel" in chap. 3 of this report, although duty drawback and rules of origin requirements are important in estimating the potential effect of the TPA on U.S. bilateral textile and apparel trade with Colombia, they are not comprehensively incorporated into the CGE model. As a result, the model may overestimate the marginal effects of tariff elimination in this sector.

¹² The possibility of increased investment in Colombia's cut flower industry, and disinvestment in Ecuador's flower industry, is discussed in more detail in the section on "Cut Flowers" in chap. 3 of this report.

U.S. Gross Output and Employment Effects

Full implementation of the TPA may result in expansion of those U.S. industries that experience higher export demand as a result of Colombia's removal of tariffs on imports from the United States. In addition, the reallocation of resources to goods that are given preferential import treatment into the United States may cause the output of other U.S. industries to be lower. However, as is suggested by the percentage changes for total U.S. sectoral trade in appendix table G-4, these changes are likely to be very small. According to the model estimates, there is likely to be minimal to no effect on output or employment for most sectors in the U.S. economy. As shown in table 2-5, the sectors with the biggest proportional output gains are processed rice, cereal grains n.e.c., and wheat (see appendix table G-5 for data on the effects for all sectors).

The sectors exhibiting the largest increases are processed rice, cereal grains, and wheat, with output quantity increases of 0.4, 0.3, and 0.2 percent, respectively; revenue increases of 0.5, 0.3, and 0.3 percent, respectively, and labor increases of 0.4, 0.3, and 0.2 percent, respectively. As discussed in chapter 3 of this report, U.S. rice exports will benefit from the removal of Colombia's prohibitive tariff and increase from a very small base; wheat and grain exports will benefit immediately from the elimination of Colombia's tariffs, and U.S. exports could displace Argentine and Canadian grain products in the Colombian market.

Two sectors show a decline of more than 0.1 percent in output, revenue, or employment—sugar cane and sugar beets, and sugar. These estimates are consistent with the increase in imports of these products from Colombia. As discussed in chapter 3, Colombia is already a net exporter of sugar and is likely to meet the net exporter provisions of the TPA.¹³

¹³ In order for its exports of sugar to benefit from liberalization under the TPA, Colombia must be a net exporter of sugar—it must export more sugar than it imports. This is to ensure that Colombia does not, in essence, re-export products of other countries under its TPA preferences.

Table 2-5 U.S.-Colombia TPA: Simulated effects on U.S. output and employment for selected sectors, from a projected 2007 baseline

GTAP sector	Output		Labor quantity	
	Quantity	Revenue	Skilled	Unskilled
	Percent changes			
Paddy (unprocessed) rice	0.0	0.1	0.0	0.0
Wheat	0.2	0.3	0.2	0.2
Cereal grains n.e.c.	0.3	0.3	0.3	0.3
Vegetables, fruit, nuts	-0.1	0.0	-0.1	-0.1
Sugar cane, sugar beet	-0.3	-0.2	-0.3	-0.3
Plant-based fibers	0.0	0.1	0.1	0.1
Crops n.e.c.	-0.1	-0.1	-0.1	-0.1
Oil	0.0	0.0	0.0	0.0
Bovine meat products	0.0	0.0	0.0	0.0
Meat products n.e.c.	0.0	0.0	0.0	0.0
Dairy products	0.0	0.0	0.0	0.0
Processed rice	0.4	0.5	0.4	0.4
Sugar	-0.3	-0.3	-0.3	-0.3
Textiles	0.0	0.0	0.0	0.0
Wearing apparel	0.0	0.0	0.0	0.0
Leather products	0.0	0.0	0.0	0.0
Chemical, rubber, plastic products	0.0	0.1	0.0	0.0
Motor vehicles and parts	0.0	0.0	0.0	0.0
Electronic equipment	0.0	0.0	0.0	0.0
Machinery and equipment n.e.c.	0.0	0.0	0.0	0.0
Manufactures n.e.c.	0.0	0.1	0.0	0.0

Source: Commission calculations and GTAP version 6.1.

Notes: The abbreviation "n.e.c." stands for "not elsewhere classified." Zero values for percent indicate values less than 0.05 percent in absolute value. See app. table G-5 for a list of effects for all sectors.

CHAPTER 3

Sector-specific Assessments

This chapter discusses the effect of the market access provisions of the U.S.-Colombia TPA on specific U.S. sectors. It builds on the analysis using the CGE model in the previous chapter by analyzing the impact of both the immediate and the phased elimination of tariffs and TRQs on a more narrowly defined specific sectoral basis. The chapter focuses on meat (beef and pork); grain (wheat, rice, and corn); soybeans, soybean products, and animal feeds; chemical, rubber, and plastic products; machinery, electronics, and transportation equipment; textiles and apparel; sugar and sugar-containing products; and cut flowers.¹

Summary of Assessments

Although the TPA will likely result in increased U.S. exports of specific products to Colombia, the agreement is not expected to have a large effect on total U.S. exports or production for any given sector because of the small size of the Colombian market relative to total U.S. trade and production. The TPA will likely have little impact on U.S. imports because most imports from Colombia currently enter the United States free of duty under ATPA, GSP, or other U.S. provisions, and because Colombia generally is a relatively small U.S. import supplier. Key findings from the Commission's sectoral analyses are:

- **Meat:** The TPA will likely result in increased U.S. meat exports to Colombia, although any positive impact on U.S. industry would be very small. U.S. beef exports to Colombia could increase by \$3 million (46.2 percent) and other meat products, which includes pork, could increase by \$16 million (72.3 percent) as a result of tariff elimination under the TPA. U.S. meat exports will further benefit from the removal of a number of Colombian nontariff barriers, such as discretionary licensing procedures, and resolution of outstanding sanitary and phytosanitary issues. The TPA also could result in increased U.S. meat imports from Colombia, although any increase in imports from Colombia is unlikely to have a significant adverse impact on the U.S. beef and pork industries because Colombia is not currently certified to export fresh, chilled, or frozen beef or pork to the United States.

¹ Sectors were selected for analysis according to a number of criteria, including the importance of the sector or key sector components in terms of bilateral trade, the extent of trade liberalization under the TPA, the potential for increased bilateral trade as a result of the TPA, and industry and Commission views regarding the TPA commitments or the U.S.-Colombia trade relationship in that sector. The assessments in this chapter are based on industry knowledge and expertise of USITC industry analysts, industry reports and interviews with industry contacts, reports by U.S. industry and functional trade advisory committees on the TPA, testimony at the Commission's public hearing for this investigation, and written submissions received in response to the Commission's *Federal Register* notice of institution for this investigation.

- **Grain:**² The TPA will likely result in significantly higher U.S. grain exports to Colombia over the long term, but with a relatively small positive impact on U.S. industry. U.S. grain exports to Colombia could increase by an estimated 55–77 percent above the \$339 million exported to Colombia in 2005 as a result of the increased market access afforded by the TPA through tariff removal, TRQ phase out, removal of Colombian government support measures, and removal of competitive disadvantages vis-à-vis other grain suppliers to the Colombian market. More than two-thirds of the expected additional U.S. grain exports to Colombia will likely consist of rice, with the remainder mostly yellow corn and small amounts of wheat. The TPA is likely to have a small effect on total U.S. grain exports to the world, which are estimated to increase by only 1–2 percent as a result of the TPA.
- **Soybeans, soybean products, and animal feeds:** The TPA will likely result in increased exports of U.S. soybeans, soybean products, and animal feeds, with a relatively small positive impact on U.S. industry. U.S. exports of these products could increase by 30–50 percent above the \$116.2 million exported to Colombia in 2005 as a result of the immediate or phased removal of Colombian tariffs on these U.S. exports. U.S. exports will further benefit from Colombia’s commitment to remove government support measures for directly competing soybeans and soybean products and eliminate other measures that act as a disadvantage to U.S. exports in the Colombian market.
- **Chemical, rubber, and plastic products:** Tariff elimination under the TPA will likely result in increased exports of U.S. chemical, rubber, and plastic products to Colombia. This will particularly benefit U.S. companies that manufacture chemicals used as raw materials in the production of plastics.
- **Machinery, electronics, and transportation equipment:** U.S. exports of machinery and equipment to Colombia will likely increase as a result of the immediate or phased tariff elimination under the TPA. U.S. exports will also benefit from the nontariff market access provisions of the TPA, most notably the elimination of Colombia’s restrictions on imports of U.S. remanufactured goods. The TPA will increase market access opportunities for exports of U.S. motor vehicle parts, oil and gas equipment, construction and mining equipment, pollution control equipment, power generation equipment, radiology equipment, food and beverage processing equipment, and information technology equipment.
- **Textiles and apparel:** Tariff elimination under the TPA will likely result in a small increase in U.S. exports of textiles and apparel to Colombia, consisting mostly of inputs used in the production of apparel exported to the United States. Tariff elimination under the TPA also will likely result in a minor increase in U.S. imports of textiles and apparel from Colombia. However, by making permanent benefits already provided under ATPA and thereby enhancing investor confidence, the TPA could encourage additional investment in the Colombian textile and apparel sector

² In this chapter, the Commission used a partial-equilibrium analysis to estimate the impact of the U.S.-Colombia TPA on U.S. grain (wheat, rice, and corn) exports to Colombia. The partial-equilibrium estimates for wheat and corn are consistent with the estimates from the CGE model discussed in chap. 2 of this report. The partial-equilibrium estimates for rice differ from the CGE estimates because of the way the CGE model treats the very small baseline level of U.S. rice exports to Colombia. The partial-equilibrium estimates are discussed in more detail below; the CGE model estimates are discussed in chap. 2 and in app. G.

that could result in additional increases in Colombian production and increased U.S. imports of textiles and apparel.

- **Sugar and sugar-containing products:** Although Colombia is expected to fill its new sugar TRQ, tariff elimination and quota expansion under the TPA are likely to have a minor effect on U.S. imports and production of sugar and sugar-containing products.
- **Cut flowers:** The TPA will likely not affect the current levels of U.S. imports of fresh cut flowers from Colombia. However, by making permanent duty-free treatment for Colombian flowers already provided under ATPA, the TPA could encourage additional investment in the Colombian flower sector that could result in increased availability of cut flowers from Colombia in the U.S. market.

Meat (Beef and Pork)

Assessment

The U.S.-Colombia TPA will likely result in increased U.S. meat (beef and pork)³ exports to Colombia, although any positive impact on U.S. industry will likely be small because of the small size of the Colombian market relative to total U.S. meat exports. U.S. meat exports will benefit from the removal of a number of Colombian tariff and nontariff barriers under the TPA, such as the removal of high and variable tariffs, including price band duties on pork items (box 3-1); elimination of discretionary licensing procedures; and resolution of outstanding sanitary and phytosanitary (SPS) issues.

The TPA also will likely result in increased U.S. meat imports from Colombia, although any increase in imports from Colombia is unlikely to have a significant adverse impact on the U.S. cattle and beef industries or the U.S. swine and pork industries at least in the short term because of U.S. sanitary restrictions and the fact that Colombia does not currently have any slaughter or processing facilities that are eligible to export meat to the United States.⁴

Impact on U.S. Exports

The Commission's CGE model described in chapter 2 of this report estimates that U.S. beef exports to Colombia would increase by \$3 million (46.2 percent)⁵ and exports of other meat products, which include pork, would increase by \$16 million (72.3 percent)⁶ as a result of tariff elimination under the TPA (appendix table G-3). Given the small size of the Colombian market relative to total U.S. production and exports, the tariff elimination under the TPA will likely have a positive but small effect on the U.S. beef and pork industries, with increases in U.S. output, revenue, and labor of less than one-half of one percent (appendix table G-5).

³ This section primarily covers beef, beef variety meats, pork, and pork variety meats classified in chaps. 2, 5, and 16 of the HTS.

⁴ USDA, FSIS, *Eligible Foreign Establishments*.

⁵ This GTAP model sector is "bovine meat products."

⁶ This GTAP model sector, "meat products n.e.c.," includes both pork and poultry items.

Box 3-1 Colombia's price band system

Colombia is a member of the Andean Community (described in more detail in appendix E of this report) and applies the Andean common external tariff (CET) on non-Andean products. In addition to the basic CET, Andean Community members assess a variable ("price band") surcharge on sensitive agricultural commodities. The price band system applies to imports of non-Andean poultry, pork, dairy, barley, wheat, sorghum, corn, sugar, and rice.

Under the price band system, variable monthly duties, which may be positive or negative, are imposed on top of ad valorem tariffs to keep domestic prices within a predetermined range. Reference prices are established for each commodity and adjusted every 2 weeks. A floor price and a ceiling price are established annually for each commodity, thus creating a price band around each commodity reference price. When the reference price falls within the floor and ceiling price band, the import duty is calculated by applying the CET to the reference price. When the reference price falls below the floor price, a variable levy, or surcharge, is applied in addition to the CET. When the reference price rises above the ceiling price, a reduction is made to the CET. The purpose of the price band is to mitigate fluctuations in the changes in global prices on Colombian producers and consumers.

Upon implementation of the U.S.-Colombia TPA, U.S. imports will no longer be subject to the rates of the Colombian price band system. However, if the rates under the price band system result in a lower rate than that given under the TPA, the United States will be allowed to import under the lower rates.

Sources: USDA, FAS, "Colombia: Trade Policy Monitoring."

Tariff elimination under the TPA will likely lower prices for Colombian meat, thereby increasing demand for U.S. beef and pork. Colombia historically has had a high degree of self-sufficiency in beef and pork production. Between 2001 and 2005, Colombian beef production averaged 705,000 metric tons (mt) annually, while consumption averaged 698,000 mt,⁷ and Colombian pork production averaged 113,000 mt annually compared with consumption of 116,000 mt.⁸

Factors that could not be explicitly considered by the Commission's CGE model are also likely to further benefit U.S. beef exports to Colombia. For example, USDA Prime and Choice beef, currently subject to Colombia's 80 percent tariff, will receive duty-free treatment upon implementation of the TPA.⁹ U.S. beef exports graded USDA Prime and Choice are likely to be initially targeted at Colombia's rapidly expanding hotel and restaurant sector.¹⁰ While this initially creates a market that may be dependent upon tourism services, it is also expected to create a market opening among upper- and middle-income Colombian consumers, creating local demand for grain-fed beef, which is expected to expand as local incomes increase. The TPA will allow U.S. beef to be priced competitively

⁷ Carcasses weight equivalent. FAO, *June 2006 Meat Market Assessment and Meat Statistics*.

⁸ Ibid.

⁹ U.S. Prime and Choice beef tend not to compete directly with domestic Colombian production or imports from other regional suppliers. Prime and Choice beef are typically produced from grain-fed young animals, while local and regional production tends to be produced primarily from grass-fed animals of varying ages. Colombian consumers historically have had limited access to U.S. grain-fed beef, but are familiar with it from local and regional production. USDA, "Colombia HRI Food Service Sector."

¹⁰ Colombia's hotel and restaurant sector recently has grown at the rate of 6 percent annually as increased security has contributed to an increase in tourism and domestic away-from-home consumption. Ibid., and Gómez, hearing transcript, 95.

with comparable cuts of beef from the Mercosur countries, Colombia's other beef suppliers, and will help develop a local market for grain-fed beef in Colombia.

The Commission's CGE model also does not explicitly show the benefits to U.S. producers of the phase-in periods of beef TRQs under the agreement. The TPA will allow immediate duty-free exports of up to 2,100 mt of standard quality U.S. beef (currently subject to Colombia's 80 percent tariff) and 4,642 mt of U.S. beef variety meats (currently subject to tariffs of 70 to 80 percent).¹¹ U.S. standard quality beef and beef variety meats are most likely to fill increased demand for home consumption from low- and moderate-income consumers. At current import unit values, these TRQs would be valued at up to \$16.3 million during the first year after implementation of the agreement. The standard quality beef TRQ grows at 5.0 percent annually and the variety meat TRQ grows at 5.5 percent annually, increasing the potential value of U.S. exports under these TRQs at current import unit prices to \$24.6 million by 2015.¹² The effect of the variety meat TRQ is especially significant to U.S. producers because, if not exported, these items have very low U.S. domestic demand for consumption, and have much lower values in alternative domestic uses, such as pet food.

The Commission's CGE model also does not reflect the impact of the resolution of longstanding SPS issues. U.S. beef exports to Colombia will likely further benefit from side letters to the TPA that provide for the removal of Colombia's ban on U.S. beef exports related to bovine spongiform encephalopathy (BSE). As of November 3, 2006, Colombia had fulfilled the obligation to open its market to U.S. beef exports.¹³ By removing Colombia's import ban and reducing duties on U.S. beef exports, the TPA will immediately enhance the competitive position of U.S. beef relative to domestic production, as well as imports from other suppliers, such as the Mercosur countries, that currently have preferential access to the Colombian beef market.¹⁴

The TPA will provide U.S. pork with duty-free access to the Colombian market for most muscle cuts, variety meats, and processed products by year 5 of the agreement, with duty-free treatment for all pork items by year 10 of the agreement. Pork skins, which are used to make a popular snack called *chicarones* (similar to pork rinds in the United States), will receive duty-free treatment upon implementation of the agreement. U.S. pork products currently are subject to Colombia's price band system (box 3-1).¹⁵ By eliminating the application of the price band to U.S. agricultural exports, the TPA will place U.S. pork in a better competitive position relative to pork from Canada and Chile, currently Colombia's leading pork suppliers, as well as increase the competitiveness of U.S. pork relative to other

¹¹ Beef that does not meet the definition of USDA Prime or Choice is defined as "standard quality beef." *U.S.-Colombia TPA*, annex 2.18.

¹² Estimates for specific years are based on implementation on January 1, 2007.

¹³ Colombia has prohibited imports of U.S. beef since December 2003 when a Canadian-born cow in a Washington State dairy herd was confirmed to have BSE. On November 3, 2006, the USTR and USDA announced that the Colombian market had reopened to U.S. beef exports. USDA, "Colombia and Peru Open Markets to U.S. Beef." Further discussion of the SPS provisions of the U.S.-Colombia TPA can be found in chap. 5 of this report.

¹⁴ Colombia has a preferential trade agreement with Chile but, in most cases, the U.S.-Colombia TPA provides equal or better access for U.S. pork exporters. Colombia does not currently have a preferential trade agreement with Canada. Colombia's preferential trade agreements are summarized in app. E of this report.

¹⁵ Price band levies have caused Colombia's applied tariffs on non-Andean pork to vary significantly in recent years. When world pork prices were below Colombia's reference prices during the 2000–2003 time period, U.S. pork exports to Colombia were subject to duties of 25 to 43 percent; however, when world pork prices were above the reference price during 2004–5, U.S. pork exports to Colombia were subject to duties of 7 to 13 percent.

domestic and imported protein sources in the Colombian market.¹⁶ Colombian consumers have historically consumed more poultry and beef than pork.¹⁷ While the TPA phases out duties on pork cuts expected to be most competitive in the Colombian market within 5 years, Colombian duties on the most competitive poultry cuts (164.4 percent on chicken leg quarters) will not be phased out until year 18 of the agreement.¹⁸ Furthermore, the duties on standard quality U.S. beef (80 percent), and beef variety meats (70 to 80 percent) on quantities in excess of the TRQs are to be phased out over 10 years. As a result, Colombian consumer pork prices will likely decrease to world prices at a faster rate than either domestic poultry or domestic beef prices, which is likely to increase the competitiveness of pork relative to beef and poultry in the Colombian market.¹⁹

The TPA also will enhance the competitiveness of U.S. pork exports by eliminating the application of the price band duties to U.S. pork exports and increasing the transparency of U.S.-Colombia pork trade. In a side letter to the TPA, Colombia reaffirms that it will continue to recognize the equivalence of the U.S. meat inspection system and accept USDA Export Certificates of Wholesomeness for U.S. pork exports, thus providing assurance that discretionary licensing practices related to these sanitary issues would not be used in the future to limit U.S. pork exports to Colombia.²⁰

Impact on U.S. Imports

The TPA eventually could result in increased U.S. meat imports from Colombia. The Commission's CGE model estimated that U.S. beef imports would increase by less than \$500,000 (33.1 percent) and other meat imports would increase by \$4 million (13.4 percent) (appendix table G-3) with minimal impact on U.S. production (appendix table G-5). Any increase in meat imports from Colombia as a result of the TPA is unlikely to have a significant adverse impact on the U.S. cattle and beef industries or the U.S. swine and pork industries because of U.S. sanitary regulations related to foot and mouth disease (FMD) and the fact that Colombia does not currently have any slaughter or processing facilities that are eligible to export meat to the United States.²¹ The timing by which Colombia might achieve FMD status that would result in certification of fresh, chilled, or frozen beef and pork for export to the United States is unclear. Written and oral testimony provided in response to the Commission's public hearing provided varied assessments of this situation, ranging from

¹⁶ The Mercosur countries (Argentina, Brazil, Paraguay, and Uruguay) have trade agreements with Colombia that provides these countries with preferential access into the Colombian market. In most cases, the U.S.-Colombia TPA provides equal or better access for U.S. beef exporters.

¹⁷ Per capita consumption of pork is about 2.2 kilograms (kg) annually, compared with 15.6 kg of poultry and 15.9 kg of beef. FAO, *June 2006 Meat Market Assessment and Meat Statistics*.

¹⁸ Colombian producers have expressed concern about competition from U.S. exports of chicken leg quarters. Gómez, hearing transcript, 62.

¹⁹ Chicken leg quarters are subject to a duty-free TRQ of 27,040 mt in year 1 of the agreement, increasing to 50,645 mt in year 17 of the agreement. The base tariff rate to be phased out begins at 164.4 percent, compared with a 30 percent base tariff on most pork muscle cuts. As a result, when unlimited quantities of pork are subject to zero duty in year 5 of the TPA, chicken leg quarters in excess of the TRQ quantities will still be subject to 116 percent duty. *U.S.-Colombia TPA*, app. I.

²⁰ Further discussion of the SPS provisions of the U.S.-Colombia TPA can be found in chap. 5 of this report.

²¹ Chile and Uruguay are the only South American countries currently exporting fresh, chilled, or frozen beef and pork to the United States. USDA, *Eligible Foreign Establishments*.

“within the near future” to “not in the foreseeable future.”²² Colombia has one region that is currently recognized by the World Organization of Animal Health (OIE) as FMD-free without vaccination, and several additional areas that are recognized as FMD-free with vaccination.²³ However, certification to export fresh, chilled, or frozen beef or pork to the United States has never been granted based on a regional recognition. Therefore, it appears that Colombia faces a difficult, but not impossible, task in achieving and maintaining FMD status sufficient to be certified to export beef to the United States.

Views of Interested Parties

The Agricultural Technical Advisory Committee (ATAC) for Trade in Animals and Animal products stated that the TPA is in the best interest of the United States because it expands trading opportunities to the benefit of U.S. agriculture. ATAC wrote that opening of the Colombian market to all U.S. beef and beef products in accordance with OIE guidelines on BSE and eliminating application of the price band to U.S. exports will be especially beneficial. While ATAC in general supports the agreement, the poultry industry would have liked shorter phase-out times on some poultry tariffs. Furthermore, ATAC expressed the concern that some animal products may be disadvantaged because the preference clause only covers trade agreements that Colombia negotiates with other parties after February 27, 2006.²⁴ The Animals and Animal Products ATAC said that the rules of origin and SPS provisions of the TPA must be strongly monitored and enforced to ensure that U.S. industries receive the benefits of the agreement.

The National Cattlemen’s Beef Association (NCBA) stated that it supports the TPA because it believes that the agreement benefits the U.S. beef industry and provides increased export market opportunities, while maintaining adequate protection for the U.S. industry. The NCBA said that the SPS side letters are especially important to increased market access for U.S. beef and beef products. The NCBA said that the provisions outlining the terms under which Colombia will re-open its market to U.S. beef with regard to BSE are so important that it would withdraw support for the agreement if Colombia fails to meet these commitments. The NCBA stated that the side letter provisions, along with unlimited duty-free access for U.S. Prime and Choice beef, and duty-free access under TRQs for standard quality beef and beef variety meats, will allow the U.S. cattle and beef industry to be competitive suppliers in the Colombian market. Furthermore, the NCBA said that it does not expect any impact from Colombian beef exports to the United States because they do not foresee Colombia achieving status relative to FMD that would allow exports to the United States.²⁵

The National Pork Producers Council (NPPC) said that it supports the TPA because the agreement will provide significant benefits to U.S. pork producers. The U.S. pork industry has documented significant benefits through increased market access negotiated in other free trade agreements. The value of pork exports have increased by more than 361 percent since NAFTA was implemented in 1994, and analysis of the provisions of the this TPA expect this trend to continue. The analysis estimated that U.S. pork exports to Colombia could increase

²² Gómez, hearing transcript, 118; Truitt, “United States-Colombia Trade Promotion Agreement;” and Kiker, “R-CALF USA Posthearing Brief.”

²³ OIE, *Recognition of the Foot and Mouth Disease Status of Member Countries*.

²⁴ Colombia has preferential trade agreements with animal product supplies such as Brazil, Argentina, Uruguay, and Chile.

²⁵ Truitt, “United States-Colombia Trade Promotion Agreement.”

by 50,000 mt, valued at \$77 million, by 2017 when the agreement is fully implemented for pork items, which would add \$1.63 to the value of each U.S. hog, or about 14 percent to current per hog profit.²⁶

Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF) stated its concern that the TPA may have an adverse impact on the U.S. domestic cattle industry because beef processors have the ability to pass any adverse effects on to cattle producers. R-CALF stated that TPA will do little to promote increased exports of U.S. beef to Colombia because of Colombia's potential for increased production along with limited demand growth due to low per capita GDP. R-CALF said that the potential for U.S. beef exports is limited to high-quality beef targeted at the restaurant industry. Furthermore, R-CALF said that the agreement could subject the U.S. industry to increased beef imports because Colombia's potential to increase domestic beef production is not limited to increased domestic slaughter, but could also be increased through the slaughter of cattle imported from other South American countries and transshipped through Colombia. Finally, R-CALF expressed its concern that the quantity-based safeguard does not extend beyond the end of the transition period to protect U.S. producers from abrupt price fluctuations after the quota expires.²⁷

Grain (Wheat, Rice, and Corn)

Assessment

The U.S.-Colombia TPA will likely result in significantly higher U.S. grain exports²⁸ to Colombia over the long term, but with a very small positive impact on U.S. industry. U.S. grain exports to Colombia will benefit from the increased market access afforded by the TPA through tariff removal and TRQ phase out, and removal of Colombian nontariff barriers. The TPA is likely to have a small effect on total U.S. grain exports given the small size of the Colombian market relative to total U.S. production and exports. The TPA is likely to have no impact on U.S. imports of grain because Colombia is a high-cost producer and a net importer of grain.²⁹

Impact on U.S. Exports

U.S. grain exports to Colombia could increase by an estimated 55–77 percent above the \$339 million in U.S. grain exported to Colombia in 2005 as a result of the increased market access afforded by the TPA. These estimates are based on the Commission's partial-

²⁶ Giordano, "Public Comments Concerning the U.S.-Colombia Trade Promotion Agreement."

²⁷ The TPA will provide Colombia with a duty-free TRQ of 5,250 mt in year 1 of the agreement that grows to 7,757 mt by year 9 of the agreement. After year 9, duty-free beef imports from Colombia are not subject to quantitative restrictions or safeguards. Kiker, "R-CALF USA Prehearing Brief."

²⁸ This section primarily includes HTS headings 1001 through 1006 (except grain for seed). The grain sector as described in this section of the report focuses on wheat, rice, and corn, although the TPA also addresses sorghum, in which trade with Colombia is negligible. Corn is the primary grain destined for livestock feed in the world. However, white corn is used solely in food, and yellow corn mainly in animal feed. Corn, barley, and sorghum are called "coarse grains" or "feed grains." Rice is traded in unmilled (paddy) form and in various processed forms (dehulled/brown, semimilled, and milled).

²⁹ U.S. imports of grain from Colombia averaged less than \$100,000 annually from 2001 to 2005. U.S. MFN tariffs on grain are generally low, averaging 2.9 percent AVE between from 2001 to 2005, and U.S. grain imports from Colombia are free of duty under ATPA.

equilibrium analysis of the impact of the TPA on U.S. grain (wheat, rice, and corn) exports to Colombia.³⁰

Increases in U.S. exports result from the tariff removal and TRQ phase out, removal of Colombian government support measures, and removal of competitive disadvantages vis-à-vis other grain suppliers to the Colombian market (particularly Argentina). More than two-thirds of the expected additional U.S. grain exports to Colombia will likely consist of rice (some combination of both unmilled (paddy) and milled rice), with the remainder mostly yellow corn and small amounts of wheat. The TPA is likely to have a small effect on total U.S. grain exports, raising the \$11.2 billion total in 2005 to all countries by \$170 million to \$260 million, or 1–2 percent.

The \$339 million in U.S. grain exports to Colombia in 2005 accounted for 3 percent of total U.S. grain exports to all countries.³¹ Approximately 63 percent of grain exports to Colombia in 2005 consisted of corn; 37 percent of wheat; and a negligible percentage of rice. In that year, U.S. corn exports to Colombia totaled \$212 million, and were all yellow corn (no white corn or popcorn). U.S. wheat exports to Colombia totaled \$126 million, and rice exports, \$1 million. The United States, a highly competitive exporter, supplied 67 percent of Colombia's \$646 million of grain imports in 2004 (the latest year for which data are reported), followed by Canada (19 percent) and Argentina (5 percent).³²

Table 3-1 outlines the first full year of market access for U.S. grain exports to Colombia under the TPA. There will be immediate duty-free treatment for U.S. wheat and popcorn exports to Colombia upon implementation of the agreement; up to 2.1 million mt of U.S.

Table 3-1 U.S. grain exports to and market access in Colombia

Product	U.S. exports to Colombia		Colombian market access		
	2001–05 average	2005	First year TRQ	Over-quota tariff	Base rate, 2006
	1,000 metric tons		Percent AVE		
Wheat	703	802	No quota	Free	15 ^a
Rice ^b	6	4	79	80	80 ^a
Corn:					
Yellow	1,712	2,132	2,100	25	15 ^c
White	57	0	135	20	15 ^d
Popcorn	(^e)	0	No quota	Free	15

Source: *U.S.-Colombia TPA*, General Notes, Tariff Schedule of Colombia, app. I; official statistics of the U.S. Department of Commerce; International Customs Tariffs Bureau, Colombia, May 2006; and USDA, FAS, "Colombia Grain and Feed Annual 2006," 5.

^aThe price band levy on wheat and rice was zero percent in 2006.

^bPaddy and processed rice, combined.

^cThere is also a price band levy of 15 percent for 2006.

^dThere is also a price band levy of 45 percent for 2006.

^e Less than 500 mt.

³⁰ The estimates in this section on the impact on the grain sector are based the Commission's partial-equilibrium analysis. Partial-equilibrium analyses draw on more detailed market information than is incorporated in the CGE model estimates reported in chap. 2 of this report.

³¹ Compiled from official statistics of the U.S. Department of Commerce.

³² The latest year for which reported data is 2004. UN Comtrade data.

yellow corn exports to Colombia will receive duty-free access under the provisions of a TRQ; and up to 135,000 mt of U.S. white corn and 79,000 mt of U.S. rice to Colombia will receive duty-free treatment in the first full year of the agreement. The first year quota levels are about equal to U.S. yellow corn exports to Colombia in 2005, but well above U.S. rice and white corn exports in 2005.

Wheat

U.S. wheat exports will benefit from the immediate elimination of Colombia's 15 percent tariff, with no quota, upon implementation of the TPA.³³ U.S. wheat exports to Colombia are estimated to increase by \$13 million (10 percent) above the \$126 million exported to Colombia in 2005.³⁴ These estimates, based on Commission staff partial-equilibrium analysis, are consistent with the estimates from the Commission's CGE model in chapter 2 of this report; the CGE model estimates that U.S. wheat exports to Colombia would likely increase by \$19 million (11.2 percent) over an estimated base of \$170 million as a result of elimination of an estimated 12.5 percent Colombian tariff (appendix table G-3), with total U.S. wheat output expanding by less than 0.5 percent (appendix table G-5).

As the United States is the major supplier of wheat to Colombia,³⁵ most of the expected increase in exports will be driven by increased consumption of U.S. wheat in Colombia as a result of Colombia's wheat duty elimination,³⁶ with some U.S. export sales occurring at the expense of Argentina and Canada, which are both major wheat suppliers to Colombia.³⁷ Argentine wheat currently has an advantage in the Colombian market because it is subject to a preferential tariff Colombia grants to products of Mercosur countries; the TPA will eliminate this tariff advantage for Argentine wheat in the Colombian market. U.S. wheat would have an additional advantage because freight costs from the United States are generally lower than freight costs from Argentina or Canada because of the shorter distance to Colombia from U.S. Gulf ports.³⁸

³³ Colombia does not currently impose a price band duty on wheat imports, as it does for imports of rice and corn, as discussed below.

³⁴ Partial-equilibrium analysis suggests that, over the long run, the removal of the 15 percent tariff would result in a 13 percent decline in domestic (Colombian) prices. The estimated export increase is based on the 13 percent price decline in Colombia, using a price elasticity of demand of -0.4. No change in the negligible Colombian wheat supply was assumed. No specific demand data were available for Colombia; therefore, data for Andean countries were used. The price elasticity of demand for grain was found to be -0.405 for Ecuador, -0.355 for Peru, and -0.335 for Venezuela. The base year was marketing year 2005–06 for Colombia with domestic consumption of 1.355 million mt, according to USDA, FAS, "Colombia Grain and Feed Annual 2006, 12. Demand elasticities are from USDA, ERS, *International Food Consumption Patterns*, using data for 1996.

³⁵ In marketing year 2005–06, Colombia imported 98 percent of its domestic consumption of wheat. In that year, the United States supplied 60 percent of Colombian imports of wheat, Canada supplied 33 percent, and Argentina supplied most of the remainder. USDA, FAS, "Colombia Grain and Feed Annual 2006," 7.

³⁶ A 10 percent decline in wheat prices in Colombia will likely lead to a nearly 4 percent increase in the quantity demanded. Based on USDA estimated price elasticities of demand cited in footnote 34.

³⁷ Since February 2005, Argentina has received a 52 percent reduction in Colombia's applied 15 percent tariff on wheat. USDA, FAS, "Colombia Grain and Feed Annual 2006," 5.

³⁸ USDA, FAS, "Colombia Grain and Feed Annual 2005," 4.

Rice

U.S. rice exports to Colombia in 2005 amounted to a negligible 4,000 mt, valued at \$1 million. Colombia has banned nearly all rice imports from all countries, except for small amounts entering legally or smuggled from adjacent Venezuela and Ecuador. The 80 percent tariff on rice imports has obviated the need for Colombia to apply a price band levy (box 3-1) on rice, set at zero in 2005–06.

U.S. paddy and processed rice exports to Colombia are estimated to increase in the long term by \$110 million to \$200 million annually from the negligible level of \$1 million in 2005 as a result of tariff elimination under the TPA.³⁹ The expected increase in U.S. rice exports to Colombia would stem from increased consumption of U.S. rice in Colombia caused by lower prices for rice after the elimination of the 80 percent duty and, equally as important, a reduction in Colombian rice production.⁴⁰

In the first year of the TPA, a TRQ will allow U.S. exports of 79,000 mt of rice, valued at \$15 million to \$28 million.⁴¹ The U.S. rice exports will likely consist of both paddy and milled rice (with the lower value being completely paddy rice, and the upper value being completely milled rice). In the long term, the expected volume of U.S. rice exports to Colombia will be about 560,000 mt annually, valued at \$110 million to \$200 million, depending on the proportion of paddy and milled rice products exported. These estimates differ from the estimates obtained from the Commission's CGE model described in chapter 2 of this report because of the way that the model treats the very small baseline level of U.S. rice exports to Colombia; this technical aspect of the CGE model is discussed in more detail in appendix G.

Colombian market access for U.S. rice exports will gradually expand through growth of the TRQ for rice over a period of 19 years, but will be restrictive until the end. In year 17 of the TPA, duty-free access via the TRQ is 177,000 mt, a level still well below the 560,000 mt of exports likely in the long term; thus, the expected level will not be reached for nearly 20

³⁹ Partial-equilibrium analyses draw on more detailed market information than is incorporated in the CGE model estimates reported in chap. 2 of this report. Partial-equilibrium analysis suggests that, over the long run, the removal of the 80 percent tariff will result in a 44 percent decline in domestic prices. The estimated export increase is based on the 44 percent price decline in Colombia, using a price elasticity of demand of -0.4, a supply elasticity of 0.55, and assuming perfect substitutability. No specific data were available for Colombia; therefore, data for Andean countries were used. The price elasticity of demand for grain used was -0.405 for Ecuador, -0.355 for Peru, and -0.335 for Venezuela. The supply elasticity of rice for Latin American countries (except Argentina, Brazil, and Venezuela) used was 0.55. The base year was marketing year 2005–06 for Colombia with domestic production of 1.3 million mt (milled basis), and domestic consumption of 1.45 million mt, according to USDA, FAS, "Colombia Grain and Feed Annual 2006, 12. Demand elasticities are from USDA, ERS, *International Food Consumption Patterns*, using data for 1996; and supply elasticities are from USDA, ERS, *Elasticities in the Trade Liberalization Database*.

⁴⁰ USDA studies indicate that a 10 percent decline in the rice price in Colombia will likely lead to a nearly 4 percent increase in the quantity demanded, based on the price elasticity of demand for grain. Meanwhile, a 10 percent decline in the rice price would likely lead to a 5 percent decline in Colombian rice production. The elasticity of supply used a standard supply elasticity coefficient (the aggregate own price-supply elasticity for rice and corn for all South American countries, except Argentina, Brazil, and Venezuela, based on 1989 data). USDA, ERS, *International Food Consumption Patterns*; and USDA, ERS, *Elasticities in the Trade Liberalization Database*.

⁴¹ The value of potential U.S. rice exports depends on the composition of the rice products exported to Colombia, likely to be a mix of milled and rough rice, with milled rice valued at twice the unit value of rough rice. The average export price in marketing year 2005–06 of U.S. long-grain milled rice was \$350 per mt and of rough rice, \$192 per mt, f.o.b. U.S. Gulf ports. USDA, ERS, *Rice Outlook*, table 6.

years.⁴² In addition, Colombia has a price trigger mechanism under the agricultural safeguards that will further reduce over-quota imports, and thus keep U.S. exports to the in-quota amount.⁴³

Corn

Over the long term, total U.S. corn exports to Colombia are estimated to rise annually by \$45 million (21 percent) above the \$212 million base level of exports in 2005 as a result of tariff elimination under the TPA.⁴⁴ These estimates, based on Commission staff partial-equilibrium analysis, are consistent with the estimates from the Commission's CGE model in chapter 2 of this report, which estimates that U.S. exports of cereal grains, n.e.c. (of which corn is a significant component) will increase by \$42 million (19.8 percent) over an estimated base of \$211 million as a result of elimination of an estimated 14.9 percent Colombian tariff (appendix table G-3). The CGE model estimates that U.S. corn output expands by less than 0.5 percent (appendix table G-5).

In the short term, however, any increase in U.S. corn exports to Colombia would be limited by Colombia's quotas on U.S. yellow and white corn, with prohibitive over-quota tariffs. For popcorn, there will be immediate duty-free, quota-free access to the Colombian market, but U.S. popcorn exports were negligible in most years. The Colombian market for popcorn is limited; therefore, this market access is not significant.

Increased U.S. corn exports would likely result from increased consumption of U.S. corn in Colombia stimulated by a lower domestic corn price (as the tariff is removed), by reduced Colombia corn production,⁴⁵ and by U.S. shipments displacing shipments from other suppliers. Colombia imported 64 percent of its corn consumption in marketing year 2005–06;⁴⁶ the United States accounted for 89 percent of Colombia's corn imports during that year, with Argentina supplying most of the remainder. In 2005, Argentine corn was dutiable at 4.6 percentage points less than U.S. corn as a result of Colombia's trade

⁴² *U.S.-Colombia TPA*, General Notes, Tariff Schedule of Colombia, app. I, note 20(a).

⁴³ The TPA allows Colombia to impose a temporary safeguard tariff or quota if the domestic market is disrupted and producers are harmed by an import surge. *U.S.-Colombia TPA*, General Notes, Tariff Schedule of Colombia, annex 2.18.

⁴⁴ Partial-equilibrium analysis suggests that the removal of the a 30 percent tariff (15 percent MFN and 15 percent price levy) would result in a 23 percent decline in domestic (Colombian) prices. The estimated export increase is based on the 23 percent price decline in Colombia, using a price elasticity of demand of -0.4, a supply elasticity of 0.55, and assuming perfect substitutability. No specific data were available for Colombia; therefore, data for Andean countries were used. The price elasticity of demand for grain used was -0.405 for Ecuador, -0.355 for Peru, and -0.335 for Venezuela. The supply elasticity of rice for Latin American countries (except Argentina, Brazil, and Venezuela) used was 0.55. The base year was marketing year 2005–06 for Colombia with domestic production of 1.2 million mt (milled basis) and domestic consumption of 3.58 million mt, according to USDA, FAS, "Colombia Grain and Feed Annual 2006," 12. Demand elasticities are from USDA, ERS, *International Food Consumption Patterns*, using data for 1996; and supply elasticities are from USDA, ERS, *Elasticities in the Trade Liberalization Database*.

⁴⁵ USDA studies indicate that a 10 percent decline in corn prices in Colombia will likely lead to a near 4 percent increase in the quantity demanded, based on the price elasticity of demand. The same 10 percent decline in price will likely lead to a 3 percent decline in Colombia corn production. The elasticity of supply used a standard supply elasticity coefficient (the aggregate own price-supply elasticity for rice and corn for all South American countries, except Argentina, Brazil, and Venezuela, based on 1989 data). USDA, ERS, *International Food Consumption Patterns*; and USDA, ERS, *Elasticities in the Trade Liberalization Database*.

⁴⁶ USDA, FAS, "Colombia Grain and Feed Annual 2006," 9.

agreement with the Mercosur countries.⁴⁷ The TPA will eliminate this advantage for Argentine corn and, as a result, U.S. corn could displace some Argentine corn in the Colombian market.

Colombia's price band levy of 15 percent on non-Andean corn in 2006 (box 3-1) has provided additional import protection for Colombian corn. The price band duty on yellow corn was 20 percent in 2005 and 8 percent in 2004. The price band levy on white corn rose from 5 percent in 2004 to 45 percent in 2005 and in 2006.⁴⁸ Price band levies will not apply to U.S. exports of agricultural exports under the TPA.⁴⁹

In addition to the price band, the Colombian government provides support and assistance for corn growers through a domestic purchase requirement system that guarantees the purchases of domestic corn and sorghum before imports are allowed (box 3-2). Under the TPA, this domestic purchase requirement will not apply to U.S. corn.⁵⁰

Additionally, the Colombian government will begin a price support and direct subsidies program for grain and other agricultural production, totaling \$225 million in 2006. The Colombian support price in marketing year 2005–06 for corn averaged \$217 per mt,⁵¹ while the export price of U.S. yellow corn was \$105 per mt.⁵² The TPA permits the \$225 million program or other new support programs provided that they are WTO compliant. Colombia's announced program for grains and other agricultural products (most likely corn and rice) will be implemented along with the TPA.⁵³

Views of Interested Parties

The ATAC for Trade in Grains, Feed, and Oilseeds endorses the TPA, and stated that the agreement will reduce Colombian tariffs on grain and negate the adverse effects of Colombian policies such as price bands and domestic purchase requirements. In the industry's view, the agreement will provide both immediate and long-term benefits to U.S. producers and processors of grain, feed, and oilseeds.⁵⁴

The U.S. Grains Council, the National Corn Growers Association, the National Barley Growers Association, and the National Sorghum Growers stated in a joint written submission that they support the TPA and that, "the provisions of the agreement will provide both immediate and long-term benefits to U.S. producers and processors of corn, barley and sorghum."⁵⁵ They stated that the agreement will negate the adverse effects of Colombian policies on the U.S. feed grain industry, and provide enhanced access through the elimination of tariffs.

⁴⁷ Ibid., 5.

⁴⁸ USDA, FAS, "Colombia Grain and Feed Annual 2006," 5; USDA, FAS, "Colombia Grain and Feed Annual 2005," 5; and USDA, FAS, "Colombia Grain and Feed Annual 2004," 5.

⁴⁹ *U.S.-Colombia TPA*, General Notes, Tariff Schedule of Colombia, app. I, note 2(a).

⁵⁰ *U.S.-Colombia TPA*, chap. 2, art. 2.15(2)(c)(ii).

⁵¹ USDA, FAS, "Colombia Grain and Feed Annual 2006," 4.

⁵² Cash price for U.S. corn, No. 2 yellow, Gulf ports. USDA, ERS, *Feed Outlook*, table 3.

⁵³ USDA, FAS, "Colombia Grain and Feed Annual 2005," 4.

⁵⁴ ATAC for Trade in Grains, Feed, and Oilseeds, *The U.S.-Colombia Trade Promotion Agreement*.

⁵⁵ Natz, "U.S.-Colombia Trade Promotion Agreement."

Box 3-2 Colombia's domestic purchase requirement

Colombia has a domestic crop support system of TRQs for rice, yellow corn, white corn, soybeans, and cotton, under which companies bid to receive an import quota in exchange for buying local production on the spot or futures market.

In 2006, the quotas were 2.1 million mt of yellow corn, 60,000 mt of white corn, and 300,000 mt of soybeans. Importers were required in the auction held in September 2005 to purchase 1 mt of local yellow corn for every 4.3 mt of imported yellow corn; 4 mt of local white corn for every 1 mt of imported white corn; and 1 mt of local soybeans for every 2 mt of soybeans.

Under the TPA, the domestic purchase requirements will not apply to U.S. grain and soybeans.

Sources: USDA, FAS, "Colombia Grain and Feed Annual 2006," 5; USDA, FAS, "Colombia Grain and Feed Tariff Rate Quotas for 2006," 2; USDA, FAS, "Colombia Oilseeds and Products Annual 2006," 5; and *U.S.-Colombia TPA*, chap. 2, art. 2.15(2)(c)(ii).

The American Farm Bureau Federation (AFBF) stated that it supports the TPA, and that it would result in a net benefit to the general U.S. agricultural sector of more than \$660 million per year after full implementation.⁵⁶ The AFBF estimates that after full implementation of the TPA, U.S. grain exports would rise by \$289 million over what would occur without the TPA.⁵⁷ According to the AFBF, in the long term, the TPA will cause U.S. corn exports to rise by 79 percent, U.S. wheat exports by 50 percent, and U.S. rice exports by 92 percent.

Soybeans, Soybean Products, and Animal Feeds

Assessment

The U.S.-Colombia TPA will likely result in increased exports of U.S. soybeans, soybean products, and animal feeds to Colombia. However, the increase is unlikely to have a significant effect on total U.S. production or exports of soybeans and soybean products because of the small size of the Colombian market relative to total U.S. production and exports. U.S. exports will benefit from the increased market access afforded by the TPA through tariff removal and removal of Colombian nontariff barriers.

Impact on U.S. Exports

The immediate or phased removal of Colombian tariffs on U.S. soybeans, soybean products, and animal feeds combined with Colombia's commitment to remove price bands could lead to increases in U.S. exports of 30–50 percent above the \$116.2 million exported to Colombia

⁵⁶ Young, hearing transcript, 39–45; and Young, "Statement of the American Farm Bureau Federation."

⁵⁷ Young, "Statement of the American Farm Bureau Federation."

in 2005.⁵⁸ The first year market access TRQ for U.S. exports of soybeans, soybean products, and animal feeds is set out in table 3-2 along with export volumes in recent years. Under the TPA, the duties on the majority of these exports will be removed immediately upon implementation with no quota restrictions.

Colombia currently maintains variable duties ranging from 5 to 28 percent on soybeans and soybean products. Depending on market conditions, price bands (box 3-1) have the potential to more than double the applied ordinary tariff rates on these U.S. exports.⁵⁹ Under the TPA, U.S. soybeans, soybean meal, and soybean flour will be granted immediate duty-free and quota-free access to the Colombian market, while soybean oil, animal feeds, and pet foods will be subject to immediate duty-free access to the Colombian market and TRQs that grow annually over their implementation period toward eventual unlimited access. Colombia will eliminate domestic production purchase requirements for in-quota TRQ access.⁶⁰ The removal of all such trade barriers under the TPA will put U.S. exports of soybeans, soybean products, and animal feeds on equal terms in the Colombian market with comparable products from other South American countries with which Colombia has implemented preferential trade agreements.

U.S. soybeans and soybean product exports to Colombia were valued at \$100.8 million in 2005, accounting for 1.3 percent of U.S. soybean and soybean product exports to all countries.⁶¹ Soybean meal was the largest component, at nearly \$57 million. Colombia is the leading Latin American destination for U.S. soybean and soybean product exports. Prepared animal feed exports to Colombia were \$15.4 million in 2005, or 2.2 percent of total U.S. exports for this category.

Soybeans and Soybean Products

U.S. soybeans, soybean meal, and soybean flour exports will benefit immediately from unlimited, duty-free access to the Colombian market upon implementation of the TPA. U.S. soybeans currently are subject to a 5 percent tariff and an annual TRQ of 300,000 mt under Colombia's domestic purchase requirement (box 3-2). U.S. exports of soybean flour and soybean meal currently face a 20 percent tariff, and crude and refined soybean oil are subject to a 24 percent tariff. These tariffs can also be increased significantly above their applied rates under certain market conditions, as soybean products are subject to Colombia's price band.⁶²

Colombia will no longer apply its price band to U.S. agricultural exports upon implementation of the TPA, and U.S. soybeans, soybean meal, and soybean flour exports will not be subject to TRQs. U.S. exports of crude soybean oil will face a TRQ that increases 4 percent annually through year 9 of the agreement, becoming unlimited in year 10. However, the first year in-quota volume of 31,200 mt in the TPA (table 3-2) will be substantially greater than U.S. soybean oil exports to Colombia in recent years (table 3-3) and should not constrain U.S. exports over the implementation period.

⁵⁸ These estimates are based the Commission's partial-equilibrium analysis. As described in more detail below, the estimates from the partial-equilibrium analysis are generally consistent with the estimates from the Commission's CGE model described in chap. 2 of this report.

⁵⁹ USDA, FAS, "U.S.-Andean FTA Promises More Market Access," 6.

⁶⁰ *U.S.-Colombia TPA*, chap. 2, art. 2.15, sec. 2(c)(ii).

⁶¹ Compiled from official statistics of the U.S. Department of Commerce.

⁶² USDA, FAS, "Colombia Oilseeds and Products Annual 2006," 4.

Table 3-2 Soybeans, soybean products, and animal feed exports to Colombia: U.S. average exports during 2001–05, exports in 2005, first year TRQ, over-quota tariff, and base rate in 2006 for Colombia

Product	2001–2005 U.S. average exports	2005 U.S. exports	First year TRQ	Over-quota tariff	Base rate, 2006
	Metric tons			Percent	
Soybeans	152,186	172,497	No quota	None	5
Soybean meal	82,373	172,504	No quota	None	20
Soybean flour	33,954	76,369	No quota	None	20
Soybean oil (crude)	5,383	4,001	31,200	24 ^a	24
Soybean oil (refined)	1,106	253	No quota	24 ^b	24
Animal feeds	97,626	55,239	194,250	25 ^c	25
Dog and cat food	1,235	1,250			
Canned	n/a	n/a	No quota	20 ^d	20
Bagged	n/a	n/a	8,640	28 ^e	28

Sources: *U.S.-Colombia TPA*, General Notes, Annex 2.3, app. I; U.S. Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics.

^aCrude soybean oil has a TRQ in which 31,200 mt are allowed free of duty in year 1 of the agreement, and the duty-free amounts increase 4 percent annually until unlimited duty-free access is achieved in year 10 of the agreement. Over-quota imports would face a 24 percent tariff, declining in equal annual stages to zero in year 10 of the agreement.

^bRefined soybean oil has a 24 percent tariff in year 1, declining in equal annual stages to zero in year 5 of the agreement.

^cAnimal feeds have a TRQ in which 194,250 mt are allowed free of duty in year 1 of the agreement, and the duty-free amounts increase 5 percent annually until unlimited duty-free access is achieved in year 12 of the agreement. Over-quota imports face a 25 percent tariff that declines in equal annual stages to zero in year 12.

^dCanned dog and cat food has a 20 percent tariff in year 1, declining in equal annual stages to zero in year 5 of the agreement.

^eBagged dog and cat food has a TRQ in which 8,640 mt are allowed free of duty in year 1 of the agreement, and the duty-free amounts increase 8 percent annually until unlimited duty-free access is achieved in year 8 of the agreement. Over-quota imports would face a 28 percent tariff, declining in equal annual stages to zero in year 8.

Table 3-3 Soybeans, soybean products, and animal feed: U.S. exports to Colombia, 2000–2005

Year	Soybeans	Soybean flour	Soybean meal	Crude soybean oil	Refined soybean oil	Animal feeds ^a	Pet foods ^b
	(metric tons)						
2000	96,257	19	78,720	10,264	1,680	74,287	2,269
2001	151,070	143	49,128	18,050	1,962	156,720	4,172
2002	193,996	114	57,515	4,855	1,649	132,589	3,975
2003	124,860	4,820	47,992	11	1,103	92,391	4,791
2004	118,505	88,326	84,728	0	563	51,190	2,532
2005	172,497	76,369	172,504	4,001	253	55,239	2,429

Source: Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics.

^aAnimal feed preparations (mixed feeds, etc.), other than dog or cat food for retail sale (HTS 2309.90).

^bDog and cat food for retail sale (HTS 2309.10).

Colombia is a net importer of soybeans and soybean products because its unfavorable growing climate and relatively high production costs keep domestic production at low

levels.⁶³ Paraguay has been Colombia's leading supplier of soybeans in recent years, supplying over 70 percent of its imports in both 2003 and 2004.⁶⁴ Paraguay's exports are assessed a duty that is one-third less than that facing the United States under Colombia's bilateral agreement with Mercosur countries.⁶⁵ This advantage allows Paraguay to offset its higher transportation costs compared with the United States. Colombia currently imports the majority of its soybean meal from Bolivia because of the duty-free preferential access granted to other Andean Community members. Bolivia supplied an average of 37 percent of Colombia's soybean meal imports in 2003–05. The remainder was largely supplied by Mercosur countries, which also receive preferential access under a 20 percent reduction in the basic duty.⁶⁶ Tariff elimination under the TPA will allow U.S. soybeans and soybean products to compete on the same or better terms as Colombia's current leading suppliers. This will likely result in Colombia importing a greater proportion of soybeans and soybean products from the United States, with U.S. products displacing some products of current leading suppliers in the Colombian market.

Demand for soybean meal has increased in recent years as a result of the Colombian government's ban on the use of animal protein in livestock feed because of BSE concerns.⁶⁷ Soybean meal is the dominant (90 percent) vegetable meal used by the feed sector.⁶⁸ Until 2004, the United States had seen a multiyear decline in exports of soybean products to Colombia, partially as the result of the preferential access Colombia grants to other Andean Community members and Mercosur countries (table 3-3). Additionally, because of the expected increase of ethanol coproducts from U.S. ethanol production (distillers dried grains), which compete with soybean meal in feed rations, there will likely be greater exportable supplies of U.S. soybean meal in the future.⁶⁹

Animal Feed Preparations and Pet Foods

Prepared U.S. animal feed exports are likely to benefit over the long-term under the TPA from the immediate elimination of Colombia's 25 percent tariff, and TRQs that grow 5 percent annually from 194,250 mt in year 1 of the TPA, to 316,413 mt in year 11, and are eliminated in year 12.⁷⁰ Colombia already has a growing animal feed industry, and the benefits of the TPA, such as higher per capita income growth, should increase meat consumption and the demand for animal feeds over the long term for Colombia.

U.S. pet food exports will likely increase under the TPA, with tariff-free quantities for bagged food under the TRQ increasing 8 percent annually from 8,640 mt in year 1 to 13,711 mt in year 7, and becoming unlimited thereafter.⁷¹ Additionally, pet foods are currently subject to the price band as they may contain corn and other grains covered under it. The

⁶³ Domestic production accounted for about 10–15 percent of total consumption in 1999–2005. USDA, FAS, *Production, Supply, and Distribution Online*.

⁶⁴ World Trade Atlas.

⁶⁵ USDA, FAS, "Colombia Oilseeds and Products Annual 2006," 4.

⁶⁶ USDA, FAS, "U.S.-Andean FTA Promises More Market Access," 6.

⁶⁷ USDA, FAS, "Colombia Oilseeds and Products Annual 2006," 4. On November 3, 2006, the USTR and USDA announced that the Colombian market had reopened to U.S. beef exports. USDA, "Colombia and Peru Open Markets to U.S. Beef." Further discussion of the SPS provisions of the U.S.-Colombia TPA can be found in chap. 5 of this report.

⁶⁸ Storz, Taylor, and Fairchild, *A Primer on Exporting to Colombia*, 6.

⁶⁹ USDA, OCE and WAOB, "USDA Baseline Projections to 2015," 30.

⁷⁰ *U.S.-Colombia TPA*, app. I, par. 19(a).

⁷¹ *U.S.-Colombia-U.S. TPA*, app. I, par. 18(a).

combination of the Colombian tariff and the variable price band levy has resulted in an effective pet food tariff as high as 95 percent in recent years.⁷² Even pet foods that contain little or no grain were assessed the variable price band duty (such as canned pet foods).⁷³

Despite the TPA, access to the Colombian market for U.S. pet foods will likely remain restricted because the Colombian government continues to exclude pet food containing U.S.-origin ruminant materials because of concerns about BSE.⁷⁴ In a side letter to the TPA, Colombia agreed to accept U.S. beef for human consumption, but did not agree to allow entry of U.S. pet food containing U.S. beef suitable for human consumption.⁷⁵

Views of Interested Parties

The ATAC for Trade in Grains, Feed, and Oilseeds stated that it “fully endorses” the TPA as “most of the provisions will greatly benefit the U.S. industry.”⁷⁶ It cited the unlimited, duty-free access for several products upon implementation, the removal of price bands, and the elimination of the domestic purchase requirements as a precondition for TRQ allocation. The American Soybean Association⁷⁷ and the National Oilseed Processors Association (NOPA)⁷⁸ expressed support for the TPA because U.S. soybeans, soybean meal, and soybean flour exports would receive immediate duty-free access to Colombia upon implementation. According to the American Soybean Association and NOPA, the TPA will improve the competitiveness of U.S. soybean and soybean products in the Colombian market compared with other suppliers. The American Farm Bureau Federation (AFBF) stated that it supports the TPA, and that its economic analysis indicates substantial gains for U.S. soybean and soybean product exports to Colombia upon the complete TPA implementation. According to the AFBF, increased per capita income growth in Colombia as a result of the TPA would allow consumers in Colombia to diversify their diets to include more meats and high-valued products and increase their demand for U.S. products. This will increase the food demand for vegetable oils and the feed demand for protein meals.⁷⁹

Chemical, Rubber, and Plastic Products

Assessment

The U.S.-Colombia TPA will likely result in increased exports of U.S. chemical, rubber, and plastic products⁸⁰ to Colombia as a result of tariff elimination under the agreement. This will benefit U.S. companies that manufacture chemicals used as raw materials in the production of plastics because Colombia is an important market for some of these products.

⁷² USDA, FAS, “Colombia Trade Policy Monitoring Annual 2006,” 14.

⁷³ Ibid., 13–14.

⁷⁴ Nancy K. Cook, director, Technical & Regulatory Affairs, Pet Food Institute, interview by Commission staff, Washington, DC, September 7, 2006.

⁷⁵ ATAC for Trade in Processed Foods, *The U.S.-Colombia Trade Promotion Agreement*, 5.

⁷⁶ ATAC for Trade in Grains, Feed, and Oilseeds, *The U.S.-Colombia Trade Promotion Agreement*, 2.

⁷⁷ Censky, “United States-Colombia Free Trade Agreement.”

⁷⁸ David J. Hoverdale, executive vice president, NOPA, interview by Commission staff, Washington, DC, September 20, 2006.

⁷⁹ Young, “Statement of the American Farm Bureau Federation.”

⁸⁰ This grouping primarily comprises HTS chaps. 28 through 40, but it also includes some 6-digit HTS headings from chaps 15, 26, 27, 44, 59, 65, 71, 84, 85, and 94.

Impact on U.S. Exports

The TPA will likely have a small, positive effect on U.S. exports of chemical, rubber, and plastic products. This estimate is smaller than the estimates obtained from the Commission's CGE model described in chapter 2 of this report because it is based on a smaller product grouping than that used in the CGE model.⁸¹ Despite the small size of the Colombian market, Colombia is a significant market for U.S. exports of certain products in this large grouping, particularly chemicals used to produce plastic materials and resins. According to one recent report, "[t]he plastics sector is one of the most dynamic of the Colombian economy as it serves most industries."⁸²

Vinyl chloride⁸³ is the largest U.S. export to Colombia in this product grouping. U.S. exports of vinyl chloride will benefit immediately from the elimination of Colombia's 5 percent tariff upon implementation of the TPA. Vinyl chloride is the primary raw material for making polyvinyl chloride (PVC), a plastic.⁸⁴ Colombia is an important market for U.S. vinyl chloride exports. U.S. exports of vinyl chloride to Colombia were valued at \$215 million in 2005, accounting for almost one-third of total U.S. exports of vinyl chloride in that year.⁸⁵

Colombia currently imports vinyl chloride almost exclusively from the United States.⁸⁶ The PVC produced in Colombia from vinyl chloride imported mostly from the United States is used domestically for bottles and packaging and for pipes, floors, and other items used in construction.⁸⁷ Demand for PVC products (and consequently for imported vinyl chloride) will likely increase as the Colombian economy continues to expand and develop. Colombian plastics producers also export PVC to the United States and other countries. The United States is the principal market for Colombian PVC, accounting for 54.8 percent of Colombia's PVC exports from 2003 to 2004, the most recent period for which data are available.⁸⁸

U.S. exports of propylene⁸⁹ (HTS 2901.22) will benefit immediately from the elimination of Colombia's 5 percent tariff upon implementation of the TPA. Colombia is an important market for U.S. propylene exports. Colombian plastics producers import propylene from the United States to produce the plastic polypropylene.⁹⁰ U.S. exports of propylene to Colombia were valued at \$108.5 million in 2005 and accounted for 58.1 percent of all U.S. exports of propylene.⁹¹ Colombian polypropylene production capacity increased from 280,000 tons to

⁸¹ The Commission's CGE model described in chap. 2 of this report estimates that U.S. exports of a broader grouping of chemical, rubber, and plastic products to Colombia would likely increase by about \$357 million (22.6 percent) as a result of tariff elimination under the TPA (app. table G-3).

⁸² USCS, *The Americas Update*, October-November 2005.

⁸³ Vinyl chloride is HTS 2903.21.

⁸⁴ PVC is used to make a large variety of products. The PVC product most likely to be recognizable to consumers is probably the white, plastic pipe often used in construction.

⁸⁵ USITC, *Dataweb*.

⁸⁶ Colombia has imported small amounts (1 percent or less of total imports) of vinyl chloride from Venezuela and Spain in recent years. *Global Trade Atlas*.

⁸⁷ De Salguero, "Plastics Materials and Resins," 9.

⁸⁸ *Ibid.*, 5.

⁸⁹ Propylene is also called propene.

⁹⁰ Polypropylene is used for a variety of products including carpet fibers, textiles, storage containers, cups, car bumpers, food packaging, small appliances, etc.

⁹¹ USITC, *Dataweb*.

320,000 tons from 2003 to 2004, and currently accounts for approximately 36.2 percent of Colombia's production capacity for all plastics.⁹²

The immediate elimination of Colombia's 5 percent tariff on U.S. styrene (HTS 2902.50) will likely have little impact on U.S. industry. As with vinyl chloride and propylene, Colombia imports the commodity organic chemical styrene and converts it into the plastic polystyrene.⁹³ U.S. exports of styrene to Colombia were valued at \$83.7 million in 2005, or 6.3 percent of total U.S. exports of styrene in that year.

Views of Interested Parties

The U.S. chemical, plastic, and rubber industries generally favor the TPA.⁹⁴ Industry representatives are pleased that all tariff lines eventually go to zero, but are disappointed in the number of lines that are subject to prolonged staging of tariff elimination.⁹⁵ According to one industry source, the chemical, plastic, and rubber industries want consistency among the bilateral trade agreements with respect to rules of origin.⁹⁶ Industry representatives stated that they approve of the rules of origin in the U.S.-Colombia TPA and ask that these rules of origin be included in future TPAs.⁹⁷

Machinery, Electronics, and Transportation Equipment

Assessment

The U.S.-Colombia TPA will likely result in increased exports of U.S. machinery, electronics, and transportation equipment (machinery and equipment)⁹⁸ to Colombia, although any positive impact on U.S. industries will likely be small because of the small size of the Colombian market relative to total U.S. machinery and equipment exports. U.S. exports will benefit from the immediate or phased elimination of Colombian tariffs ranging from 5 to 35 percent on U.S. machinery and equipment as well as from the nontariff market access provisions of the TPA, most notably the elimination of Colombia's restrictions on imports of U.S. remanufactured goods.

Impact on U.S. Exports

Machinery and equipment products were among the leading U.S. exports to Colombia in 2005. The United States is the leading import supplier to Colombia in nearly all types of machinery and equipment. Leading U.S. machinery and equipment exports to Colombia are shown in figure 3-1. A number of U.S. machinery and equipment sectors will likely benefit from expanded export opportunities in Colombia as a result of trade liberalization under the

⁹² De Salguero, "Plastics Materials and Resins," 1.

⁹³ Polystyrene is used in various packaging applications, as an insulating foam, and for automobile parts.

⁹⁴ ITAC 3, *The United States-Colombia Trade Promotion Agreement*, 3.

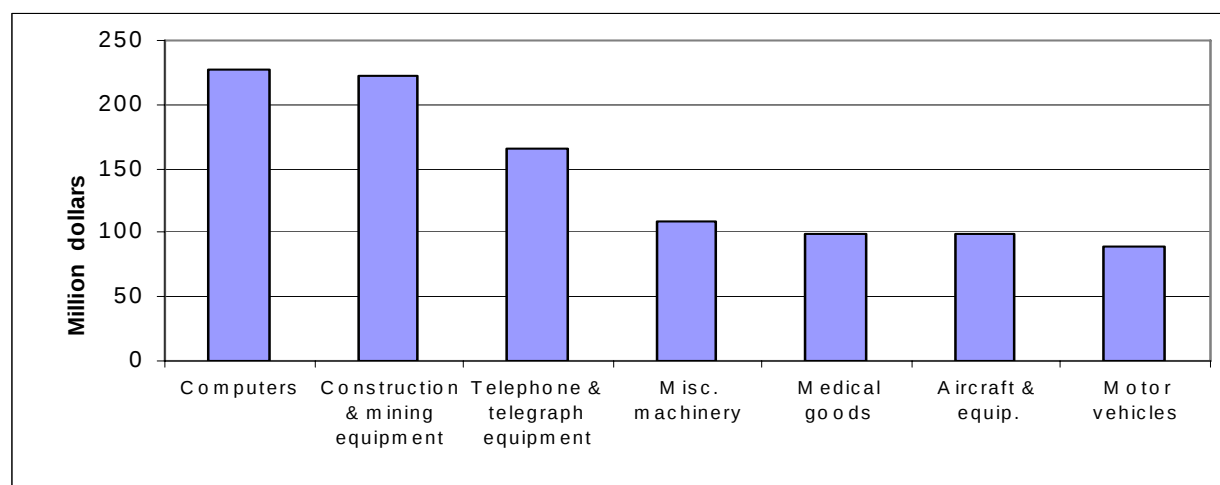
⁹⁵ Ibid.

⁹⁶ Industry official, interview by Commission staff, Houston, TX, November 3, 2006.

⁹⁷ ITAC 3, *The United States-Colombia Trade Promotion Agreement*, 7-8.

⁹⁸ This section primarily covers motor vehicles and parts, various types of machinery including construction, mining, oil and gasfield machinery, and computer hardware and software.

Figure 3-1. Leading U.S. machinery and equipment exports to Colombia, 2005



Source: U.S. Department of Commerce.

TPA, including automotive parts; various types of machinery, including oil and gasfield equipment, construction and mining equipment, pollution control equipment, electric power generating equipment, radiology equipment, and food and beverage processing and packaging equipment; and electronic equipment, particularly computer hardware and software.⁹⁹ The impact of the TPA on these U.S. machinery and equipment sectors is discussed in more detail below.

Other important U.S. machinery and equipment products that have potential to increase exports to Colombia cut across many of these larger sectors, for example, pumps, valves, and compressors.¹⁰⁰ U.S. exports of aircraft and parts, presently facing Colombian tariffs ranging from 5 to 10 percent, will also benefit from immediate duty-free treatment. Improved market access opportunities for U.S. remanufactured goods in Colombia resulting from the TPA are discussed in box 3-3.

Motor vehicles and parts

U.S. suppliers of motor vehicles and parts are likely to benefit from tariff elimination under the TPA. The Commission's CGE model described in chapter 2 of this report estimates that U.S. exports of motor vehicles and parts to Colombia are likely to increase by 43.8 percent, or \$106 million, as a result of tariff elimination under the TPA (appendix table G-3), with U.S. output expanding by less than 0.05 percent (appendix table G-5). Colombian tariffs on U.S. automotive parts range from 5 to 15 percent; most of the 5 percent tariffs are to be eliminated immediately upon entry into force of the TPA, and most of the higher tariffs are to be phased out over 5 years.¹⁰¹ The United States currently is Colombia's leading supplier

⁹⁹ USCS and U.S. Department of State, *Doing Business in Colombia*; and U.S. government official, e-mail message to Commission staff, October 6, 2006.

¹⁰⁰ The United States had a 54 percent share of the Colombian import market for these products in 2005. De Salguero, *Colombia: Market Overview Pumps, Valves and Compressors*.

¹⁰¹ *U.S.-Colombia TPA*.

Box 3-3 Market access in Colombia for U.S. remanufactured goods

Colombia currently treats remanufactured goods as used goods, and prohibits their importation. Remanufactured machinery and equipment are used products (referred to as cores) that have been disassembled, cleaned, and inspected, with parts replaced or reconditioned before reassembly to a like-new condition. Colombia's current policies limit market access for major U.S. suppliers of high-quality remanufactured goods.

The TPA provides for a 5-year phase out of prohibitive duties on remanufactured goods to begin in year 6 of the agreement. One Colombian official stated that Colombians have come to understand the higher quality of remanufactured goods compared to used goods, and to value access to these higher quality goods (Gómez, hearing transcript, 144–5).

According to one U.S. official, permanent access for remanufactured equipment should greatly enhance opportunities for U.S. remanufactured equipment exports. A U.S. industry official stated that his company will benefit from the TPA remanufactured goods provisions because the company currently must completely rebuild components in Colombia; with the TPA in place, his company will be able to perform this work in the United States. He further stated that the export of remanufactured mining components will amount to exports of \$20 million to \$25 million for the firm (Gales, hearing transcript, 145-6).

of automotive parts and accessories,¹⁰² and the United States should maintain this position as a result of the TPA.

The United States is not a major supplier of motor vehicles to Colombia. Under the TPA, Colombia is to phase out its 35 percent tariff on U.S. passenger motor vehicles over 10 years, with immediate duty removal for certain 4x4 passenger cars over 3.0 liters (sport-utility vehicles, or SUVs) HTS 8703.24.0090) and a 5 year phase out for the other vehicles in that HTS classification. Colombian tariffs of 15 and 35 percent on trucks are all subject to a 10 year phase out. The elimination of the Colombian tariff on U.S. motor vehicles likely contributes significantly to the Commission's CGE model results for this sector. However, Colombia's relatively small domestic market and Colombia's participation in a regional automobile production arrangement,¹⁰³ coupled with the lengthy phase out of motor vehicle tariffs under the TPA, are likely to make any gains for this U.S. sector smaller than those estimated by the model. Nevertheless, immediate removal of the 35 percent tariff for certain SUVs could spur U.S. exports of these vehicles in the short term; however, a U.S. automotive industry official reports that Colombia is not a major market for SUVs.¹⁰⁴

¹⁰² De Salguero, *Automotive Parts and Accessories*.

¹⁰³ The Industrial Complementarity Agreement in the Automotive Sector was signed by Colombia, Ecuador, and Venezuela in November 1993. The participating countries have a common external tariff, and apply a duty-free customs regime to automotive manufacturers in the three countries that request it after fulfilling the corresponding provisions. Andean Community General Secretariat, "Complementarity Agreement in the Automotive Sector." Major automakers have invested in manufacturing and assembly plants throughout South America, and typically serve these markets to a large extent via localized production. For example, General Motors has a large manufacturing presence in Argentina, Brazil, and Chile, and assembles imported completely knocked-down vehicles in Colombia, Ecuador, and Venezuela, where it takes advantage of intraregional opportunities under the Andean Pact. General Motors, "GM Latin America Operations."

¹⁰⁴ U.S. industry official, interview by Commission staff, Washington, DC, October 11, 2006.

Machinery

This sector comprises a wide variety of products. Those with the greatest U.S. export potential as a result of the TPA are likely to include oil and gasfield equipment, construction and mining equipment, pollution control equipment, electric power generation equipment, radiology equipment, and food and beverage processing and packaging equipment. The Commission's CGE model described in chapter 2 of this report estimates that U.S. exports of miscellaneous machinery and equipment (including the machinery products discussed below)¹⁰⁵ to Colombia are likely to increase by \$191 million, or 14.9 percent, as a result of tariff elimination under the TPA (appendix table G-3).

U.S. suppliers of oil and gas equipment are expected to benefit from tariff elimination under the TPA and favorable conditions in Colombia's domestic market. Colombian tariffs on this U.S. equipment currently range from 5 to 15 percent. The 10 percent tariff on U.S. offshore drilling and production platforms is to be eliminated immediately upon entry into force of the agreement.¹⁰⁶ The United States is Colombia's leading supplier of oil and gas equipment, and is expected to maintain its 65 percent share of the Colombian market for the foreseeable future¹⁰⁷ as Colombia continues to expand its oil and gas sector and import new exploration and production drilling rigs.¹⁰⁸

U.S. suppliers of construction and mining equipment are expected to benefit from the immediate elimination of Colombia's 5–15 percent tariffs on this U.S. equipment under the TPA.¹⁰⁹ A variety of factors are driving demand for construction equipment in Colombia, including Colombian government efforts to improve its road network.¹¹⁰ The Colombian government is also working to develop new mining projects, and there is reportedly much interest on the part of foreign investors in acquiring mining rights and developing new exploration plans, which will provide opportunities for U.S. equipment providers.¹¹¹ One Colombian official stated that the TPA will give an advantage to U.S. suppliers over European and Brazilian suppliers in the Colombian market.¹¹² According to one U.S. industry official, the duty savings afforded by the TPA on each large off-highway truck made in the United States will be more than \$200,000.¹¹³

In December 2005, Colombia eliminated all tariffs—on a temporary basis and from all sources—on equipment, spare parts, and accessories used for various oil and gas activities, including exploration, production, transportation, and refining, as well as minerals exploration, production, processing, transformation, and transportation.¹¹⁴ A U.S. industry source stated that the decree has encouraged the Colombian mining sector to expand by providing private investors with the benefit of importing equipment duty free; making this

¹⁰⁵ The GTAP sector is "machinery and equipment n.e.c."

¹⁰⁶ U.S.-Colombia TPA.

¹⁰⁷ Carbo, *Oil and Gas Drilling Equipment*.

¹⁰⁸ USCS and U.S. Department of State, *Doing Business in Colombia*.

¹⁰⁹ U.S.-Colombia TPA.

¹¹⁰ EIU, *Country Profile 2006: Colombia*, 18. "Plan 2,500" calls for government expenditures of \$770 million by 2009 to connect Colombia's highways. *Engineering News-Record*, "Colombia Finally Closes In," 17.

¹¹¹ Carbo, *Colombia: Mining Industry*.

¹¹² Gómez, hearing transcript, 85.

¹¹³ Gales, hearing transcript, 22.

¹¹⁴ Decree 4743/2005, approved on December 30, 2005. This tariff reduction is to expire in October 2010.

preference permanent for U.S. suppliers will further improve the investment climate.¹¹⁵ Further, U.S. officials stated that a key benefit of the TPA is that it grants permanent duty-free access to the Colombian market for U.S. suppliers of this equipment, which is likely to enhance U.S. export opportunities to Colombia.¹¹⁶

Colombian industries are expected to invest in pollution control equipment after the signing of the TPA, which requires enforcement of each country's environmental regulations, providing enhanced export opportunities for U.S. firms.¹¹⁷ Colombian tariffs on an estimated 79 percent of U.S. environmental products exports are to be immediately eliminated when the TPA enters into force. Tariffs on 6 percent of these product categories are to be phased out over 5 years, 11 percent over 7 years, and the remaining 4 percent over 10 years.¹¹⁸ Colombian government sources anticipate environmental investments of over \$3 billion per year in the coming years, providing new export opportunities for U.S. producers of air and water pollution monitoring and control equipment, pumps, valves, and solid waste hauling and disposal equipment.¹¹⁹

U.S. suppliers of power generation equipment are likely to benefit from elimination of Colombian tariffs under the TPA. Products among those considered to have the most potential for U.S. suppliers¹²⁰ are currently assessed tariffs ranging from 5 to 15 percent. Under the TPA, many of these tariffs are to be eliminated immediately upon implementation of the agreement, with some of the higher tariffs to be phased out over 5 years, and a few to be phased out over 10 years.¹²¹ The Colombian government is planning the development of several new electricity generation projects to accommodate expanded domestic demand as well as the prospect of becoming a leading regional exporter of electricity.¹²²

U.S. suppliers of radiology equipment are likely to benefit from the elimination of Colombian tariffs under the TPA and increase their presence in the small but growing Colombian health care market. Colombia does not produce high-technology radiology equipment,¹²³ and Colombian tariffs of 5 to 10 percent on U.S. radiology equipment are to be eliminated immediately upon entry into force of the agreement.¹²⁴ A recently announced Colombian government health care initiative to encourage the upgrading of radiology equipment¹²⁵ will likely benefit U.S. equipment suppliers in the Colombian market.

U.S. suppliers of food and beverage processing and packaging equipment are likely to benefit from tariff elimination under the TPA. Colombian tariffs on food processing machinery currently range from 10 to 15 percent; under the TPA, the 10 percent duties on U.S. machinery are to be eliminated immediately upon implementation, and the 15 percent duties are to be phased out over 10 years. Colombian tariffs on beverage processing machinery currently range from 5 to 20 percent; under the TPA, duties on U.S. machinery

¹¹⁵ Gales, hearing transcript, 91.

¹¹⁶ U.S. government official, e-mail message to Commission staff, October 6, 2006.

¹¹⁷ Environmental provisions of the TPA are discussed in chap. 6 of this report.

¹¹⁸ TEPAC, *The U.S.-Colombia Trade Promotion Agreement*, 9.

¹¹⁹ USCS and U.S. Department of State, *Doing Business in Colombia*.

¹²⁰ These products include transformers, motors, generators, and turbines. USCS and U.S. Department of State, *Doing Business in Colombia*.

¹²¹ *U.S.-Colombia TPA*.

¹²² USCS and U.S. Department of State, *Doing Business in Colombia*.

¹²³ *Ibid.*

¹²⁴ *U.S.-Colombia TPA*.

¹²⁵ USCS and U.S. Department of State, *Doing Business in Colombia*.

are to be eliminated with varied staging.¹²⁶ The TPA is likely to enhance the competitiveness of U.S. suppliers in the Colombian market as Colombia has little domestic production of this machinery.¹²⁷ Along with the tariff concessions for this type of equipment, the TPA is expected to intensify competition in Colombia from U.S. suppliers of processed and packaged food and beverages, which is likely to spur investments in food and beverage processing and packaging equipment by Colombian firms to maintain their position in the domestic market.¹²⁸

Electronics

U.S. electronics suppliers are likely to benefit from the tariff elimination under the TPA. Colombian tariffs on computer hardware and software currently range from 5 to 15 percent. The Commission's CGE model described in chapter 2 of this report estimates that U.S. exports of electronic equipment (including computer hardware and software) to Colombia are likely to increase by 8 percent, or \$51 million, as a result of tariff elimination. Colombia is the fourth largest information technology market in Latin America and has little domestic production.¹²⁹ However, U.S. products already account for 60 percent of the Colombian market,¹³⁰ and any increase in U.S. exports to Colombia is likely to have little overall effect on U.S. industry.

Most U.S. computer hardware and software exports to Colombia are to become free of duty immediately upon entry into force of the TPA.¹³¹ As part of the TPA, Colombia also has agreed to become a signatory to the WTO Information Technology Agreement (ITA), requiring Colombia to remove all tariffs and nontariff barriers to imports of technology products such as computer hardware, software, semiconductors, and telecommunication equipment. Tariffs on U.S. ITA products are to be immediately eliminated under the TPA, while tariffs for other WTO members may be gradually phased out under the ITA. Colombian tariffs will generally be eliminated within 5 years for U.S. electronics products not covered by the ITA.¹³²

Views of Interested Parties

U.S. industry representatives support the TPA and stated that the agreement will improve market access for U.S. industrial goods in Colombia. In hearing testimony, a representative from Caterpillar, the U.S. Chamber of Commerce, the Association of American Chambers of Commerce in Latin America, and the U.S.-Colombia Trade Coalition noted that Colombia maintains relatively high tariffs on manufactured goods, so that liberalization would have a real effect; for example, the tariffs on motor vehicles and computers are 35 percent and 10 percent, respectively.¹³³ The Emergency Committee for American Trade supports the provisions reducing Colombian tariffs on U.S. information technology products and

¹²⁶ U.S.-Colombia TPA.

¹²⁷ USCS and U.S. Department of State, *Doing Business in Colombia*.

¹²⁸ Peña, *Beverage Processing and Packaging Equipment*.

¹²⁹ USCS and U.S. Department of State, *Doing Business in Colombia*.

¹³⁰ Ibid.

¹³¹ U.S.-Colombia TPA.

¹³² U.S. government official, e-mail message to Commission staff, October 6, 2006.

¹³³ Gales, "Comments on the U.S.-Colombia Trade Promotion Agreement."

providing for Colombia to join the ITA, and the provisions for trade in remanufactured goods.¹³⁴

Several of the ITACs representing machinery and equipment sectors stated their support for the TPA. The ITAC on Automotive Equipment and Capital Goods stated that U.S. investors will benefit from the investment guarantees, and noted its approval of the tariff elimination for motor vehicles and the net-cost rules of origin.¹³⁵ The ITAC on Consumer Goods stated its support for provisions granting immediate duty-free access for products such as heavyweight motorcycles and provisions allowing trade in remanufactured goods.¹³⁶ The ITAC for Information and Communications Technologies, Services, and Electronic Commerce stated its support for provisions improving market access for U.S. exports of information technology products and scientific equipment.¹³⁷

Textiles and Apparel

Assessment

Tariff liberalization under the U.S.-Colombia TPA will likely result in a small increase in U.S. exports of textiles and apparel to Colombia, consisting mostly of inputs used in the production of apparel that is exported to the United States. The elimination of Colombian tariffs under the TPA will likely result in a very small increase in U.S. imports of textiles and apparel from Colombia. Because most imports of such goods from Colombia already enter free of duty under ATPA (80 percent in 2005) and because the rules of origin under the TPA for apparel are similar to those under ATPA, the principal benefit of the TPA is to make the trade preferences permanent and reciprocal.

Impact on U.S. Exports

U.S. exports of textiles and apparel to Colombia totaled \$150 million in 2005, a 4 percent increase over exports valued at \$145 million in 2004. The increase was led by a 13 percent increase in U.S. exports of fabric to Colombia.¹³⁸ The United States is expected to continue to be the principal supplier of cotton for Colombia's textile and apparel industry. Cotton consumption is projected to grow 3.3 percent annually from 2005 to 2006 because of the growth in Colombia's textile and garment exports.¹³⁹ U.S. exports of textiles to Colombia consist mostly of inputs (yarns, fabrics, and garment parts) shipped for use in the production of apparel for export to the United States. In testimony at the Commission's public hearing for this investigation, it was stated that the U.S. and Colombian textiles and apparel industries are complementary, and that the TPA could encourage U.S. exports of cotton, thread, and textiles, and U.S. imports of Colombian apparel.¹⁴⁰

¹³⁴ Cohen, "U.S.-Colombia Trade Promotion Agreement."

¹³⁵ ITAC 2, *ITAC 2 Advisory Report*, 2.

¹³⁶ ITAC 4, *The United States-Colombia Trade Promotion Agreement*.

¹³⁷ ITAC 8, *The U.S.-Colombia Trade Promotion Agreement*.

¹³⁸ Based on official statistics of the U.S. Department of Commerce.

¹³⁹ USDA, FAS, "Colombia Cotton and Products Annual 2006."

¹⁴⁰ Gómez, hearing transcript, 63 and 72.

The Commission's CGE model described in chapter 2 of this report estimates that tariff elimination under the TPA would result in a small decline in U.S. exports of textiles and apparel to Colombia; U.S. exports of textiles to Colombia are estimated to decline by \$2 million (a 1.4 percent decline), and U.S. exports of apparel are estimated to decline by less than \$500,000 (a 1.7 percent decline) (appendix table G-3). This potential negative effect from the model may be explained by the fact that most U.S. exports of textiles to Colombia currently are not subject to tariffs. These exports enter free trade zones or are eligible for duty savings in the form of duty drawback,¹⁴¹ a benefit that is maintained in the TPA.¹⁴² Since the model does not remove significant tariffs, it does not show an increase in exports due to tariff liberalization. However, because the TPA establishes reciprocal and permanent preferential duty treatment and includes both textiles and apparel, it is likely that, on balance, the TPA will actually result in small increases of U.S. exports of textiles and apparel to Colombia.

Impact on U.S. Imports

U.S. imports of textiles and apparel from Colombia totaled \$618 million in 2005, with apparel articles accounting for 93 percent (or \$575 million) of the total.¹⁴³ Leading U.S. apparel imports from Colombia included cotton trousers and pants, cotton knit shirts and blouses, wool suit-type coats, wool trousers, and wool suits. U.S. imports of textiles and apparel from Colombia grew by 67 percent between 2002 and 2005, but imports declined by 3 percent between 2004 and 2005 (from \$636 million to \$618 million), primarily as a result of increased competition from China and other lower-cost Asian suppliers prompted by the elimination of quotas on January 1, 2005¹⁴⁴ and appreciation of the Colombian peso against the U.S. dollar.¹⁴⁵

The textile and apparel sector is an important source of economic activity and employment in Colombia. The Colombian sector is integrated from the production of raw materials (mainly cotton) to the manufacture of intermediate goods (yarn and fabric) and finished

¹⁴¹ Duty drawback is a refund of duties paid on inputs imported into a country and incorporated into goods for export. Colombia's imports of U.S. materials are currently eligible for duty drawback upon exportation of the finished goods from Colombia to the United States. Although duty drawback and rules of origin requirements are important in estimating the potential effect of the TPA on U.S. bilateral textile and apparel trade with Colombia, they are not comprehensively incorporated into the CGE model, resulting in a possible overestimation of the marginal effects of tariff elimination in this sector.

¹⁴² Steve Lamar, senior vice president, American Apparel and Footwear Association, e-mail message to Commission staff, October 2, 2006; and Nicole Bivens Collinson, senior vice president, International Trade, Sandler, Travis & Rosenberg, e-mail message to Commission staff, September 28, 2006.

¹⁴³ Import data are from the U.S. Department of Commerce, OTEXA.

¹⁴⁴ According to at least one leading Colombian textile industry representative, the elimination of quotas is one of the factors that has prompted customers to shift their bulk production to China. Maria Clara Munera Velez, market access representative, Confecciones Colombia, S.A., e-mail message to Commission staff, June 5, 2006; and De Coster, "Colombia's Textile Market: Trapped by Change."

¹⁴⁵ U.S. Department of State, U.S. Embassy, Bogotá, "Textile and Apparel Statistics and Projection of Future Competitiveness"; and De Coster, "Colombia's Textile Market: Trapped by Change."

goods (mainly apparel).¹⁴⁶ Nevertheless, Colombia is a relatively small global supplier compared with China and other Asian suppliers.

Tariff elimination under the TPA¹⁴⁷ will likely result in a negligible increase in U.S. imports of textiles and apparel from Colombia. The Commission's CGE model estimates that U.S. imports of textiles and apparel from Colombia would increase by less than \$500,000 (appendix table G-3). However, the TPA could boost U.S. apparel imports from Colombia to the extent that it becomes an incentive to increase foreign investment in Colombia's textile and apparel sector.¹⁴⁸ Industry sources report that anticipation of the TPA has led to a small increase in investment in cotton mill production and in raw materials for textiles and apparel products.¹⁴⁹ Concerns about security risks and high insurance costs associated with doing business in Colombia reportedly have discouraged some prospective foreign investors.¹⁵⁰ In testimony at the Commission's public hearing it was stated that the TPA is likely to become an incentive for foreign investment in Colombia by enhancing legal stability and transparency.¹⁵¹ As a result, TPA may help Colombian producers maintain production levels in the face of increased competition from lower-cost Asian producers.¹⁵²

Views of Interested Parties¹⁵³

Many U.S. textile and apparel firms stated that the TPA will improve upon ATPA trade preferences by creating a permanent and reciprocal trade and investment partnership. However, most also expressed concern that ATPA benefits may expire before the TPA is implemented.

Representatives of the U.S. apparel industry expressed support for the immediate duty phase out in the agreement, but generally stated that the rules of origin do not provide for sufficient flexibility to generate and sustain trade and investment with Colombia or the Andean region. U.S. apparel firms contend that the yarn-forward rule is burdensome and will make it difficult to foster trade or investment links. However, U.S. textile firms generally expressed strong support for the yarn-forward rule because it mirrors similar yarn-forward rules in

¹⁴⁶ The textile and apparel sector represents 6 percent of total manufacturing, 6 percent of total exports, and slightly less than 1 percent of the country's GNP. Maria Clara Munera Velez, market access representative, Confecciones Colombia S.A., e-mail message to Commission staff, June 5, 2006. Another industry source stated that the textiles and apparel sector represents more than 10 percent of Colombia's total industrial output. EIU, "Country Profile Colombia—Main Report." Industry sources also note that Colombia holds a comparative advantage in certain parts of the textiles and apparel sectors: wadding, felt, nonwovens, certain yarns, knitted or crocheted fabric, and certain woven articles of apparel. DeRosa, Grieco, and Schott, "Bilateral Trade and Investment."

¹⁴⁷ The textiles and apparel provisions of the U.S.-Colombia TPA are virtually identical to those of the U.S.-Peru TPA.

¹⁴⁸ Since ATPA, particularly as amended by ATPDEA, several U.S. textile companies have made significant capital investments in Colombia to take advantage of ATPA preferences. U.S. Department of State, U.S. Embassy, Bogotá, "Colombia ATPDEA-Related Activity 2005."

¹⁴⁹ U.S. Department of State, U.S. Embassy, Bogotá, "Textile and Apparel Statistics and Projection of Future Competitiveness."

¹⁵⁰ De Coster, "Colombia's Textile Market: Trapped by Change"; and Mary K. Vane, director, Invista, telephone interview by Commission staff, Washington, DC, June 1, 2006.

¹⁵¹ Gómez, hearing transcript, 14 and 56; Gales, hearing transcript, 23 and 92; and Zalesky, hearing transcript, 32.

¹⁵² Gómez, hearing transcript, 119–120.

¹⁵³ Unless otherwise stated or cited, the industry views expressed in this section are from ITAC 13, *The U.S./Colombia Trade Promotion Agreement (US/CTPA)*.

other FTAs. However, U.S. textile firms raised concerns about how the rule of origin for sewing thread will be implemented in the TPA.

Some textile and most apparel firms stated that they prefer fabric-forward rules or “special regime” provisions (similar to NAFTA, but with no cutting requirement) to accommodate particular products. Several textile and apparel firms support the presence of a cumulation-style specific rule—found in other trade preference programs and yarn-forward FTAs—that permits the use of Israeli and Mexican nylon filament yarn. Other apparel interests expressed the concern that deviations from CAFTA-DR in this agreement almost always favor the more restrictive approach.

Several apparel firms stated that the initial short supply list contains too few products, including products already found to be in short supply in other FTAs and trade preference programs but not included in this TPA. However, apparel firms support the continued use of duty drawback benefits in the TPA, which are the case with several other recently completed FTAs.

The U.S. Association of Importers of Textiles and Apparel expressed concern about the loss of ATPA benefits before the TPA is implemented.¹⁵⁴ It also expressed concern that the lack of cumulation provisions¹⁵⁵ in the TPA discourages trade with Colombia because Colombia does not produce a sufficient supply of fabrics to meet demand of its U.S. apparel customers.

Industry sources in Colombia support the TPA, stating the benefits of permanent tariff elimination and their belief that having the TPA rather than a preferential agreement will help promote stronger commercial relationships.¹⁵⁶ A Colombian government representative stated that the TPA will result in increased U.S. exports to Colombia of threads and textiles.¹⁵⁷ Industry sources in Colombia report that Colombian exports of linens, including towels and bedsheets, that are currently subject to high U.S. tariffs, should increase as a result of the TPA.¹⁵⁸ They also expressed the concern that the lack of cumulation, which currently exists under ATPA, will reduce the competitiveness of Colombian goods exported to the United States that require raw materials from Peru.

Sugar and Sugar-containing Products

Assessment

The U.S.-Colombia TPA provisions concerning sugar and sugar-containing products (SCP)¹⁵⁹ are likely to have a minor effect on U.S. imports and production of sugar and SCPs;

¹⁵⁴ Julie Hughes, senior vice president, U.S. Association of Importers of Textiles and Apparel, telephone interview with Commission staff, October 2, 2006.

¹⁵⁵ Cumulation provisions enable FTA signatories to use inputs (e.g., fabrics and yarns) from other parties with which the signatory countries have free trade agreements.

¹⁵⁶ Robert D. Manogue, Economic Section, U.S. Embassy, Bogotá, e-mail message to Commission staff, November 1, 2006.

¹⁵⁷ Gómez, hearing transcript, 14.

¹⁵⁸ Robert D. Manogue, Economic Section, U.S. Embassy, Bogotá, e-mail message to Commission staff, November 1, 2006.

¹⁵⁹ The discussion of U.S. imports in this sector includes raw sugar, refined sugar, sugar syrups, and sugar-containing products classified in chaps. 17, 18, 19, and 21 of the HTS that are subject to TRQs, and all items (continued...)

while imports are likely to increase by a significant percentage, the relatively small quantities of imports will not significantly impact the U.S. sugar market. The United States is primarily a sugar importer and is a higher-cost producer than is Colombia such that U.S. sugar exports to Colombia are unlikely to increase. Thus, overall, the TPA is unlikely to have an appreciable effect on the U.S. sugar market for producers and users.¹⁶⁰ Historic production, consumption, and trade patterns suggest that Colombia likely will be able to consistently meet the TPA's net trade surplus provision.¹⁶¹ Colombia's duty-free access to the U.S. market under the TPA will be limited to an initial in-quota TRQ allocation of 50,000 mt, which increases by 750 mt annually. These levels are small relative to the size and growth of the U.S. sugar market. U.S. over-quota tariff rates are not affected by this agreement. An overview of U.S. sugar policy is presented in appendix I of this report.

Impact on U.S. Exports

The TPA is unlikely to have a significant effect on U.S. exports of raw cane and refined sugar because the United States is primarily an importer of these products and generally is a higher-cost producer than Colombia. The TPA may result in increased U.S. exports of other sweeteners, such as glucose, high-fructose corn syrup (HFCS), and SCPs classified in HS chapter 17. However, it is unlikely to have more than a negligible effect on the total exports of such products, as Colombia is a relatively small market for these products. From 2001 to 2005, U.S. exports of all products classified in HS chapter 17 to Colombia were less than 1 percent of total U.S. exports of such products, averaging \$5.6 million to Colombia compared with a world total of \$697 million.¹⁶² Under the TPA, the United States will receive a duty-free TRQ for glucose (AACOL¹⁶³ 1703.3020, 1702.3090) starting at 10,500 mt and ending in unlimited quantities after 10 years.¹⁶⁴ U.S. exports of glucose to Colombia totaled 3,400 mt, valued at \$1.5 million, in 2005.¹⁶⁵ Colombian imports of HFCS are subject to price bands. U.S. HFCS exports to Colombia have been relatively minor, but increased

¹⁵⁹ (...continued)

that are covered by the sugar provision of the TPA. The discussion of U.S. exports in this section is limited to raw sugar, refined sugar, sugar syrups, and sugar-containing products classified in chap. 17 of the HTS, as the other products generally are part of various processed food sectors.

¹⁶⁰ The U.S. sugar-producing sector addressed in this section of the report primarily consists of sugar cane growers, sugar cane millers, raw cane sugar refiners, sugar beet growers, and sugar beet refiners. This section of the report does not generally address producers of corn-based sweeteners, e.g., high-fructose corn syrup. The U.S. sugar-using sector generally consists of a wide range of food and beverage manufacturers, including manufacturers of nonchocolate confectionery, chocolate and chocolate confectionery, and breakfast cereal.

¹⁶¹ The net-exporter provision of the TPA reads as follows: "In any year, duty free tariff treatment under subparagraph (a) for Colombia shall be accorded to the lesser of (i) the aggregate quantity set out in subparagraph (a) for Colombia, or (ii) a quantity equal to the amount by which Colombia's exports to all destinations exceeds its imports from all sources ("trade surplus") for goods classified under the following subheadings: HS 1701.11, HS 1701.12, HS 1701.91, HS 1701.99, HS 1702.40, and HS 1702.60, except that Colombia's exports to the United States of goods classified under subheadings HS 1701.11, HS 1701.12, HS 1701.91, and HS 1701.99 and its imports of originating goods of the United States classified under HS 1702.40 and HS 1702.60 shall not be included in the calculation of its trade surplus. Colombia's trade surplus shall be calculated using the most recent annual data available." *U.S.-Colombia TPA*, annex 2.3, U.S. app. I, 6–8.

¹⁶² USITC, *Dataweb*.

¹⁶³ *Arancel de Aduanas de la República de Colombia (Colombia Tariff Schedule)*.

¹⁶⁴ *U.S.-Colombia TPA*, annex 2.3, Colombia app. I, 12–13.

¹⁶⁵ USITC, *Dataweb*.

from \$44,000 in 2001 to \$211,000 in 2005.¹⁶⁶ Elimination of the price band and a 5-year phase-out of the remaining duties likely will make U.S. exports of HFCS more competitive in the Colombian sweetener market, especially when used as an input for soft drink production. However, the potential Colombian market for HFCS is small relative to total U.S. production and exports.

Impact on U.S. Imports

The TPA itself is unlikely to have a significant effect on the U.S. domestic sugar market. As noted, additional duty-free access for Colombian sugar and SCPs in the U.S. market is initially limited to 50,000 mt, growing by 750 mt annually.¹⁶⁷ While it is expected that Colombia will fill its sugar quota under the TPA, these provisions will limit Colombian sugar exports to the U.S. market because current NTR over-quota duty rates associated with WTO TRQs for sugar and SCPs generally are prohibitive and are not affected by the TPA. The initial additional in-quota quantity of 50,000 mt represents about 0.5 percent of the 9.3 million mt of sugar expected to be consumed in the United States during FY2007.¹⁶⁸ Furthermore, assuming U.S. sugar consumption continues at an average annual growth rate of about 1.0 percent, as it grew from 1994 through 2005, it is unlikely that the TRQ quantities under the TPA would ever exceed more than 0.5 percent of U.S. domestic sugar consumption.

Colombia is likely to meet the net-exporter provision of the TPA, which limits Colombia's sugar exports to the United States (beyond those allocated by the U.S. WTO TRQs) to the lesser of the specified TRQ quantity or the amount by which Colombia's total exports exceed its total imports, excluding sugar and HFCS corn syrup trade with the United States. Colombia would have easily met the net-exporter provision of the agreement in the past 10 years (1996–2005), and is likely to meet the provision in 2006–07.¹⁶⁹ Colombia is a net exporter of sugar; domestic production has exceeded domestic consumption by more than 1 million mt annually since 2001.¹⁷⁰ Colombia's net-exporter status would enable it to fill its entire TPA quota. Colombia's current WTO TRQ is 30,760 mt (raw value).¹⁷¹ Colombia's cost of production is significantly lower than the typical U.S. market price and the loan forfeiture price administered in the U.S. sugar program.¹⁷² In addition, the U.S. sugar market prices are well above those in the world export market. The recent U.S. raw sugar price has been more than one-third greater than the world sugar price, while the U.S. wholesale refined sugar price has been two-thirds greater.¹⁷³

¹⁶⁶ Ibid.

¹⁶⁷ *U.S.-Colombia TPA*, annex 2.3, U.S. app. I, 6–7.

¹⁶⁸ USDA, WAOB, *World Agricultural Supply and Demand Estimates*, table 438-16, converted to mt at rate of 1 mt = 1.10231123 short tons.

¹⁶⁹ Based on Commission staff estimates using *Global Trade Atlas* and USDA, FAS, "Production, Supply, and Distribution Online."

¹⁷⁰ USDA, FAS, "Production, Supply, and Distribution Online."

¹⁷¹ USTR, "USTR Announces Revised FY 2006 Tariff-Rate Quota Sugar Allocations."

¹⁷² The current U.S. raw sugar price is about 21 cents per pound and the wholesale refined sugar price is 35 cents per pound. USDA, ERS, *Sugar and Sweeteners Yearbook*, table 4 and table 5. The current loan forfeiture price under the U.S. sugar program is 18 cents per pound for raw cane sugar and 22.9 cents per pound for refined sugar. USDA, ERS, "Sugar and Sweeteners: Policy." Data on Colombia's cost of production are proprietary and are from LMC International, Ltd., *The LMC Worldwide Survey*.

¹⁷³ USDA, ERS, *Sugar and Sweeteners Yearbook*, tables.

The Colombian government recently implemented a domestic energy policy that requires the use of fuel ethanol, which is produced from sugar cane.¹⁷⁴ Increasing ethanol production likely will divert sugar cane from sugar production.¹⁷⁵ However, given the relatively small TRQ under the TPA, this likely will not affect Colombia's ability to fill its annual allocation. Colombia's net trade surplus is forecast to drop to about 825,000 mt in FY2007.¹⁷⁶

Other factors could influence Colombia's ability to export sugar in the future. Exogenous factors, mainly weather conditions, can affect annual output. Technological improvements may increase yields. Also, the potential for substituting HFCS for sugar in soft drinks and for increased imports of SCPs could displace sugar in the Colombian market. However, given the relatively small share of Colombian exports accounted for by the TRQ under the TPA, it is unlikely these factors will affect Colombian exports to the U.S. market.

One final factor that will impact U.S. imports of Colombian sugar is the sugar compensation mechanism provision of the TPA.¹⁷⁷ Under this provision, the United States is granted the option to choose to pay Colombian sugar exporters not to ship to the U.S. market in lieu of according duty-free treatment to some or all of Colombia's sugar exports. The compensation is based on the equivalent estimated economic rents that the exporters would have received for the sugar that they would have exported to the United States. This provision is the same as the sugar compensation mechanism contained in both the U.S.-Peru TPA and CAFTA-DR.

Views of Interested Parties

American Sugar Alliance expressed concern that the TPA will contribute to an oversupply of sugar in the U.S. market, particularly in light of other commitments under CAFTA-DR and the elimination of duties under NAFTA as of January 1, 2008.¹⁷⁸ Furthermore, representatives of the U.S. sugar producers stated that including sugar in bilateral FTAs does not promote the objectives of the U.S. sugar-producing sector and that U.S. sugar market access should be negotiated in the multilateral WTO context in which foreign subsidies provided to sugar producers and exporters can be addressed. U.S. sugar producers also stated that they were "skeptical about the efficacy" of the sugar compensation mechanism, but reported that "inclusion of provisions for such a mechanism in the proposed Colombia FTA (and other FTAs with sugar-exporting countries) is advisable and could provide a potentially useful policy tool."¹⁷⁹

The Sweetener Users Association supports comprehensive product coverage, including sugar, in U.S. regional and bilateral FTAs.¹⁸⁰ U.S. sugar users stated that the TRQ access granted in the TPA is modest compared with the U.S. market and that the TPA contains provisions similar to those in previous FTAs. In addition, U.S. sugar users stated that they should be consulted prior to the use of a sugar compensation mechanism provided for in the

¹⁷⁴ USDA, FAS, "Colombia Sugar Annual, 2006."

¹⁷⁵ Ibid.

¹⁷⁶ USDA, FAS, "Production, Supply, and Distribution Online."

¹⁷⁷ *U.S.-Colombia TPA*, art. 2.19.

¹⁷⁸ ATAC for Trade in Sweeteners and Sweetener Products, *The U.S.-Colombia Free Trade Agreement (FTA)*.

¹⁷⁹ Ibid. In addition to representatives of cane and beet producers, the American Beekeeping Federation participated in the majority view.

¹⁸⁰ Ibid., minority view, 7.

TPA. U.S. food manufacturers stated that over-quota sugar tariffs should be included in the TPA, and noted their opposition to the sugar compensation mechanism.¹⁸¹

Cut Flowers

Assessment

The provisions of the U.S.-Colombia TPA will not likely affect the current levels of U.S. imports of fresh cut flowers from Colombia.¹⁸² The main effects of the agreement will be to make permanent, and therefore maintain, the positive effects of duty-free treatment under ATPA on U.S. consumers, importers, and distributors of cut flowers. However, the permanence of trade preferences under the TPA could encourage increased investment in the Colombian industry by U.S. and other foreign firms. In a scenario in which U.S. cut flower imports from Colombia have permanent duty-free status under a TPA and other Andean cut flower producers—particularly those in Ecuador—do not, existing or new investment in the industry could shift to Colombia resulting in increased availability of cut flowers from Colombia in the U.S. market.

Impact on U.S. Imports

The United States is the principal market for Colombian fresh cut flower exports, accounting for 81 percent of the total value of Colombian exports (\$727 million) in 2005.¹⁸³ In contrast, the U.S. wholesale value of domestic cut flower production in the United States was \$397 million in 2005. Colombia attained a high U.S. import market share—mainly in roses, chrysanthemums, and carnations—before ATPA was implemented in 1991.¹⁸⁴ Since the late 1980s, considerable consolidation has occurred in the U.S. industry in the face of large volumes of low-priced imports from Colombia (the largest U.S. supplier of fresh cut flowers), Ecuador, and other Latin American suppliers, and emerging low-cost producers such as China and some African countries.¹⁸⁵ Worldwide, the highly fragmented cut flower industry is currently experiencing a global oversupply, which is keeping prices low and restraining profits. This oversupply has coincided with decreased U.S. demand.¹⁸⁶

¹⁸¹ ATAC for Trade in Processed Foods, *Advisory Committee Report*.

¹⁸² This section considers imports of fresh cut flowers classified under HTS tariff heading 0603.10. The findings in this section are not comparable to the economy-wide estimates in chap. 2 of this report because trade in cut flowers makes up only a portion of the GTAP “crops n.e.c.” sector, and thus, its individual effect is not measurable in the CGE model.

¹⁸³ *Global Trade Atlas*.

¹⁸⁴ ATPA preferences are scheduled to expire at the end of 2006. Without renewal, duties of 3.2 to 6.8 percent would be assessed on cut flower imports from Colombia, since most Colombian flowers are not eligible for GSP treatment. Although imports of all varieties of cut flowers except roses are GSP eligible, imports of all cut flowers from Colombia except miniature (spray) carnations have been ineligible since July 2005 because they exceed the GSP competitive-need limit. ATPA is discussed in more detail in app. F of this report.

¹⁸⁵ The wholesale value of domestically produced fresh cut flowers declined steadily from a high of \$469 million in 1989 to \$397 million in 2005. USDA, NASS, *Floriculture Crops, 1988 Summary*, and 2005 *Summary*. Certain varieties of cut flowers lend themselves to importation; roses have a high value per pound and both roses and carnations can withstand long-distance air transport with limited damage.

¹⁸⁶ Bussey, “Dole Fresh Flowers to Cut Workers.”

Over time, the U.S. cut flower industry has switched to high-value cut varieties with limited import competition (e.g., tulips, lilies, and orchids), as well as other nursery products such as annual and perennial flowering plants.¹⁸⁷ Some remaining U.S. growers of roses, chrysanthemums, and carnations serve high-end niche markets or markets with specific requirements such as unique sizes, durability, and longevity. Some segments of the U.S. fresh cut flower industry have differentiated their products from imports to some extent by offering services not available from importers.¹⁸⁸

The TPA will make permanent the small advantage of duty-free treatment for Colombian flowers currently afforded by ATPA. However, the impact of permanent duty-free treatment under the TPA on the U.S. industry as a whole will likely be minimal because U.S. cut flower growers have already responded to duty-free Colombian flowers by diversifying into other cut varieties and nursery products.

The permanence of trade preferences under the TPA could lead to increased investment in the Colombian cut flower industry because the U.S. and Colombian flower industries are highly integrated.¹⁸⁹ Moreover, if Ecuador loses preferential access for cut flowers, some investment in that country could shift to Colombia. According to one recent press report, Dole Fresh Flowers (DFF), a division of Dole Food Company, Inc. and the largest producer of fresh cut flowers in Latin America, recently announced plans to close its operations in Ecuador, consolidate its operations in Colombia, and focus production on a narrow range of high-value products and flower types in light of an increasingly competitive global market for cut flowers.¹⁹⁰ In light of the DFF announcement, industry observers noted that rising costs in Ecuador would likely be exacerbated by its lack of preferential access to the U.S. market either through an FTA or other preferential program, and would make Ecuador less competitive vis-à-vis Colombia.¹⁹¹

Views of Interested Parties

The U.S. cut flower industry generally supports the U.S.-Colombia TPA because it will maintain the status quo of duty-free treatment for Colombian cut flowers that exists under ATPA. U.S. producers recognize the legitimacy of Colombian imports in the U.S. market.¹⁹² According to industry representatives, most U.S. cut flower producers recognize that the U.S. market has evolved over the last 25 years and that the abundance of low-priced cut flower imports has worked to increase awareness and consumption of flowers in the United States.¹⁹³ Colombian exporters maintain that the TPA will encourage additional U.S. investment in the Colombian flower industry, creating more jobs in Colombia and supporting

¹⁸⁷ Roses, chrysanthemums, and standard carnations accounted for 10 percent of total U.S. production of cut flowers in 2005.

¹⁸⁸ Some U.S. cut flowers can offer quick turnaround times on special orders, which is a service importers can less easily provide.

¹⁸⁹ U.S. companies owned approximately 17 percent of total Colombian production in 2004, and account for nearly 20 percent of total exports to the United States. The value of U.S. investments in the Colombian flower industry is estimated at \$250 million. Mulder, "Statement for the Record of the Association of Colombian Flower Exporters."

¹⁹⁰ The restructuring will result in the laying off of one-third of its workforce in Colombia, for a total of approximately 3,500 lost jobs in both countries. Dole Food Company, "Dole Food Company Announces Restructuring of its Fresh Flower Business."

¹⁹¹ Forero, "Ecuador Reaps Costs of Anti-Trade Fervor."

¹⁹² Vordale, "California Cut Flower Commission Written Submission," October 16, 2006.

¹⁹³ Industry representatives, interviews by Commission staff, October 2–6, 2006.

U.S. national security interests in the Andean region.¹⁹⁴ Other segments of the U.S. industry, such as importers, distributors, and retailers, depend on Colombian flowers for their business and the competitive prices of Colombian flowers allow U.S. companies to provide high quality flowers at low prices to U.S. consumers.¹⁹⁵ Importers, in particular, support the TPA because it makes current ATPA preferential duty-free entry permanent,¹⁹⁶ eliminating the possibility of expiration, which occurred in 2002 and cost importers approximately \$2.5 million per month in duties.

¹⁹⁴ Mulder, "Statement for the Record," October 4, 2006.

¹⁹⁵ Mulder, hearing transcript, 47.

¹⁹⁶ Ibid.

CHAPTER 4

Effects of Market Access Provisions for Services

This chapter assesses the potential effect of the U.S.-Colombia TPA on the services sector and services trade. The analysis first focuses on cross-border trade in services, generally, and then discusses financial and telecommunications services, specifically. Each TPA chapter discussion includes an assessment, a summary of TPA provisions, and the views of interested parties.

Summary of Assessments

The U.S.-Colombia TPA, which is similar to the U.S.-Peru TPA, will provide U.S. services firms with levels of market access, national treatment, and regulatory transparency that generally exceed those afforded by Colombia's commitments under the General Agreement on Trade in Services (GATS).

- **Small potential effect:** The TPA is expected to generate only a small increase in U.S. services exports to Colombia because of the small size of the Colombian market. The TPA is not likely to have a measurable effect on U.S. imports of services from Colombia because the U.S. services market is already generally open to foreign firms, including those from Colombia, and because the Colombian industry is small.
- **Benefit of “negative list” approach:** Improved access for U.S. services firms in Colombia is largely attributable to the “negative list” approach in the agreement. This approach extends the trade disciplines found in the services chapters of the TPA to services for which Colombia made no commitments under GATS, such as architectural services and real estate services.
- **Estimation of tariff rate equivalents:** Based on the Commission's quantitative analysis, the tariff rate equivalents (TREs) of Colombia's nontariff impediments to banking services decline significantly under the TPA, as compared to Colombia's commitments under the GATS.
- **Financial services:** The financial services chapter will contribute to favorable conditions for U.S. providers of banking, securities, and insurance services. Particularly important provisions for U.S. industry include new commitments regarding asset management, cross-border insurance services, and mutual and pension funds. However, because of the small size of the Colombian market, substantial new investment by U.S. financial services companies is unlikely in the short term.

- **Telecommunications services:** The existing level of openness and small size of Colombia's telecommunication services market will limit any measurable effect of the TPA on U.S. cross-border exports, imports, or affiliate sales of telecommunications services.

TPA Chapter 11—Cross-Border Trade in Services

Assessment

The trade in services provisions of the U.S.-Colombia TPA will broadly provide U.S. firms levels of market access, national treatment, and regulatory transparency that exceed those afforded by Colombia's commitments under the GATS.¹ However, the effect of TPA disciplines on overall bilateral services trade is likely to be minimal because of Colombia's relatively small and domestically focused services sector (box 4-1 and table 4-1).²

Improvement in U.S. firms' access to the Colombian market under the TPA is attributable in large part to the use of a "negative list" approach in the agreement. Under this approach, all trade disciplines included in TPA chapters 11, 12, and 14 will automatically cover all services industries and industry segments except for those specifically exempted in TPA annexes I through III on nonconforming measures (table 4-2).³ Use of the negative list approach extends the trade disciplines found in the services chapters of the TPA to many services for which Colombia made no (or limited) commitments under the GATS, including those yet to be offered commercially.⁴ For instance, Colombia elected to make no GATS commitments in architectural services and real estate services and limited GATS commitments in computer and related services, but did not exempt these services from TPA disciplines. Consequently, U.S. providers of such services will be entitled to unrestricted market access, nondiscriminatory regulatory treatment, and improved transparency under the terms of the TPA, whereas they may not under GATS.

Summary of Provisions

Chapter 11 of the TPA covers services other than financial services and air transport services.⁵ The TPA will guarantee national and MFN treatment for providers of the covered

¹ WTO, "Colombia: Schedule of Specific Commitments."

² It is not possible to establish an overall quantitative measure of the effect of the U.S.-Colombia TPA on trade in services because of the unavailability of data. However, using methodology developed by the Commission, a quantitative measure of impediments to banking services is presented in app. J of this report.

³ The United States has specified five services industries for which it currently maintains cross-border nonconforming measures (NCMs), whereas Colombia specified 22 services industries subject to cross-border NCMs. However, due to the already largely open U.S. market and Colombia's relatively small services industry, the commercial impact of these measures on U.S. imports and exports is likely to be small. For information on the nature of Colombia's NCMs, see app. K of this report.

⁴ The negative list approach tends to yield greater market access and transparency than the "positive list" approach employed in GATS, wherein market access and national treatment apply only to the provision of specifically listed services. Under a positive list approach, the extension of trade disciplines to newly created services would have to be negotiated individually.

⁵ The covered measures include those adopted or maintained by central, regional, or local governments and authorities and by nongovernmental bodies exercising powers delegated by such governments and authorities.

Box 4-1 Profile of services industries in Colombia and the United States

The services sector in Colombia accounted for 54 percent of the country's GDP in 2004. Colombia posted a services trade deficit in that year, with imports and exports of \$4.0 billion and \$2.2 billion, respectively. Services accounted for 11 percent of Colombia's overall exports, with the travel and tourism sector accounting for 46 percent of services exports in 2004.

As of May 2006, there were 14 domestic banks and 6 foreign-owned banks in Colombia, including U.S.-owned Citibank, which controlled 2 percent of total assets in the banking system. Under current law, foreign banks must establish subsidiaries within Colombia, but they then receive full national treatment. There are no limits on foreign equity stakes in Colombian commercial banks. The Colombian government privatized several banks in 2005, one of which, Granahorrar, was sold to a foreign investor, BBVA of Spain. State-owned banks controlled 12 percent of assets at the end of 2005. Colombia recorded exports of \$31 million in financial services, excluding insurance, compared with \$93 million in financial services imports in 2004. By contrast, total U.S. exports of financial services were \$21.9 billion, compared with imports of \$4.8 billion.

The insurance market in Colombia in 2005 recorded total premiums of \$2.8 billion, of which 28 percent was for life insurance and 72 percent for nonlife insurance. Based on total premium volume, Colombia's insurance market is ranked 44 out of 88 countries in the Swiss Re industry database. As of September 2006, there were 27 insurance companies operating in Colombia, 11 of which were foreign owned. Colombia did not record any exports of insurance services in 2004, but imported insurance services valued at \$249 million. By comparison, U.S. exports of insurance services were valued at \$6.1 billion, with imports of \$29.9 billion.

The U.S. services sector accounted for 83 percent of U.S. private sector GDP and 85 percent of private sector employment in 2004. The United States is the world's largest services exporter, with cross-border private services exports totaling \$323.4 billion in 2004, and maintains the largest cross-border services trade surplus, measuring \$65.3 billion in 2004. Sales of services by foreign affiliates of U.S. parent firms, the value of which has exceeded that of U.S. cross-border services exports since 1996, totaled \$477.5 billion in 2003 (latest available). Such sales follow U.S. direct investment in foreign markets, and in part reflect the degree to which foreign markets are open to U.S. services firms.

Sources: U.S. Department of Commerce, BEA, *Survey of Current Business*, May 2005, August 2005, and October 2005; IMF, *Balance of Payments Statistics Yearbook, 2005*; EIU, *Country Profile 2006: Colombia*; EIU, "Country Finance Colombia;" FASECOLDA, "Compañías Afiliadas;" and Swiss Re, *Sigma*.

Table 4-1: Cross-border trade in services with all trading partners by the United States and Colombia, 2004 (million U.S. dollars)

Service industry	United States		Colombia	
	Exports	Imports	Exports	Imports
Total services	340,420	296,070	2,236	4,009
Passenger transport	18,860	23,700	308	354
Freight transport	15,810	39,230	177	1,002
Other transport	21,050	14,940	194	254
Travel and tourism	93,920	69,520	1,032	1,290
Other services ^a	190,780	148,690	525	1,110

Source: International Monetary Fund (IMF), *Balance of Payments Statistics Yearbook, 2005, Part 1: Country Tables*, vol. 56, 2005, 212 and 1011.

Notes: As noted by the IMF regarding data summation discrepancies: Columns may not sum to totals due to rounding. Most data in the tables are expressed in units of 1 million; users should not assume that any IMF table showing smaller units necessarily contains more accurate figures. The unit is chosen to present the figures conveniently. Because of the calculation routines used, there may be rounding differences between an aggregate and the sum of its components.

^aIncluded in "other services" are communications; construction; insurance; financial; computer and information; royalties and license fees; other business; personal, cultural, and recreational; and other government.

Table 4-2 U.S.-Colombia TPA: Services sectors subject to nonconforming measures related to cross-border trade

Colombia		United States	
Current Measures	Potential measures	Current Measures	Potential measures
Cinematography	Advertising	Air transportation	Communications
Community television	Audiovisual	Business services	Minority affairs
Customs activities	Cultural industries and activities	Insurance	Social services
Domiciliary public services	Handicraft industries	Professional services—patent attorneys, patent agents, and others that practice before the Patent and Trademark Office	Transportation
Electric energy	Interactive audio and/or video services	Transportation services - customs brokers	
Fishing and related activities	Issues related to minorities and ethnic groups		
Free-to-air television	Jewelry design		
Insurance and insurance-related services	Music		
Maritime and fluvial transport	Performing arts		
Port services	Professional services excluding accountants and travel agents		
<i>Postal and mensajería especializada services</i>	Publishing		
Private security and surveillance services	Road and fluvial transport		
Public accountants	Social services		
Public notaries and register services	Traditional expressions		
Radio broadcasting services	Visual arts		
Research and development services			
Services directly incidental to exploration and exploitation of minerals and hydrocarbon			
Specialty air services			
Subscription television			
Telecommunications services			
Transport			
<u>Travel and tourism agents</u>			

Source: *U.S.-Colombia TPA*, annex I, annex II, and annex III.

Notes: Nonconforming measures are found in annexes I through III of the TPA. Annex I contains reservations for cross-border services, excluding financial services, to preserve existing measures that are inconsistent with the disciplines concerning nondiscrimination, performance requirements, and senior personnel. Annex II contains reservations for cross-border services, excluding financial services, to ensure that a party maintains flexibility to impose measures in the future that may be inconsistent with the disciplines of the TPA. Annex III contains both existing and future nonconforming measures related to financial services, including insurance.

services. Local presence is not required, and regulation of services and qualification requirements may not be unduly burdensome. There are transparency requirements in addition to those set out in TPA chapter 19 on transparency. The parties are permitted but not required to recognize education, experience, licenses, or certifications obtained in particular nonparty countries.

The parties commit to permit unfettered transfers and payments relating to the cross-border supply of services, and must allow such transactions to occur in a freely usable currency at the prevailing exchange rate on the date of transfer, subject to explicit exceptions. The benefits of this chapter may be denied under limited circumstances if the service supplier is controlled by persons of a nonparty. Chapter 11 includes specific language on express delivery services that defines the scope of coverage, confirms the desire to maintain market access no less favorable than that in effect when the TPA was signed, delineates the relationship between covered services and each party's postal monopoly, places limits on state subsidies, and ensures the independent regulation of state postal services (annex 11-D).

In annex 11-A, the parties agree that if a party establishes or maintains a fund to promote a particular service within its territory, discriminatory disbursement of such funds will be allowed under the TPA, even when the fund is administered in part or wholly by a privately owned entity. In annex 11-B, the parties agree to encourage relevant bodies to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers. This annex permits the parties, by mutual agreement, to encourage the relevant bodies in their respective territories to develop procedures for the temporary licensing of one another's professionals. Moreover, this annex establishes a Working Group on Professional Services, including representatives of each party, to facilitate the activities listed previously, with priority consideration given to engineering, architecture, and accounting services. At its first meeting, the working group is to consider establishing procedures for the temporary licensing of engineers with consultation by relevant professional bodies in its territory. Annex 11-C will allow Colombia to reserve the right to maintain certain limitations regarding nationality and local content requirements for specified professions, except to the extent that these limitations restrict the ability of enterprises to employ professionals and specialty personnel of other parties on a temporary basis. Annex 11-E addresses dealer protection laws, revising or eliminating automatic penalties imposed on companies upon termination of a commercial agency contract. Finally, the TPA includes a U.S. side letter and Colombian confirmation reply concerning the review of permanent residency and citizenship requirements in the states of New York, New Jersey, California, Texas, and Florida, and in the District of Columbia, for the following services subsectors: engineering, accounting, architecture, legal services, nursing, dentistry, medical general practitioners, and paramedics.

Views of Interested Parties

Overall, U.S. industry representatives are generally satisfied with the TPA provisions on services and transparency. U.S. industry sources stated that the TPA will provide a favorable environment for cross-border services trade, opening many previously closed Colombian sectors to U.S. services suppliers and investors. In particular, U.S. industry sources are encouraged by the elimination of Colombia's prohibitions on hiring U.S. nationals in key

executive or professional positions.⁶ Further, U.S. industry representatives are encouraged by the provisions in annex 11-E that ensure the efficient and effective distribution of U.S. goods and services.⁷ U.S. industry sources indicated that the TPA chapters on investment, government procurement, cross-border trade in services, and transparency provide a framework that can increase opportunities in Colombia for U.S. energy services firms, as Colombia has proven reserves in oil, natural gas, and coal.⁸ However, U.S. industry representatives noted that, although Colombia maintains a relatively developed and modern services sector, aside from services that are directly linked to increased goods trade, any additional bilateral services trade between the United States and Colombia will not likely be significant in the near term.⁹

TPA Chapter 12—Financial Services

Assessment

The financial services provisions of the U.S.-Colombia TPA will likely lead to increased penetration of the Colombian market by U.S. firms.¹⁰ However, the Colombian economy is small compared with the U.S. economy, so new cross-border exports of financial services and new investment in the Colombian financial services market by U.S. firms are expected to be limited. Significant new imports of financial services from Colombia are unlikely.

The TPA will likely encourage changes in Colombia's banking and securities regulatory regime that are expected to improve conditions for U.S. financial services firms in Colombia. Particularly important changes for U.S. financial services firms include cross-border provision of insurance and asset management services, and the ability for U.S. firms to establish branches rather than separately capitalized subsidiaries, as currently required. Another important new provision will permit U.S. portfolio managers to provide services to both mutual funds and pension funds in Colombia, including Colombia's privatized social security accounts.

Financial Services, Except Insurance

The TPA is expected to generate only a small increase in U.S. exports of banking, securities, and asset management services to Colombia. The anticipated absolute effect is small due to the size of the Colombian market and historically small export volume, estimated to have accounted for not more than 2 percent (\$534 million) of total U.S. exports of financial services in 2004.¹¹ Nonetheless, the TPA text represents a significant improvement over

⁶ ITAC 10, *The United States-Colombia Trade Promotion Agreement*, 1–3.

⁷ U.S. industry representative, e-mail messages and telephone interview with Commission staff, September 12, 2006.

⁸ ITAC 10, *The United States-Colombia Trade Promotion Agreement*, 11.

⁹ U.S. industry representatives, e-mail messages and telephone interviews with Commission staff, September 12–15, 2006.

¹⁰ ITAC 10, *The United States-Colombia Trade Promotion Agreement*; U.S. Department of State, U.S. Embassy, Bogotá, “Colombian Banking Sector,” and U.S. industry representatives, telephone interviews with Commission staff, September 14–19, 2006.

¹¹ This figure represents exports to “other South and Central America” countries, including Colombia, for which data are not individually available. U.S. Department of Commerce, BEA, *Survey of Current Business*, (continued...)

Colombia's current GATS bindings. The Commission estimates that the tariff rate equivalent (TRE) of Colombia's remaining nontariff impediments to banking services stands at 42 percent under the terms of the TPA, which is less than one-half the estimated 88 percent TRE consistent with Colombia's GATS bindings.¹² The TRE declines in large part are due to the elimination of economic needs tests, which increase the cost of foreign investment (box 4-2). Greater foreign investment will likely reduce the cost of loans as banks compete for business.¹³ In turn, lower loan cost will likely increase lending, with U.S. banks among the beneficiaries.

The market for U.S. financial services is already fairly open and the Colombian industry is relatively small. As a result, the TPA is not likely to have a significant effect on U.S. imports of financial services from Colombia. Total U.S. imports of banking and securities services registered \$11.2 billion in 2004, and sales of financial services by U.S. affiliates of foreign firms totaled \$24.5 billion in 2003 (latest available).¹⁴ While precise figures on U.S. imports of financial services from Colombia do not exist, available data indicate that cross-border imports did not exceed \$95 million in 2004,¹⁵ or less than 1 percent of total U.S. banking and securities services imports. Moreover, such Colombian imports, if any, are most likely concentrated in the provision of trade financing to U.S. clients importing goods from Colombia, and do not directly compete with U.S.-based banks due in part to their small size and higher lending costs.¹⁶ Any future growth in this industry segment will likely be a result of demand for trade finance services generated by increased trade in goods between the United States and Colombia, rather than a direct result of financial sector liberalization.

Insurance

The TPA will likely generate only a small increase in U.S.-Colombia bilateral trade in insurance services, with little or no change in overall U.S. insurance imports and exports. The insurance market in Colombia is small compared with that in the United States, and, therefore, the potential for cross-border U.S. exports or sales by foreign affiliates of U.S. firms in this sector reportedly is limited.¹⁷ With respect to the potential for increased U.S. imports from Colombia, the U.S. insurance market is already open to foreign firms, so market access gains for Colombian firms are expected to be marginal. In 2004, U.S. cross-

¹¹ (...continued)
October 2005, 60.

¹² TREs as used here are the percentage increases in net interest margins due to trade restrictions. Although the trade restraints are not applied at the border, when analyzing services trade this TRE measures an analogous increase in the domestic price of the service. Net interest margins are the difference between bank lending and deposit-taking rates, used here as the price of banking services. These TREs are not directly comparable to import duties, and their full effect on observable market prices is contingent on competition in the Colombian market, ready substitution between Colombian and the U.S. banking services, and an infinitely elastic foreign supply curve. See app. J of this report for a discussion of the Commission's methodology.

¹³ Claessens, Demircuc-Kunt, and Huizinga, "How Does Foreign Entry Affect the Domestic Banking Market," 4.

¹⁴ U.S. Department of Commerce, BEA, *Survey of Current Business*, October 2005, 60 and 77.

¹⁵ Ibid. The \$95 million figure represents combined cross-border imports of financial services from all South and Central American countries excluding Argentina, Brazil, Chile, Mexico, and Venezuela.

¹⁶ As of September 2005, there were four Colombian banks with offices in the United States, with combined assets of \$629 million. U.S. Federal Reserve Board, *Structure and Share Data for U.S. Offices of Foreign Banks*. In the aggregate, Colombian banks' net interest margins are about 30 percent higher than those of U.S. banks. Bureau van Dijk, *Orbis company database*.

¹⁷ U.S. industry representatives, telephone interviews by Commission staff, September 14–18, 2006.

Box 4-2 The estimation of tariff rate equivalents

The Commission estimated the tariff rate equivalent (TRE) of Colombia's GATS commitments in the banking sector to be 88 percent. The Commission estimated that this TRE is reduced to 42 percent as a result of Colombia's commitments under the TPA. The decline in the TRE represents both the lowering of barriers to entry for U.S. firms and the lowering of the price of banking (intermediation) services in Colombia. The reduction in Colombia's TRE in the banking sector applies only to U.S.-based financial institutions. As such, U.S.-based financial institutions may realize a competitive advantage in the Colombian market relative to financial institutions based in third-country markets.

The Commission estimated the price effects of trade barriers on net interest margins (NIMs), which are the spread between lending and deposit interest rates, using a two-stage econometric model. The first stage of the model corrected NIMs for the effects of prudential regulations, which promote the stability of the financial system but increase the price of banking services. This first stage model incorporated firm-level data from 1,500 banks in over 50 countries, including Colombia. The second stage of the model isolated the effects of trade restrictions after controlling for a number of country-level market variables. The Commission used GATS schedules and the TPA text, including the annexes on nonconforming measures, to identify trade restrictions. The Commission assigned scores to market access and national treatment commitments on the seven activities defined as banking services in the GATS. The services included deposit taking and lending services as well as fee-based services. A full description of the analysis and methodology used is presented in appendix J.

border imports of insurance services from the world were \$29.9 billion, and insurance sales by U.S. affiliates of foreign firms totaled \$83.3 billion. Precise figures on U.S. cross-border imports of insurance services from Colombia are not available, but existing data indicate that such imports did not exceed \$23 million in 2004, or less than 0.1 percent of total U.S. imports of insurance services.¹⁸ Similar to other financial services, any future growth in this industry segment will likely result from demand for insurance generated by increased trade in goods between the United States and Colombia, rather than as a direct result of insurance sector liberalization, as Colombian insurance companies do not hold the capital base to compete directly with U.S. insurers.

Summary of Provisions

Chapter 12 of the TPA will generally require each party to allow cross-border trade in financial services, accord national treatment and MFN treatment to investors of the other party, and provide market access for financial institutions without limitations on the number of financial institutions, value of transactions, number of service operations, or number of persons employed.

As in previous bilateral U.S. FTAs, cross-border trade is limited to certain segments of the financial services industry, as outlined in annex 12.5.1. For insurance, TPA coverage of cross-border trade in insurance is limited to marine, aviation, and transit insurance; reinsurance; and insurance intermediation services such as brokerage and agency services. However, for Colombia, these cross-border insurance commitments will not become effective until Colombia has adopted legislation to modify its current law, but must become

¹⁸ Data are not available on sales of insurance services by Colombian-owned affiliates in the United States. U.S. Department of Commerce, BEA, *Survey of Current Business*, October 2005, 63 and 77.

binding no later than 4 years after the entry into force of the agreement. For banking and securities, TPA coverage of cross-border trade is limited to the provision and transfer of financial information and financial data processing, advisory, and other auxiliary financial services as defined in the text of the chapter, although Colombia reserves the right to prohibit advisory services related to credit reference and analysis. Cross-border intermediation services (i.e., deposit taking and lending) are prohibited.

Annex 12.15 outlines specific commitments of the two parties related to financial services. For the United States, one specific commitment allows Colombian financial institutions to provide investment advice and portfolio management services to collective investment schemes located in the United States. The United States also commits to work with the National Association of Insurance Commissioners in its review of states that do not permit non-U.S. insurance companies to establish through branches. For Colombia, specific commitments include the following, most of which apply no later than 4 years after the entry into force of the TPA:

- allow U.S. financial institutions to provide investment advice and portfolio management services to collective investment schemes located in Colombia;
- allow banks to establish as branches;
- allow insurance companies to establish as branches;
- allow persons located in Colombia, or Colombian nationals outside its territory, to purchase insurance services from financial service suppliers located in the territory of any other party, outside of Colombia; and
- allow U.S. financial service providers to supply services related to Colombia's privatized social security accounts (SAFPs).

Each party will be required to permit a financial institution of the other party to provide new financial services similar to those that it permits its own domestic institutions to provide, without additional legislative action. The chapter will not require either party to furnish or allow access to information related to individual customers or confidential information, the disclosure of which would impede law enforcement, be contrary to the public interest, or prejudice legitimate commercial concerns.

Under chapter 12, a party could not require financial institutions of the other party to hire individuals of a particular nationality as senior managers or other essential personnel, and could not require more than a simple majority of the board of directors to be nationals or residents of the party. The parties agree that transparent regulations and policies are important, commit to publishing in advance all regulations of general application, and agree to maintain or establish mechanisms to respond to inquiries from interested persons. Where a party requires membership in a self-regulatory organization, the chapter provides that such organizations are subject to the national treatment and MFN obligations of this chapter. The two parties state that they recognize the importance of maintaining and developing expedited procedures for offering insurance services.

The TPA will establish a financial services committee to implement the provisions of chapter 12. Chapter 12 also provides for consultations and dispute resolution, and includes cross-references to the provisions covering dispute settlement procedures. Under the TPA, parties may retain specific financial services measures that do not conform to the TPA by including

the measures in annex III of the agreement. An understanding incorporated into the chapter makes clear that parties have the right to designate a monopoly to supply some activities and services, as long as it is consistent with the TPA provisions on national treatment and MFN.

Views of Interested Parties

In its testimony to the USTR, the Coalition of Service Industries noted that an important current barrier to U.S. firms in Colombia was that local branching of insurance subsidiaries was not permitted.¹⁹ In the final agreement, such local branching by insurance firms will be permitted, leading to gains for U.S. insurers, particularly nonlife insurers. Other accomplishments of importance to U.S. insurers include the use of the negative list format, which follows the model of previous bilateral U.S. free trade agreements, and the transparency requirements included in the TPA.²⁰

A number of insurance industry representatives noted that the small size of the Colombian market will limit new interest by U.S. firms, but others expect their Colombian business to increase as a result of the TPA. Industry representatives that were not immediately interested in the Colombian market reported that the TPA provisions would positively influence their decision to do business in Colombia if market conditions changed. Banking industry representatives stated that the TPA might lead to some expansion by U.S. firms, both in retail business with Colombian consumers and in corporate business, particularly project finance related to expanded trade between the two countries following the TPA. U.S. insurance firms also noted the possibility of increased business from Colombian firms established in the United States.²¹

The most important provisions for U.S. asset managers permit U.S. firms to supply asset management services to mutual funds and pension funds, including Colombia's SAFPs. Industry representatives expressed disappointment that the provisions on asset management will not enter into force for up to 4 years from the TPA's entry into force. Other drawbacks noted were the provisions requiring Colombian SAFPs to offer up to 20 percent of their capital stock to plan participants and beneficiaries, and the prohibition on investments by SAFPs outside of Colombia.²²

U.S. insurance industry sources expressed support for the TPA, noting in particular that foreign insurers will be permitted to establish through branches in Colombia, although industry representatives stated that they would prefer the agreement not include the 4-year delay.²³ Existing Colombian requirements that foreign insurance firms hire local nationals have been eliminated under the TPA. However, one industry representative noted that foreign nationals hired as insurance brokers will be required to reside in Colombia for 1 year before being hired, eliminating most of the effective benefit of that change.²⁴ The TPA enables U.S. insurers in Colombia to establish a commercial presence through subsidiaries, branches, or joint ventures; to supply marine, aviation, and transport insurance and reinsurance to Colombian residents on a cross-border basis; and to supply insurance-related

¹⁹ Coalition of Service Industries, "Written Testimony on the Free Trade Agreement Between the United States and the Andean Countries."

²⁰ U.S. industry representative, telephone interview with Commission staff, September 14, 2006.

²¹ U.S. industry representatives, telephone interviews with Commission staff, September 14, 2006.

²² ITAC 10, *The United States-Colombia Trade Promotion Agreement*.

²³ U.S. industry representative, telephone interview with Commission staff, September 15, 2006.

²⁴ U.S. industry representative, telephone interview with Commission staff, September 18, 2006.

services on a cross-border basis, including brokerage, claims processing, actuarial services, and other auxiliary services. Colombians will also be permitted to purchase most insurance services from abroad.²⁵ Financial services industry representatives pointed out one additional drawback to the agreement, noting that the prudential carve out may be applied inappropriately, allowing government restrictions to a greater degree than expected.²⁶

TPA Chapter 14—Telecommunications

Assessment

The telecommunications provisions of the U.S.-Colombia TPA will likely have little impact on U.S. cross-border exports and imports of telecommunications services, largely due to the small, competitive nature of Colombia's telecommunications services market, and the relative openness of the U.S. market for telecommunications services; as a result of U.S. participation in the WTO Basic Telecommunications Agreement. Although intense competition stemming from Colombian sector liberalization will likely reduce the incentive for U.S. telecommunications service firms to establish new affiliates in Colombia (box 4-3), the TPA's provisions may encourage further investment by existing telecommunications services providers, potentially improving the sales of U.S. affiliates based in Colombia.²⁷ Despite U.S. WTO commitments removing most foreign investment restrictions, Colombian firms have not entered the U.S. market, although several international mobile services firms operating in Colombia currently offer telecommunications services in the United States.²⁸

Summary of Provisions

Chapter 14 of the TPA commits each party to ensure a high degree of openness, transparency, and nondiscrimination for the provision of both basic and value-added telecommunication services. For example, it requires each party to ensure that enterprises of the other party have access to and use of any public telecommunication service offered in its territory on reasonable and nondiscriminatory terms and conditions. The chapter imposes pro-competitive obligations on telecommunication service providers related to interconnection, number portability, dialing parity, and resale services.²⁹ In addition, major suppliers³⁰ of one party are also required to offer telecommunication services to entities of the other party on terms no less favorable than those accorded to their own subsidiaries,

²⁵ ITAC 10, *The United States-Colombia Trade Promotion Agreement*.

²⁶ Ibid.

²⁷ In June 2006, Colombia Móvil, the country's third-largest mobile services provider, invited 17 mobile operators and investment banks to make offers for a stake in a planned joint venture. Standard & Poor's, *Telecommunications: Wireless-Latin America*, 9.

²⁸ Telefónica S.A., the Spain-based parent of Telefónica Móviles Colombia, operates in the United States through Telefónica Contenidos, Telefónica Empresas, and Terra Networks. Similarly, America Móvil, the Mexico-based parent of Comcel, operates in the United States through Tracfone Wireless, Inc.

²⁹ Par. 2 (resale), par. 3 (number portability), and par. 4 (dialing parity) of art. 14.3 (Obligations Relating to Suppliers of Public Telecommunications Services) do not apply to suppliers of commercial mobile services.

³⁰ Chap. 14 defines "major supplier" as a supplier of public telecommunication services that has the ability to materially affect the terms of participation in the relevant market due to its market position and control over essential facilities.

Box 4-3 Competitive conditions in Colombia's telecommunications market

In observance of its commitments under the WTO 1997 Basic Telecommunications Agreement, Colombia introduced competition in local, long distance, and international services in 1998. Despite such liberalization, Colombia's fixed line market remained largely dominated by public sector carriers with Colombia Telecom, the former state-owned monopoly, the primary supplier of domestic long distance and international services. In 2006, Spain's Telefónica acquired at auction a majority stake in Colombia Telecom.

Since 1998, regional carriers control voice markets in their respective municipalities and compete aggressively with Colombia Telecom in domestic long distance and international markets. Mobile services were introduced by Comcel (a subsidiary of Mexico's America Móvil) and Telefónica Móviles Colombia in 1994, followed by a third operator, Colombia Móvil (a joint venture involving two Colombian regional carriers), in 2003. As in many other countries, mobile phone services make up the most dynamic component of Colombia's telecommunications sector. Intense competition between Comcel, Telefónica, and Colombia Móvil has resulted in not only declining fixed line traffic, but also falling prices on both local and domestic long distance calls.

Sources: TeleGeography, "Colombia Country Overview;" EIU, "Colombia: Telecoms and Technology Forecast;" EIU, "Colombia: Telecoms and Technology Profile;" EIU, *Country Profile 2006: Colombia*.

affiliates, and nonaffiliated partners,³¹ particularly regarding the availability, provisioning, rates, and technical quality of such services. Major suppliers also face additional obligations related to network unbundling, colocation, interconnection, leased circuits, resale services, and access to poles, ducts, conduits, rights-of-way, and submarine cable systems.³²

Chapter 14 requires the governments of the United States and Colombia to make all regulations and measures publicly available, ensure the independence of the national telecommunications regulator, maintain dispute resolution procedures, and bestow regulatory entities with the authority to enforce compliance with TPA obligations. The chapter also contains commitments and obligations related to universal service, licensing, and the allocation/use of scarce resources. Chapter 14 also allows each party to exercise latitude regarding the application of regulations to public telecommunication services, if the telecommunications regulatory body determines that enforcement is not necessary to protect consumers, promote competition, or prevent discriminatory practices. Two annexes to

³¹ Each party is required to maintain measures preventing major suppliers from engaging in anticompetitive practices. Such practices include, inter alia, cross-subsidization; using information obtained from competitors with anticompetitive results; and not making relevant technical and commercial information available to suppliers on a timely basis.

³² Par. 1 (treatment by major suppliers), subpar. (2)(b)(iii) (availability of technical information), par. 3 (resale), par. 4 (unbundling), par. 5 (interconnection), par. 6 (leased circuits), par. 7 (colocation), and par. 8 (access to poles, ducts, conduits, and rights-of-way) of art. 14.4 (Additional Obligations Relating to Major Suppliers of Public Telecommunications Services) do not apply to major suppliers of mobile services.

chapter 14 establish exemptions, in both the United States³³ and Colombia,³⁴ for the provision of telecommunication services in rural areas.

Views of Interested Parties

Overall, U.S. industry representatives expressed support for the commitments detailed in the telecommunications chapter, noting the strong “WTO-plus” nature of many of the commitments. According to ITAC 8, for example, the chapter ensures U.S. providers access to and use of public telecommunication networks on reasonable and nondiscriminatory terms and conditions; commits Colombia to create an independent regulatory body; and includes rigorous commitments for all suppliers of telecommunication services, including major suppliers.³⁵ One industry source, however, stated that Colombia is not in compliance with its previous telecommunication agreements, citing a lack of transparency related to interconnection and trunk access policies.³⁶

³³ In the United States, a regulatory authority at the regional level may exempt a rural local exchange carrier from obligations contained in par. 2 (resale), par. 3 (number portability), and par. 4 (dialing parity) of art. 14.3 (Obligations Relating to Suppliers of Public Telecommunications Services). Art. 14.4 (Additional Obligations Relating to Major Suppliers of Public Telecommunications Services) does not apply to the United States with respect to a rural telephone company, unless a regulatory authority at the regional level orders that the requirements described in that article be applied.

³⁴ In Colombia, rural telephone companies may be exempted from obligations contained in par. 2 (resale), par. 3 (number portability), and par. 4 (dialing parity) of art. 14.3 (Obligations Relating to Suppliers of Public Telecommunications Services) and the obligations in art. 14.4 (Additional Obligations Relating to Major Suppliers of Public Telecommunications Services). In addition, Colombia may exempt service suppliers that supply public telecommunications services in rural areas from the obligations contained in par. 2 (resale), par. 3 (number portability), and par. 4 (dialing parity) of art. 14.3 (Obligations Relating to Suppliers of Public Telecommunications Services) and from the obligations contained in par. 3 (resale), par. 4 (unbundling), par. 6 (leased circuits), and par. 7 (colocation) of art. 14.4 (Additional Obligations Relating to Major Suppliers of Public Telecommunications Services).

³⁵ ITAC 8, *The U.S.-Colombia Trade Promotion Agreement*, 7–8.

³⁶ U.S. industry representative, e-mail messages and telephone interviews with Commission staff, October 3, 2006.

CHAPTER 5

Effects of Trade Facilitation Provisions

This chapter assesses the potential effect of provisions in the U.S.-Colombia TPA related to trade facilitation. These provisions are covered in TPA chapters addressing customs administration and trade facilitation, sanitary and phytosanitary (SPS) measures, technical barriers to trade (TBT), and electronic commerce.

Summary of Assessments

The U.S.-Colombia TPA provisions on trade facilitation are designed to expedite the movement of goods and the provision of services between the United States and Colombia through specific improvements in customs administration, SPS measures, TBTs, and electronic commerce.

- **Customs Administration and Trade Facilitation:** The customs administration and trade facilitation provisions of the TPA will likely have small beneficial effects on U.S. industries that export to and invest in Colombia. U.S. industry will likely benefit from reduced transaction costs¹ with the implementation of the customs administration and trade facilitation provisions of the TPA. The commitments to transparent and efficient procedures, greater accountability and predictability, improved customs efficiency, reciprocity and fairness, and expedited goods clearance will likely further reduce paperwork, speed goods delivery, and alleviate Colombian customs concerns for U.S. industry. These improvements will facilitate the customs process and ensure greater safety.² Moreover, these provisions will likely enhance Colombia's investment climate,³ a desirable outcome for U.S. industry.
- **Sanitary and Phytosanitary Measures (SPS):** The SPS chapter of the TPA is expected to provide enhanced market access by resolving certain SPS barriers to agricultural trade, especially regarding food safety inspection procedures for U.S. beef, pork, and poultry products. The agreement will create a bilateral standing committee, which will assist in more quickly addressing SPS issues. Through this committee, the United States and Colombia will also support, with the resources of the Trade Capacity Building Committee, the development of Colombia's SPS system to enhance bilateral trade.
- **Technical Barriers to Trade (TBT):** TBT provisions will benefit U.S. companies by (1) reinforcing transparency obligations in rulemaking, (2) increasing opportunities for direct participation on a nondiscriminatory basis in Colombia's standards development activities, (3) establishing informal mechanisms for rapid resolution of disputes, and (4) reinforcing WTO TBT obligations. However, there

¹ For an in-depth discussion of the effect of trade facilitation on transaction costs, see OECD, "The Economic Impact of Trade Facilitation," 26.

² Gómez, hearing transcript, 106.

³ OECD, "The Economic Impact of Trade Facilitation," 26.

will be little, if any, effect on U.S. industries or the U.S. economy based on U.S. implementation of the TPA because the United States already generally meets the principal TBT obligations of the agreement in its dealings with Colombia. U.S. product sectors identified as potentially benefitting from the provisions include industrial equipment, transportation equipment, pharmaceuticals, chemicals, textile goods, paper products, food products, and energy services and equipment.

- **Electronic Commerce:** E-commerce provisions are virtually identical to those of the U.S.-Peru TPA and may provide limited, but increasing, opportunities for U.S. suppliers. Opportunities are supported by market growth in Colombia, potential reduction in transaction costs as a result of the TPA, and improvement in Colombia's business environment.

TPA Chapter 5—Customs Administration and Trade Facilitation

Assessment

The customs administration and trade facilitation provisions of the U.S.-Colombia TPA will likely have small beneficial effects on U.S. industries that export to and invest in Colombia. U.S. industry will likely benefit from reduced transaction costs⁴ with the implementation of these provisions.⁵ The commitments to transparent and efficient procedures, greater accountability and predictability,⁶ improved customs efficiency, reciprocity and fairness, and expedited goods clearance will likely further reduce paperwork, speed goods delivery,⁷ and alleviate Colombian customs concerns for U.S. industry. These improvements over current conditions will likely facilitate the customs process and ensure greater safety.⁸ Although certain provisions, such as those for express shipments and advanced rulings, will receive deferments comparable to those provided in the U.S.-Peru TPA, their full implementation will build on commitments to streamline goods processing and documentation and provide binding advanced rulings. Moreover, chapter 5 provisions will likely enhance Colombia's investment climate,⁹ a desired outcome for U.S. industry. Under the U.S.-Colombia TPA,

⁴ For an in-depth discussion of the effect of trade facilitation on transaction costs, see OECD, "The Economic Impact of Trade Facilitation," 26.

⁵ Colombia has already demonstrated progress in these areas by implementing in 2005 two programs that offer benefits to exporters to Colombia. The Unique Model for Automated Income, Services, and Control System speeds paperwork processing for foreign commerce in part by simplifying forms. Colombian Ministry of Foreign Relations, *Colombia, A Positive Country*. In addition, Colombia's *Ventanilla Unica de Comercio Exterior* (single trade window) centralizes several import functions and allows importers to access via the Internet pertinent import documentation, pay fees, and monitor the status of procedures involving any of the 18 government agencies with import responsibilities. Colombian Government Trade Bureau, "Doing Business in Colombia."

⁶ The greater stability provided by the customs administration commitments was cited as an important benefit of the agreement. Gales, hearing transcript, 105.

⁷ The agreement establishes specific time frames for Colombian customs to process imports out of port. Gómez, hearing transcript, 106.

⁸ *Ibid.*

⁹ OECD, "The Economic Impact of Trade Facilitation," 26.

a working group has been established with a focus on the implementation of the provisions in this chapter.¹⁰

Summary of Provisions

Chapter 5 of the U.S.-Colombia TPA reinforces many of the GATT goals in the areas of fees and formalities (GATT article VIII) and publication and administration of trade regulations (GATT article X) (table 5-1). The TPA will likely facilitate the goods clearance process¹¹ through greater use of information technology to enhance automation, establish procedures for resolving disputes, and improve risk management and cooperation among parties. The parties will commit to immediate cooperation in the areas of information exchange, technical advice and assistance for trade facilitation, and enforcement of customs rules and regulations. They will also continue to explore other means of cooperation.¹² Additionally, chapter 5 calls for the immediate implementation of articles that provide for customs automation,¹³ the use of risk maintenance systems,¹⁴ the advanced publication of Colombian customs regulations,¹⁵ confidential information guidelines,¹⁶ review and appeal of customs matters,¹⁷ and penalties for customs violations.¹⁸

The express shipments section,¹⁹ which will be subject to a 2-year deferment,²⁰ includes two noteworthy provisions that will further liberalize such activity: such shipments will not be limited by a maximum weight or customs value, and express shipments valued at \$200 or less will not be assessed duties or taxes and will not require any formal entry documents, except when expressly identified by each party's laws and regulations. The TPA will require each party to adopt separate customs administration measures for express shipments.²¹ These measures will facilitate express shipment processing by allowing (1) electronic submission of documents; (2) prearrival processing of information; and (3) submission of a single manifest covering all goods in an express shipment, and will also minimize release documentation, when possible. Chapter 5 requires release of express shipments within 6 hours.²²

Staggered implementation schedules will also defer the entry into force of other provisions. Simplified release procedures will be deferred for 1 year,²³ and internet access to Colombian

¹⁰ See chap. 20 (Administration of the Agreement and Trade Capacity Building), sect. B, art. 20.4.

¹¹ Parties are committed to release goods from port within 48 hours. Colombian importers currently may wait up to 7 days for the release of goods. Gómez, hearing transcript, 132.

¹² *U.S.-Colombia TPA*, art. 5.5.

¹³ *U.S.-Colombia TPA*, art. 5.3.

¹⁴ *U.S.-Colombia TPA*, art. 5.4.

¹⁵ *U.S.-Colombia TPA*, art. 5.1.3.

¹⁶ *U.S.-Colombia TPA*, art. 5.6.

¹⁷ *U.S.-Colombia TPA*, art. 5.8.

¹⁸ *U.S.-Colombia TPA*, art. 5.9.

¹⁹ *U.S.-Colombia TPA*, art. 5.7.

²⁰ Deferral of certain provisions is provided for in the TPA to allow parties to develop the necessary technical capacity through trade capacity building programs.

²¹ Colombia currently has a system in place to process express delivery shipments, but will establish a fully separate system for such goods under the TPA. Gómez, hearing transcript, 133.

²² Express deliveries are currently released within 24–48 hours in Colombia. Gómez, hearing transcript, 132.

²³ *U.S.-Colombia TPA*, art. 5.2.

Table 5-1 Selected GATT articles and U.S.-Colombia TPA commitments related to customs administration

GATT	U.S.-Colombia TPA
Article VIII—Fees and Formalities 1. (c) <i>Minimize the incidence and complexity of import/export formalities.</i>	Article 5.2—Release of Goods 1. Shall adopt or maintain <i>simplified customs procedures</i> for the efficient release of goods (1-year deferment).
Article X—Publication and Administration of Trade Regulations 1. (in part) <i>Laws, regulations, etc. shall be published promptly and in such a manner as to enable government and traders to become acquainted with them; trade policy agreements in force shall be published.</i> 2. <i>No measures may be enforced to change import duties or charges or other customs administrative practices before official publication.</i>	Article 5.1—Publication 1. <i>Internet publication of laws, regulations, and administrative procedures</i> (2-year deferment). 2. Designate or maintain customs inquiry points and provide procedural information for inquiries via Internet (2-year deferment). 3. <i>Advance publication of regulations</i> governing proposed customs matters and comment period (immediate).
Article X—Publication and Administration of Trade Regulations 2. <i>No measures may be enforced to change import duties or charges or other customs administrative practices before official publication.</i>	Article 5.5—Cooperation 1. <i>Advance notice</i> of significant modifications of administrative policy likely to substantially effect Agreement's operation (immediate).
Article X—Publication and Administration of Trade Regulations 1. (in part) <i>Prevents disclosure of confidential information.</i>	Article 5.6—Confidentiality 1. Designated <i>confidential information</i> shall be maintained as such and <i>will not be disclosed without prior permission</i> (immediate). 2. Parties may decline to provide such information if confidentiality has not been maintained (immediate). 3. Adopt or maintain procedures to protect unauthorized disclosure (immediate).
Article X—Publication and Administration of Trade Regulations 3. (b) Maintain and establish <i>independent tribunals to review and correct customs administrative actions.</i>	Article 5.8—Review and Appeal Importers will have access to <i>independent administrative review and judicial review of determinations</i> (immediate).

Sources: *U.S.-Colombia TPA*; WTO, *Trade Facilitation Documents*.

customs information and assistance will be subject to a 2-year deferment.²⁴ The requirement that importers be able to obtain binding advanced rulings will not apply to Colombia until 3 years after the date of entry into force of the TPA.²⁵ The United States already has a system in place allowing requests for advance rulings.

Views of Interested Parties

The Industry Trade Advisory Committee on Customs Matters and Trade Facilitation (ITAC 14) stated that the TPA substantially meets the committee's objectives, in particular its goal

²⁴ *U.S.-Colombia TPA*, art. 5.1.1–5.1.2.

²⁵ *U.S.-Colombia TPA*, art. 5.10.

for consistency with customs chapters in other agreements,²⁶ and will provide equity and reciprocity in the area of customs administration.²⁷ The committee noted that the agreement includes the adoption of many current best practices in international customs administration, such as 48-hour release of goods and advanced publication of rules and regulations. Moreover, the commitment to capacity building to better implement such provisions as risk assessment, review and appeal, and confidentiality, and the formation of a committee to administer chapter obligations, were cited as critical to meeting the objectives in this functional area.

TPA Chapter 6—Sanitary and Phytosanitary Measures

Assessment

The SPS provisions of the U.S.-Colombia TPA are likely to have positive effects on U.S. agricultural producers and exporters. The TPA provides the United States and Colombia an opportunity to resolve certain SPS barriers to agricultural trade, especially regarding food safety inspection procedures for U.S. beef, pork, and poultry products.²⁸ The TPA includes letters of exchange in which Colombia agreed to lift bovine spongiform encephalopathy (BSE) restrictions on U.S. beef and beef products, and avian influenza (AI) restrictions on U.S. poultry exports from 10 U.S. states.²⁹ These provisions will likely provide improved market access for U.S. exports of these products to Colombia. In addition, Colombia will continue to recognize equivalence for the U.S. meat inspection system, a provision which will ensure market access for U.S. exports from USDA-approved facilities.³⁰ The establishment of a bilateral standing committee³¹ to address relevant SPS issues should provide a forum whereby the United States and Colombia can address bilateral SPS concerns in a more efficient and timely manner. Through this committee, the United States and Colombia will also support, with the resources of the Trade Capacity Building Committee, the development of Colombia's SPS system, which will likely further enhance bilateral trade.³²

Summary of Provisions

Chapter 6 of the TPA covers the protection of human, animal, or plant life or health in the parties' territories, insofar as they directly or indirectly affect trade between them, and is meant to enhance the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (WTO SPS Agreement). The United States and Colombia agree to establish a Standing Committee on Sanitary and Phytosanitary Matters to coordinate administration of

²⁶ Committee objectives included transparency of rules and regulations and inclusion of a mechanism to maintain "best practices" for the import and export process. ITAC 14, *The U.S.-Colombia Free Trade Agreement*.

²⁷ Ibid.

²⁸ USTR, "Free Trade with Colombia: Brief Summary of the Agreement," 1.

²⁹ The United States and Colombia are currently working on the procedures for implementing the enhanced market access for poultry and poultry products.

³⁰ See chap. 3 of this report for additional sector-specific information on beef and pork.

³¹ Standing committees have been included in other U.S. FTAs, including those with Chile, Australia, Central America and the Dominican Republic, and Peru.

³² U.S. government trade officials, interviews by Commission staff, Washington, DC, September 28, 2006.

the chapter (article 6.3). The standing committee will provide a forum for enhancing mutual understanding of each government's SPS measures, resolving future bilateral SPS matters, coordinating technical assistance programs, and consulting on issues and positions in fora such as the WTO and various Codex committees. The chapter further outlines the process by which the standing committee will review issues of interest to either the United States or Colombia. The chapter specifies that no party has recourse to the dispute settlement provisions of the TPA for any matter arising under the chapter. Any SPS issue that requires formal dispute resolution is to be resolved through the formal process established under the WTO SPS agreement.

The TPA includes three letters of exchange on SPS issues between the United States and Colombia.³³ The letters confirm that (1) Colombia will continue to recognize the U.S. meat and poultry inspection system as equivalent to its own and will not require approval of individual U.S. establishments by the Colombian Ministry of Agriculture or any other Colombian ministry or sanitary authority,³⁴ (2) Colombia will permit imports of U.S. poultry and poultry products from all U.S. states no later than May 15, 2006, in recognition that the United States meets the guidelines set by the World Organization for Animal Health (OIE) on AI, (3) Colombia will permit, no later than October 31, 2006, the importation of all beef and beef products³⁵ from the United States in recognition that the United States has taken measures with regard to BSE consistent with the OIE, and (4) Colombia and the United States will cooperate to address SPS issues within the framework of their laws, develop technical and scientific cooperation, and support the development of Colombia's SPS system to enhance bilateral trade.

Views of Interested Parties

The Agricultural Policy Advisory Committee (APAC) stated that it believes that the TPA will benefit U.S. agricultural exports by eliminating tariffs and nontariff barriers. In regard to SPS measures, the committee reported that the recognition of the U.S. meat inspection system by Colombia is significant and sets a precedent for other FTA negotiations.³⁶ The ATAC for Animals and Animal Products reported that its members are very pleased with the TPA, including the agreement by Colombia to eliminate BSE restrictions on beef and beef products. However, the ATAC cautioned that SPS issues addressed in the TPA must be monitored to ensure that such issues do not evolve into nontariff barriers overtime.³⁷ This ATAC also noted that exports of poultry products are expected to grow over time as a result of the TPA.³⁸ The National Pork Producers Council also indicated that the provision whereby Colombia recognizes the meat inspection system of the United States is a significant benefit for the industry.³⁹

³³ Ministerio de Comercio, Industria y Turismo, República de Colombia, and USTR, "SPS Letter Exchange," February 26, 2006; "Other SPS Letter Exchange," May 8, 2006, and "Letter Exchange," August 21, 2006.

³⁴ U.S. meat and poultry exports must be accompanied by an Export Certificate of Wholesomeness issued by the USDA, Food Safety and Inspection Service.

³⁵ Excluding certain risk materials and subject to additional certification statements as specified in the annex to the "Letter Exchange on Beef SPS Issues," August 21, 2006.

³⁶ APAC, *The U.S.-Colombia Trade Promotion Agreement*, 2.

³⁷ ATAC for Trade in Animal and Animal Products, *The United States-Colombia Trade Promotion Agreement*, 2.

³⁸ Ibid.

³⁹ NPPC, "Public Comments Concerning the U.S.-Colombia Trade Promotion Agreement," 2.

The National Cattlemen's Beef Association (NCBA) stated that it considers the BSE side letter to be an important provision in the TPA. The NCBA noted that it would oppose the TPA should Colombia fail to lift its BSE restrictions on U.S. beef as required in the SPS side letter of August 21, 2006.⁴⁰ Ambassador Gómez from Colombia stated that the SPS provisions of the TPA will provide opportunities for future exports from Colombia to the United States. He said that Colombia currently has requests with the USDA's Animal and Plant Health Inspection Service for approval of 13 fruits for export to the United States.⁴¹

TPA Chapter 7—Technical Barriers to Trade

Assessment

The TBT provisions of the U.S.-Colombia TPA will likely benefit U.S. firms investing in and exporting to Colombia. However, there will likely be little, if any, effect on U.S. industries or the U.S. economy based on U.S. implementation of the TPA because the United States and Colombia already generally meet the principal TBT obligations of the agreement. Among other things, comparable to the U.S.-Peru TPA, TBT provisions should benefit U.S. companies by (1) reinforcing transparency obligations in rulemaking, (2) increasing opportunities for direct participation on a nondiscriminatory basis in Colombia's standards development activities, (3) establishing informal mechanisms for rapid resolution of disputes, and (4) reinforcing WTO TBT obligations. U.S. product sectors identified as potentially benefitting from the provisions include industrial equipment, transportation equipment, pharmaceuticals, chemicals, textile goods, paper products, food products, and energy services and equipment.⁴²

Summary of Provisions

Chapter 7 of the TPA requires both parties to intensify efforts to improve transparency, enhance bilateral cooperation on standards-related issues, increase mutual acceptance of one another's regulations and procedures, and reduce or eliminate unnecessary technical trade barriers.⁴³ As such, the chapter largely affirms and improves on the implementation of the WTO TBT agreement rather than substantively expanding it.⁴⁴ To improve transparency,⁴⁵ each party is to allow persons from the other party to participate in the development of its standards, technical regulations, and conformity assessment procedures; to transmit proposals for new technical regulations and conformity assessment procedures electronically to the other party at the same time they are transmitted to the WTO pursuant to the TBT agreement; to allow the other party at least 60 days to review and comment on such proposals; and to publish or otherwise make available to the public its responses to

⁴⁰ Truitt, "United States-Colombia Trade Promotion Agreement," 3.

⁴¹ Gómez, transcript, 70.

⁴² CIA, "Colombia," 1; and U.S. industry representatives, telephone interviews by Commission staff, September 11–21, 2006.

⁴³ *U.S.-Colombia TPA*, arts. 7.1–7.3.

⁴⁴ U.S. government official, interview by Commission staff, May 25, 2006; and U.S. industry representatives, telephone interviews by Commission staff, September 19–26, 2006.

⁴⁵ The transparency provisions of the U.S.-Colombia TPA TBT chapter are consistent with overall U.S. trade negotiating objectives of increased "[t]ransparency: public access, [and] timely publication." Schott, "Free Trade Between the United States and Colombia," 9.

significant comments no later than the date it publishes the final technical regulation or conformity assessment procedure.⁴⁶ The chapter encourages each party to consider a broad range of alternatives for accepting the results of the other's conformity assessment procedures and technical regulations, and when this is not possible, to explain why.⁴⁷ Finally, the chapter establishes a Committee on Technical Barriers to Trade, comprising representatives of each party, to monitor the implementation and administration of the chapter and address any issues arising from the other's standards, technical regulations, or conformity assessment procedures.⁴⁸

Views of Interested Parties

U.S. industry and government officials indicate that Colombia has a relatively transparent and open standards, testing, and certification regime.⁴⁹ The national standards body, ICONTEC,⁵⁰ bases Colombia's national standards and technical regulations on international standards, in compliance with its WTO obligations.⁵¹ Most concerns expressed by U.S. industry representatives in recent years have focused on what are perceived by U.S. food, pharmaceutical, consumer product, and textile producers as excessive Colombian labeling requirements. Certain labeling requirements of the Colombia Ministry of Health and the Superintendent of Industry and Commerce require food, drug, and consumer goods firms to list not only the ingredients in their products, but the percentage of each ingredient as well, which U.S. firms consider proprietary information.⁵² For U.S. textile goods, Colombia reportedly requires that, in addition to the name of the manufacturer, the importer's name also be included on the label.⁵³ U.S. firms report that such information is difficult or impossible to know at the time of manufacture, when labeling must be attached to the textile product in question in the country of production.⁵⁴ These firms added that relabeling of such products is costly and delays their placement on the market.⁵⁵ According to a Colombian standards expert, U.S. government officials, and U.S. industry representatives, there is little evidence of other certification, testing, or regulatory practices or issues that serve as unreasonable or unnecessary impediments to U.S. exports to Colombia.⁵⁶

The Industry Trade Advisory Committee on Standards and Technical Trade Barriers, (ITAC 16), representing a wide range of U.S. industries, reported that the TBT chapter of the TPA adequately addresses the standards and technical trade barrier issues advanced at the beginning of the negotiations.⁵⁷ In general, U.S. industry representatives found the TBT provisions of the TPA conducive to increasing trade and investment with Colombia through

⁴⁶ U.S.-Colombia TPA, art. 7.6.

⁴⁷ U.S.-Colombia TPA, arts. 7.4–7.5.

⁴⁸ U.S.-Colombia TPA, arts. 7.7–7.8.

⁴⁹ U.S. government trade official, e-mail message to Commission staff, September 27, 2006; and U.S. industry representatives, telephone interviews by Commission staff, September 11–21, 2006.

⁵⁰ Instituto Colombiano de Normas Técnicas y Certificación.

⁵¹ Colombian technical standards consultant, e-mail message to Commission staff, September 27, 2006.

⁵² USTR, "Colombia," 2006 National Trade Estimate Report, 65–66.

⁵³ Storz, Taylor, and Fairchild, *A Primer on Exporting to Colombia*, 8; and USCS and U.S. Department of State, *Doing Business in Colombia*, 8–9.

⁵⁴ USTR, "Colombia," 2006 National Trade Estimate Report.

⁵⁵ U.S. industry representatives, telephone interviews by Commission staff, September 19 and 21, 2006.

⁵⁶ Colombian technical standards consultant, e-mail message to Commission staff, September 27, 2006; U.S. government officials, e-mail message to Commission staff, September 27, 2006; and U.S. industry representatives, telephone interviews by Commission staff, September 11–21, 2006.

⁵⁷ ITAC 16, *The U.S.-Colombia Trade Promotion Agreement*, 1–3.

increased transparency and bilateral coordination.⁵⁸ These representatives also stated that the transparency obligations will enhance U.S. companies' opportunities to participate in Colombian standards development activities and to have their views taken into account on proposed new Colombian rules on technical regulations and conformity assessment.⁵⁹ Additionally, U.S. industry representatives indicated they are pleased the TPA's relatively short 3-year implementation period for the transparency obligations.⁶⁰

TPA Chapter 15—Electronic Commerce

Assessment

The electronic commerce (e-commerce) provisions of the U.S.-Colombia TPA are likely to increase opportunities for U.S. suppliers of goods and services that enable e-commerce. Such opportunities may be supported by the proliferation of technology related services in Colombia, potential reduction in transaction costs as a result of TPA implementation, improvements in phone service, and increased Internet and personal computer usage. However, despite Colombia's efforts to remove potential barriers, e-commerce in Colombia has progressed at a slightly slower rate than in many other South American countries.⁶¹ Consumer constraints include a low level of personal computer penetration (5 percent in 2005) and a general distrust of electronic commercial transactions.⁶² Consequently, in the near future, Colombia's business-to-business e-commerce market will likely offer U.S. companies the greatest opportunities for export sales. Further, IPR and piracy concerns are expected to limit opportunities for e-commerce trade and investment, at least in the short term.

The TPA provision providing for nondiscriminatory treatment of digital products may promote e-commerce trade between the parties by limiting the transaction costs associated with electronically traded goods and services. E-commerce development prospects in Colombia may be aided by recent legislation that regulates electronic commerce activity.⁶³ Further, the United States and Colombia signed an e-commerce agreement that emphasizes open and fair e-trade.⁶⁴

Summary of Provisions

Chapter 15 of the TPA includes provisions that reflect the increasingly important contribution that electronic services provides to global trade and local economies. Broadly, the parties have committed to nondiscriminatory treatment of digital products, agreed that

⁵⁸ U.S. industry representatives, telephone interviews by Commission staff, September 11–21, 2006.

⁵⁹ Ibid.

⁶⁰ ITAC 16, *The U.S.-Colombia Trade Promotion Agreement*, 1–3; and U.S. government official, e-mail message to Commission staff, September 27, 2006.

⁶¹ In 2004, the Internet usage rate in Colombia was estimated to be 8 percent, below that of Peru and Venezuela. EIU, *EIU Country Profile 2005: Colombia*, 21.

⁶² Colombia ranked behind Argentina, Chile, Peru, and Venezuela in the number of PCs per household. ITU, "ICT Statistics."

⁶³ In August 1999, Colombia approved a law on electronic commerce, digital signatures, and certification authorities, which was based on the UNCITRAL Model Law on Electronic Commerce. ITU, "A Guide to Global E-commerce Law—Legislation."

⁶⁴ USCS and U.S. Department of State, *Doing Business in Colombia*.

customs duties will not be imposed on digital products transmitted electronically, and agreed to cooperate in numerous policy areas related to e-commerce. The e-commerce chapter of the TPA recognizes the importance of avoiding economic, regulatory, and technical barriers to e-commerce, and recognizes the applicability of WTO rules to e-commerce. Chapter 15 also affirms the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices.

The TPA allows for nondiscriminatory treatment of digital products, providing broad national treatment and MFN provisions. A party may not apply customs duties, fees, or other charges on or in connection with the import or export of digital products by electronic transmission. The customs value of imported carrier media that includes a digital product must be determined by the cost of the medium alone, without regard to the value of the digital products stored on the carrier medium.⁶⁵ A party may not accord less favorable treatment to some digital products than it accords to other like digital products on the grounds that the digital products were created, stored, transmitted, published, or first made commercially available outside its territory, or on the basis of the nationality of the author, performer, producer, developer, or distributor of such digital products. The TPA also promotes e-commerce by requiring publication of laws, regulations, and other measures relating to e-commerce; providing flexibility for parties to mutually determine the appropriate authentication method for their electronic transactions; and encouraging paperless trade administration. However, the chapter does not prevent any party from imposing internal taxes, charges, or other fees on the domestic sale of such products, provided they are imposed in a manner consistent with the TPA.

As a result of the TPA, Colombia has agreed to sign the WTO Information Technology Agreement (ITA), which requires signatories to remove tariff and nontariff barriers to trade in IT products (box 5-1). Colombia's ITA membership is likely to promote e-commerce, reduce or eliminate duties on technology products and components, and result in stronger intellectual property protection. U.S. exporters of IT products that facilitate e-commerce, notably software, personal computers, and networking equipment, are also likely to benefit, as a preponderance of the ancillary goods and services that facilitate e-commerce are imported from the United States. To join the ITA, Colombia must present a schedule of tariff commitments, which must be approved by the ITA committee.

Views of Interested Parties

Industry representatives generally support measures that promote the most liberal treatment of e-commerce possible, and a moratorium on taxes, duties, and other fees pertaining to e-commerce or the Internet. Industry representatives expressed support for TPA provisions that are likely to simplify and encourage the use of e-commerce, such as measures that improve market conditions for the distribution and transmission of materials over the Internet.⁶⁶ Industry representatives recognized the need to make progress in various aspects of e-commerce and emphasize aspects such as capacity building, consumer protection, network security, and providing a favorable and compatible legal infrastructure for e-commerce.⁶⁷ Provisions within the TPA prohibiting parties from applying any additional costs to the trade

⁶⁵ Currently, countries use different methods to apply customs duties.

⁶⁶ ITAC 15, *Advisory Committee Report*.

⁶⁷ *Ibid*.

Box 5-1 WTO Information Technology Agreement

The Information Technology Agreement (ITA), endorsed by 28 WTO member countries and currently including 63 participants that account for 95 percent of global trade in information technology products, was finalized on March 26, 1997, and entered into force on July 1, 1997. The ITA liberalized market access for IT products by eliminating most tariffs on a wide range of technology products on January 1, 2000. Developing countries have been granted extensions.

The ITA only addresses tariff reductions. It provides for a review of nontariff barriers, but there are no binding commitments concerning these barriers. The agreement encompasses three basic principles: (1) all listed products must be covered, (2) all tariffs must be reduced to zero, and (3) other duties and charges must be bound at zero. ITA product coverage includes computers and computer equipment, semiconductors and integrated circuits, computer software products, telecommunications equipment, semiconductor manufacturing equipment, and computer-based analytical instruments.

To date, the ITA is the only global sectoral agreement in which participating governments have agreed on a uniform list of products on which all duties will be eliminated. Work to review possibilities for expanding product coverage continues, as do efforts to address nontariff measures affecting trade in ITA-covered products.

Source: WTO, "Information Technology Agreement."

of electronically transmitted digital products are similar to the WTO Moratorium on Customs Duties and Electronic Transmissions.⁶⁸ Members of the Industry Trade Advisory Committee for Information and Communications Technologies, Services, and Electronic Commerce (ITAC 8) favor making such measures permanent. Industry representatives said that electronically delivered goods and services should receive no less favorable treatment under trade rules and commitments than like products delivered in physical form, that trade classification should ensure the most liberal treatment possible, and that trade in software and other digital products should be duty free.⁶⁹ While the TPA provides for duty-free trade in digital products by electronic transmission, assurances that electronically delivered goods and services receive treatment comparable to that of their physical counterparts are not specifically provided.

⁶⁸ Member governments of the WTO agreed in May 1998 to refrain from imposing customs duties on electronic transmissions. The agreement does not mean that physical goods ordered over the Internet are free from customs duties, or that items delivered electronically are exempt from internal taxes. Rather, duty-free electronic commerce allows that electronic transmissions coming from abroad are not subject to customs duties at the border. U.S. Department of State "The Internet and Customs Duties."

⁶⁹ ITAC 8, *The U.S.-Colombia Trade Promotion Agreement*.

CHAPTER 6

Effects of Regulatory Provisions

This chapter assesses the potential effect of provisions in the U.S.-Colombia TPA related to the regulatory environment, including investment. These provisions cover nine TPA chapters and include topics such as trade remedies, government procurement, investment, intellectual property rights, labor, and environment. Each TPA chapter discussion includes an assessment, summary of TPA provisions, and views of interested parties.

Summary of Assessments

Though the effects are difficult to quantify, the TPA regulatory-related provisions are likely to improve the regulatory climate for bilateral trade and investment, particularly over the medium and long term.

- **Small effect:** Benefits are likely to be marginal because of the small size of the Colombian market relative to that of the United States, and structural changes already undertaken by the government of Colombia as part of economic reforms and privatization programs.
- **Investment:** Notably, the TPA incorporates important investor protections, particularly the investor-state dispute settlement mechanism, which covers all investment agreements between U.S. investors and the Colombian government including those that were concluded either before or after the implementation of the TPA.
- **Intellectual property rights (IPR):** The protection of intellectual property in Colombia will likely be improved if the IPR provisions of the TPA are fully and effectively implemented through appropriate legislation and enforcement.
- **Labor and environment:** The labor and environment provisions of the TPA are expected to have little effect on the U.S. economy or U.S. trade with Colombia because these provisions focus on the enforcement of existing regulations.

TPA Chapter 8—Trade Remedies

Assessment

The trade remedy provisions in the U.S.-Colombia TPA are not likely to result in a notable effect on U.S. industries or the U.S. economy. Each party will retain all rights and obligations of article XIX of GATT 1994, the WTO Agreement on Safeguards and Countervailing Measures, and the WTO Agreement on Implementation of Article VI of the GATT 1994 (The Anti-dumping Agreement). The TPA mirrors bilateral provisions in other FTAs, including the TPA with Peru, that the United States has implemented with other parties.

Summary of Provisions

Chapter 8 of the TPA provides the legal framework to allow bilateral safeguards on originating goods under the TPA, under terms similar to corresponding provisions of existing TPAs/FTAs with other countries. A party must notify the other party when an investigation is initiated and consult before taking any action under the safeguard provisions. A bilateral TPA safeguard measure can be taken only if a party determines that, as a result of the reduction or elimination of duty under the TPA, an article is being imported from the other party in such increased quantities (in absolute terms or relative to domestic production) as to be a substantial cause of serious injury or threat thereof to a domestic industry producing a like or directly competitive good. The measure imposed can take the form of (1) a suspension of the further reduction of the TPA duty rate on such goods, or (2) an increase in that duty to a level not exceeding the lower of the MFN duty rate at the time the action is taken or the applied MFN rate on the day before the date of entry into force of the TPA. Such a safeguard is aimed at preventing or remedying serious injury and facilitating adjustment. A party may not invoke a safeguard after the transition period (10 years after entry into force of the TPA). During the transition period, a safeguard can be imposed for an initial period of up to 2 years, and may be extended up to 2 additional years if deemed necessary by the proper authorities. Measures continuing longer than 1 year must be progressively liberalized, and the party invoking a TPA safeguard cannot subsequently impose another such measure on the same originating good.

The rate of duty to be applied when the safeguard measure terminates may be no higher than the TPA rate that would have been in effect 1 year after application of the safeguard. Under the chapter, the parties agree to try to provide compensation that will be mutually acceptable and will liberalize trade. Concerning antidumping and countervailing measures, the TPA provisions simply state that each party retains its rights and obligations under the relevant WTO agreements, and that the TPA does not impose any rights or obligations on the United States or Colombia with respect to antidumping or countervailing measures.

Views of Interested Parties

Overall, the trade advisory committee reports, testimony, and written submissions in this investigation did not address the bilateral safeguard provisions in the U.S.-Colombia TPA. However, the report of the Industry Trade Advisory Committee on Steel states its approval that the safeguard language in the U.S.-Colombia TPA does not provide for changes in, or changes in the application of, U.S. antidumping and countervailing duty statutes.¹

TPA Chapter 9—Government Procurement

Assessment

The government procurement provisions of the U.S.-Colombia TPA are likely to benefit U.S. goods and services providers, primarily as a result of improvements in regulatory transparency and market access (box 6-1). U.S. industry estimates that nondiscriminatory

¹ ITAC 12, *The U.S.-Colombia Trade Promotion Agreement*, 2.

Box 6-1 Current government procurement in Colombia

Government procurement accounts for approximately 16 percent of Colombia's GDP. Colombia's Law 80, dating from 1993, requires foreign firms to establish a commercial presence in Colombia to participate in government procurement, which is costly.^a However, Law 80 granted equal treatment to foreign companies on a reciprocal basis and eliminated the 20 percent surcharge previously added to foreign bids.^b

In 2003, the Colombian government passed Law 816, which requires all public entities to support domestic industries and grants preferential treatment to bids that incorporate Colombian goods or services.^c Law 816 effectively barred U.S. service firms, including those in express delivery, financial services, and telecommunications, from bidding on Colombian government procurement contracts.^d

^aUSTR, "Colombia," *2006 National Trade Estimate Report*, 166–67.

^bU.S. Department of State, "Colombia Economic Policy and Trade Practices."

^cUSTR, "Colombia," *2006 National Trade Estimate Report*, 166–67.

^dDeRosa, Grieco, and Schott, "Bilateral Trade and Investment," 38.

access to Colombian government procurement could result in increased U.S. exports in the range of \$100 million to \$500 million annually.² Colombia is an observer but not a signatory to the WTO Government Procurement Agreement; therefore, the TPA establishes procedures, provides greater predictability in the government procurement process, and grants U.S. suppliers nondiscriminatory rights to bid on goods and services contracts to supply numerous Colombian central and subcentral (equivalent to U.S. state level) government entities. The text of the government procurement chapter mirrors that of the U.S.-Peru TPA; however, the annex contains distinct provisions.

Summary of Provisions

Chapter 9 of the TPA applies to covered government procurement of goods and services by any contractual means where the value concerned exceeds thresholds set out in an annex to the chapter. The thresholds will be adjusted every 2 years, with the first adjustment taking place on January 1, 2008, according to a formula set out in the annex. The chapter sets out definitions, general principles such as national treatment and nondiscrimination, criteria on the rules of origin used in the normal course of trade, and restrictions on the use of offsets. The chapter's provisions also set forth advanced notice requirements for intended procurements, time frames for the tendering process, documentation requirements, rules on the declaration of technical specifications, conditions for participation, criteria for awarding contracts, requirements concerning the publication of information on selected tenders, and a mechanism for the review of challenges that suppliers submit relating to the application of the TPA's provisions by a procuring entity of a party's government. The chapter also sets forth procedures and conditions pertaining to selective tendering and limited tendering, and provides for establishment of a Committee on Procurement consisting of representatives of each party to handle matters related to implementation of the government procurement provisions.

² USTR, "Colombia," *2006 National Trade Estimate Report*, 166–67.

The annex to chapter 9 lists covered entities, covered purchases, and exclusions, and establishes the threshold amounts for purchases of goods and services by covered entities. In general, most goods and services are covered by the agreement; however, both the United States and Colombia exclude certain purchases and service sectors. For example, at the federal level, Colombia excluded certain procurements of the Ministries of National Defense, Agriculture and Rural Development, Social Protection, Mining and Energy, Transportation, and procurements for the preparation and conduct of elections. In the case of the United States, exclusions include certain procurements by the Departments of Agriculture, Commerce, Defense, Energy, Homeland Security, Transportation, and the General Services Administration. Subcentral provisions apply to all 32 of Colombia's departments (analogous to U.S. states) and the U.S. states of Arkansas, Colorado, Florida, Illinois, Mississippi, New York, Texas, and Utah as well as to Puerto Rico.

As noted above, the annex also contains the threshold adjustment formula. Thresholds at the federal level are at the same level as found in NAFTA; these amounts are lower than WTO levels, thereby opening up relatively more contracts for U.S. bidders.³ On construction services, the United States' threshold is \$7,407,000, while, for the first 3 years of the TPA, Colombia's is the higher of \$7,407,000, as adjusted by the threshold adjustment formula, or \$8 million; after this period, Colombia's threshold adjusts to match the U.S. threshold.

The TPA stipulates that the state-owned *Empresa Colombiana de Petróleos* (ECOPETROL), which is not required to follow the government's procurement procedures, may follow procedures that are comparable to those in the TPA, and allows it more flexibility with regard to the tendering period, specifying a minimum 10-day bidding period. Most FTAs and TPAs require a 40-day tendering period, but the Chile, Australia, and Peru agreements provide for a slightly shorter period. In addition, all agreements allow the time period to be reduced to 10 days in certain cases, e.g., when an annual procurement plan is published. The TPA will allow for a reduction of the tendering period by up to 10 days, provided that the United States determines that Colombia has a robust electronic procurement system.⁴

A list of special covered entities—entities in Colombia that are not subject to Colombia's government procurement law, conduct their procurement under private law, and compete in the commercial market—is provided in section D of the annex. This is groundbreaking in that this is the first U.S. FTA or TPA with such a list. While Colombia only agreed to cover these entities with regard to the national treatment obligation, their inclusion in the annex means that U.S. firms will be assured of the same treatment that these companies give to Colombian companies.

³ For example, for entities of the central level of government listed in each party's schedule, the threshold for procurement of goods and services is \$64,786. For entities at the subcentral level of government listed in each party's schedule, the threshold for procurement of goods and services is \$526,000. For construction services, the thresholds are the same as at the central level of government. There are also thresholds set forth for other covered entities.

⁴ "If Colombia notifies the United States in writing that it has implemented an electronic procurement system that would enable it to comply with paragraph 3 of article 9.5 and the United States does not object within 60 days of the receipt of the notification, Colombia may reduce the time limit for submission of a tender pursuant to paragraph 3 of article 9.5. If the United States objects, Colombia shall not reduce its time limit for tendering under paragraph 3 of article 9.5." *U.S.-Colombia TPA*, "Side Letter on 30-Day Tendering."

Section H of the annex includes a small business reservation for Colombia,⁵ which is comparable to that of the United States. Colombia's program is capped at \$125,000, while the U.S. reservation has no dollar limitation.

Views of Interested Parties

The trade advisory committee indicated general support for the government procurement chapter of the TPA, but noted that certain reservations remain. The Advisory Committee for Trade Policy and Negotiations (ACTPN) unanimously supports the TPA and its report stated that the government procurement commitments will lead to increased U.S. access to the Colombian market. This report also stated that the TPA covers most Colombian government agencies, particularly those of key interest to U.S. suppliers, and provides for criminal penalties for bribery in government procurement.⁶

The Emergency Committee for American Trade (ECAT) stated that the TPA's provisions on government procurement will offer U.S. suppliers new access to Colombia's government procurement market, which is particularly significant given that Colombia is not a signatory to the WTO government procurement agreement. ECAT asserted that the government procurement chapter will be especially significant for U.S. suppliers of information technology and construction and engineering services, and stated that the provisions will encourage efficiency in the Colombian government procurement process.⁷

The Industry Trade Advisory Committee for Steel (ITAC 12) reported that the government procurement provisions in the TPA mirror language in previously negotiated FTAs reviewed by the committee and therefore appear acceptable.⁸ The report of the Industry Trade Advisory Committee for Information and Communications Technologies, Services, and Electronic Commerce (ITAC 8) expressed support for the TPA government procurement chapter. The ITAC 8 report stated that the strong provisions on government procurement are important considering that Colombia is not yet a member of the WTO government procurement agreement. The report also states that chapter 9 provisions offer greater certainty to U.S. providers and ensure access to the Colombian market, particularly for digital products and IT and communications products and services, noting that government is a major purchaser of IT and communications products and services. ITAC 8 applauded the TPA language that allows for notification and documentation through electronic media, and encouraged future trade agreements to include similar language promoting the use of electronic means.⁹

The report of the Industry Trade Advisory Committee on Services and Finance Industries (ITAC 10) indicates mixed support for the government procurement chapter of the TPA. The ITAC 10 report states that the TPA provides "acceptable access" to the government procurement market for construction services, but notes that it excludes architectural

⁵ "This Chapter does not apply to the reservation of contracts below \$125,000 for the benefit of Micro, Small and Medium-sized Companies (MIPYMES), including any type of preferences, such as the exclusive right to provide a good or a service, and measures conducive to facilitate the transfer of technology and sub-contracting." *U.S.-Colombia TPA*, annex 9.1, sec. H.

⁶ These penalties will promote fair competition and enhanced procurement processes. ACTPN, *The U.S.-Colombia Trade Promotion Agreement*, 6.

⁷ Cohen, "U.S.-Colombia Trade Promotion Agreement," 8-9.

⁸ ITAC 12, *The U.S.-Colombia Trade Promotion Agreement*, 2.

⁹ ITAC 8, *The U.S.-Colombia Trade Promotion Agreement*, 4 and 9.

services, engineering and design services, and engineering services during the construction and installation phase. ITAC 10 called for the eventual removal of these exclusions. The report also supported the chapter as promoting “a more open, transparent and fair framework for U.S. companies to participate in Colombia’s government procurements.”¹⁰

The Intergovernmental Policy Advisory Committee (IGPAC) indicated overall agreement with the trade liberalizing content of the TPA, but expressed significant reservations with respect to government procurement provisions. The IGPAC report expresses general support for the objectives of increased market access and greater transparency in government procedures and regulatory decisions related to procurement, as well as the preservation of the ability of state and local authorities to adopt legislation, standards, and procedures to best serve their interests. However, the IGPAC report expressed concern over the “reciprocity policy,” which was applied for the first time in the U.S.-Peru TPA and subsequently applied in the TPA with Colombia, whereby reciprocal market access in the foreign country is granted at the subcentral level to businesses located in states that agree to the procurement provisions of the TPA. IGPAC pointed out that the possible benefits to states could be compromised by the processes and boundaries of the policy.¹¹ The report reiterated comments and feedback concerning the reciprocity agreement provided by IGPAC members to the USTR in 2004, and asked that further negotiations take those observations into account. IGPAC also noted that certain of the TPA’s government procurement provisions differ from other FTAs and the WTO government procurement agreement, and could cause undue confusion and difficulties in implementation.

TPA Chapter 10—Investment

Assessment

The investment provisions of the U.S.-Colombia TPA will likely have a small positive effect on overall U.S. investment in Colombia and on Colombian investment in the United States (box 6-2). The small effects result from the small size of the Colombian economy relative to that of the United States. The TPA will likely contribute to a more secure and stable investment environment for U.S. investors in Colombia, which will encourage additional U.S. direct investment in Colombia. The TPA incorporates important investor protections, particularly the investor-state dispute settlement mechanism, which covers all investment agreements between U.S. investors and the Colombian government, including those that were concluded before or after the implementation of the TPA. All investment agreements are covered; however, to be subject to arbitration under the terms of the TPA, a breach of an investment agreement must occur after entry into force of the TPA. This facet of the investor-state dispute settlement provisions is of particular concern to U.S. investors in the

¹⁰ ITAC 10, *The United States-Colombia Trade Promotion Agreement*, 5, 6, 9, and 10.

¹¹ According to IGPAC, “potential benefits to participating states tend to be weakened by the policy’s implementation process, through supplier self-certification, and by the overly broad definition of “principal place of business” (“defined to include the headquarters or main office of a supplier or any other place where a supplier’s business is managed, conducted, or operated. This means that, under this policy, a supplier could have more than one principal place of business.”) IGPAC, *The US-Colombia Trade Promotion Agreement*, 17.

Box 6-2 Foreign direct investment (FDI) in the United States and Colombia

The United States is the world's largest destination for FDI, with 2004 inbound direct investment stock of \$1.5 trillion, representing 17 percent of total worldwide inbound investment stock. Inbound FDI amounts to for 13 percent of the U.S. GDP. Colombia, with a much smaller economy, registered \$22.3 billion in inbound direct investment stock in 2004, equal to 26 percent of Colombia's GDP.^a

Foreign investment in Colombia receives full national treatment with domestic investment, and 100 percent foreign ownership is permitted in most sectors. Colombia requires investors to register new investment with the Central Bank within 3 months, and to obtain a license from the Superintendent of Companies, but these requirements are nondiscriminatory formalities.^b As of 2004, however, foreign portfolio investment entering Colombia is required to remain in the country for a minimum of 1 year. The United States is the second-largest source of FDI in Colombia, after the United Kingdom. The manufacturing sector accounted for 53 percent of FDI inflows in 2005, followed by the mining and oil industries.^c In 2006, there were 79 U.S.-owned companies operating in Colombia. The largest by operating revenue were Bavaria and Cerveceria Leona (both brewery subsidiaries of Altria), Exxon Mobil, General Motors, and Liberty Seguros (a subsidiary of Liberty Mutual Holding Co.).^d Colombia has concluded six bilateral investment treaties (BITs), including one with the United Kingdom, but has not concluded a BIT with the United States.

United States and Colombia: Investment data, 2004

	Colombia	United States
Cumulative inbound investment stock (million dollars)	22,278	1,473,860
Cumulative inbound stock as percentage of GDP (percent)	26	13
Outbound investment stock (million dollars)	4,284	2,018,205
Outbound stock as percentage of GDP (percent)	6	16
Investment inflows in the year 2004 (million dollars)	2,739	95,859
Cumulative bilateral outbound investment stock (million dollars)	NA	2,811

Sources: UNCTAD, *Foreign Direct Investment Database* and U.S. Department of Commerce, BEA, *Survey of Current Business*, September 2006.

Notes: Investment stock as percentage of GDP reflects 2003 data. Data for 2004 are not available. Bilateral outbound investment stock reflects U.S. government statistics for U.S. outbound direct investment position in Colombia on a historical-cost basis, and U.S. inbound direct investment position from Colombia on a historical-cost basis.

^a UNCTAD, *World Investment Report 2005*, annex tables B.2 and B.3.

^b USTR, "Colombia," *2006 National Trade Estimate Report*, 174–75.

^c EIU, "Country Finance Colombia."

^d Bureau Van Dijk, *Orbis company database*.

mining and energy industries, which typically have a long time horizon between the initial investment and financial profitability.¹²

¹² Mining and energy together accounted for 38 percent of all foreign direct investment flows (FDI) in Colombia between 2000 and the first quarter of 2006. ProExport Colombia, "Trend Report: Report on Foreign Investment in the First Quarter of 2006." Mining (including the petroleum sector) represented 19 percent of U.S. FDI stock in Colombia in 2005 (latest available year). U.S. Department of Commerce, BEA, *Survey of Current Business*, September 2006, 106.

Summary of Provisions

Chapter 10 of the U.S.-Colombia TPA outlines the rights of investors and the rules that govern new cross-border investment, and provides a clear outline of the investor-state dispute settlement process. Section A of the chapter outlines the rules governing new investments and sets forth the types of investments to which these rules apply.¹³ Specifically, the TPA requires each party to give national and MFN treatment to investors and covered investments of the other party. The treatment of investors under the TPA must comply with customary international law. Other provisions are as follows:

- Expropriation will be only for a public purpose; it must be nondiscriminatory and accompanied by payment of prompt, adequate compensation in accordance with due process of law.
- All financial transfers relating to covered investments, including, but not limited to, contributions to capital, payment of interest, and payments under contracts, may cover the full value of the investment and may be made freely and without delay.
- Neither party will impose performance requirements as a condition of investment.¹⁴
- Neither party will require that senior management or boards of directors be of any particular nationality.

The benefits of this chapter may be denied only in limited, delineated instances, as outlined in the TPA annexes of nonconforming measures. This section of the chapter also deals with nonconforming measures, special formalities, and information requirements.

Section B of this chapter provides detailed information and procedures in case of an investment disputes particularly the investor-state dispute settlement process, including submission of claims to arbitration, selection of arbitrators, conduct of the arbitration, transparency of the arbitral proceedings, governing law, and awards of monetary damages (not including punitive damages) or restitution. Under the terms of the provisions of section B, each party will consent to claims being submitted according to the process outlined in the TPA. The awards made by any arbitration tribunal will have binding force only between the disputants and with regard to the particular case. The chapter also contains definitions of terms and relevant conventions for use in the resolution of investment disputes. An annex defines “customary international law” for purposes of the chapter, while another deals with expropriation (direct and indirect) in some detail. To be considered expropriation, a party’s action or series of actions must interfere “with a tangible or intangible property right or property interest in an investment,” and be based on clear transfers of title or outright seizure. Other annexes deal with the service of documents in such matters and the establishment of a possible future appellate body.¹⁵

¹³ Investment related to financial services is covered separately in the financial services chapter (TPA chap. 12).

¹⁴ Such provisions may include requirements to export a given level or percentage of goods or services, to purchase goods produced in a party’s territory, or to transfer a certain technology or other proprietary information.

¹⁵ Under annex 10-D, within 3 years after the date of entry into force of the TPA, Colombia and the United States will consider whether to establish an appellate body to review awards resulting from arbitration under the TPA’s dispute settlement mechanism.

The investment chapter incorporates an additional four annexes, all of which are identical to the annexes in the U.S.-Peru TPA, but different from previous U.S. bilateral FTAs. All four of these annexes safeguard the rights of the Colombian and U.S. governments in the case of a dispute resolved through the investor-state process. Annex 10-E applies special dispute settlement provisions to the TPA, requiring that investors wait a minimum of 12 months before sending a claim to arbitration, and ensuring that investors have the opportunity to invest returns from investments in cases where they are not permitted to transfer capital outside of Colombia. Annex 10-F disallows claims related to the rescheduling of sovereign debt from arbitration under the investor-state dispute settlement process, unless there is a claim that the rescheduling agreement violates national treatment or MFN treatment. Annex 10-G requires an investor to choose to pursue an investment claim either in the host country's court system or under the TPA's investor-state dispute settlement process. This provision states that once the dispute has been submitted to a local court, the foreign investor may no longer initiate the investor-state process.

Nonconforming Measures Related to Investment

Colombia has two investment-related horizontal reservations under annex I. The first states that foreign investors may make portfolio investments in Colombian securities only through a foreign capital investment fund (*fondo de inversión de capital extranjero*). The second reservation states that if Colombia chooses to privatize a state-owned entity, the shares of that company may first be offered to employees or employee organizations before being offered to the public. In annex II, Colombia lists three horizontal reservations. Under the first, Colombia reserves the right to limit foreign ownership of real estate in border regions, on the national coast, and in insular territory.¹⁶ The second reservation accords differential treatment to countries that have signed international agreements with Colombia before the entry into force of the TPA, specifically including agreements involving aviation, fisheries, or maritime matters. The third reservation permits Colombia to adopt measures “for reasons of public order,” provided that Colombia promptly informs the United States of the measure, that the measure responds to a serious threat to society, and that it meets certain other conditions. If such a measure is adopted, a claimant may submit a claim for compensation to investor-state arbitration, although there will be no award if the tribunal determines that Colombia has followed all the procedures outlined in the nonconforming measure.

Horizontal reservations taken by the United States under annex I address the programs of the Overseas Private Investment Corporation and the registration of public offerings of securities, as well as existing nonconforming measures at the state level. Under annex II, the first horizontal reservation listed by the United States appears to ensure that U.S. obligations under the TPA concerning the cross-border services trade or establishment of a service enterprise are equivalent to those undertaken in the GATS. The second horizontal reservation taken by the United States mirrors the reservation taken by Colombia, which accords differential treatment to countries under international agreements that were signed before the U.S.-Colombia TPA.

¹⁶ The insular territory is defined as islands, islets, keys, headlands, and shoals that are part of the territory of Colombia.

The specific sectors for which investment-related reservations are listed in annexes I and II are presented in table 6-1.¹⁷ Each nonconforming measure is different, and will have varied effects on U.S. investment in the named sector. The inclusion of a sector in an annex does not mean that the entire sector has been exempted from coverage under the investment disciplines of the TPA.

Views of Interested Parties

A U.S. industry representative from Caterpillar, Inc., speaking on behalf of several U.S. industry groups, said that he expects the TPA to improve the investment climate for U.S. investors by enhancing the rule of law and improving protection of U.S. trademarks, patents, and copyrights. He said that the TPA will also contribute to long-term stability in the investment climate between the two countries, a necessary prerequisite for long-term investment in industries such as mining and infrastructure development. Combined with the new investment dispute settlement mechanisms, the representative stated that he would expect the TPA to lead to increased U.S. investment in Colombia.¹⁸

A number of U.S. industry representatives noted several important attributes of a prospective U.S.-Colombia TPA, including increased economic growth in Colombia, which will presumably lead to greater stability in the country and is expected to create new trade opportunities for U.S. firms in a variety of sectors.¹⁹ Another U.S. industry representative noted that the investor protections included in the agreement will protect U.S. companies investing in Colombia. The Colombian textile industry was one sector expected to benefit from this scenario.²⁰

The ITAC 10 report, which reflects the views of a range of services sector representatives, stated that the investment provisions of the TPA are particularly important for services industries, and expressed the view that the agreement creates new opportunities for U.S. investors in Colombia and provides strong protections for such investment.²¹ For investment agreements concluded prior to the entry into force of the TPA, the TPA provides coverage under the investor-state dispute settlement provisions. In the ITAC 6 and ITAC 10 reports, representatives of both the energy and the services industries indicated that the TPA's coverage of such existing investment agreements is particularly significant.²² Both reports noted that companies involved in the construction of infrastructure and hotels frequently make long-term investments; therefore, it is likely they would also find these provisions to be valuable.

Industry representatives have also cited several drawbacks to the TPA investment provisions. First, the ITAC 10 report expressed concern that the "extremely lengthy and onerous" review procedure for determining whether certain measures fall within the prudential carve-out for

¹⁷ Investment-related reservations related to financial services, including insurance, are listed in annex III, and are presented in table 4-2 of this report.

¹⁸ Gales, hearing transcript, 60.

¹⁹ U.S. industry views were posted on *Colombia Trade News*, the official Web site of the Trade Bureau of the Embassy of Colombia in the United States and Colombia's Ministry of Trade, Industry and Tourism. Industry comments date from prior to the conclusion of the negotiations. Colombian Government Trade Bureau, "What Others Are Saying About the Colombia-U.S. Free Trade Agreement."

²⁰ Industry representative, e-mail message to Commission staff, September 14, 2006.

²¹ ITAC 10, *The United States-Colombia Trade Promotion Agreement*, 2.

²² Ibid., and ITAC 6, *The U.S.-Colombia Free Trade Agreement*, 3.

Table 6-1 U.S.-Colombia TPA: Industry sectors subject to nonconforming measures related to investment

Colombia		United States	
Current measures (Annex I)	Potential measures (Annex II)	Current measures (Annex I)	Potential measures (Annex II)
Fishing	Social services	Communications: Radio	Minority affairs
Private security and surveillance services	Minorities and ethnic groups	Atomic energy	Communications
Journalism	Cultural industries and activities	Mining	Social services
Domiciliary public services, including water, sewage, public refuse disposal, electric power and fuel gas distribution, basic public switched telephone services, and related activities	Jewelry design	Transportation services: Air transportation	Transportation services: Maritime transportation
	Performing arts	Customs brokerage	Insurance
	Music	Banking and other financial services	
	Visual arts	Insurance	
Cinematography	Publishing		
Free-to-air television	Handicraft industries		
Subscription television	Audiovisual services		
Waste related services	Advertising		
Specialty air services	Traditional expressions		
Banking and other financial services	Banking and other financial services		
	Interactive audio and/or insurance video services		

Source: *U.S.-Colombia TPA*, annex I, annex II, and annex III.

Note: Nonconforming measures are found in annexes I through III of the TPA. Annex I contains reservations for cross-border services, excluding financial services, to preserve existing measures that are inconsistent with the disciplines concerning nondiscrimination, performance requirements, and senior personnel. Annex II contains reservations for cross-border services, excluding financial services, to ensure that a party maintains flexibility to impose measures in the future that may be inconsistent with the disciplines of the TPA. Annex III contains both existing and future nonconforming measures related to financial services, including insurance. For information on the nonconforming measures related to financial services, see table 4-2.

financial services measures²³ may open the way for certain Colombian government provisions to act as barriers to investment. Second, industry representatives expressed concern that the modifications to the dispute settlement procedures outlined in annex 10-E

²³ The “prudential carve-out” refers to a provision in the U.S.-Colombia TPA and other bilateral and multilateral trade agreements that exempts certain financial services regulations from certain provisions of the agreement, on the grounds that the regulations serve strictly prudential purposes. The generally accepted definition comes from the WTO GATS, as follows. “Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member’s commitments or obligations under the Agreement.” WTO, “Annex on Financial Services,” par. 2.

may prolong the waiting period before investors are permitted to submit certain claims to arbitration.²⁴

While representatives from varying industries strongly support the investor-state dispute settlement process, the IGPAC report stated that representatives of U.S. state and local governments are not in favor of investor-state dispute settlement. In their opinion, legal challenges brought by foreign investors against U.S. state and local regulations have overly burdened state and local governments and have caused some confusion regarding the scope of their regulatory authority. However, they also noted that they consider the language of annex 10-G²⁵ to be an improvement over the investment provisions of previous FTAs, as it prevents the investor-state process from overturning the decisions of the local courts.²⁶ The ITAC 10 report stated that while industry representatives do not object on principle to the provisions of annex 10-G, this language may prove confusing to some investors, leading them to unknowingly forgo their rights under the investor-state dispute settlement process.²⁷

According to a Colombian government official, the TPA provides for long-term commitments from both countries to sustainable, clear, and predictable rules for trade and investment, and enhances legal stability and transparency, all of which are vital for foreign investors.²⁸ The result is likely to be increased U.S. direct investment in Colombia. The official cited studies from Mexico and Chile showing increased U.S. investment of 1–2 percent following their respective free trade agreements with the United States. An increase of similar scale would be valued between \$1.3 billion and \$2.6 billion in Colombia. In particular, the official cited several potential areas of gain from the TPA related to investment. First, he noted the TPA might lead Colombian investors to increase existing investment in the U.S. cement industry. Second, he expected U.S. investors to increase their presence in Colombia, particularly in the manufacturing and services sectors. Finally, he noted that other South American countries without preferential access to the U.S. market would likely increase their investment in Colombia as a way to access the U.S. market on preferential terms.²⁹

TPA Chapter 13—Competition Policy

Assessment

The competition policy provisions of the U.S.-Colombia TPA are likely to have little effect on U.S. firms investing in and exporting to Colombia because Colombia's economy is already relatively open to international competition. The TPA competition policy provisions may result in greater transparency in Colombia's regulatory procedures related to competition issues.

²⁴ ITAC 10, *The United States-Colombia Trade Promotion Agreement*, 6; and industry representatives, telephone interviews by Commission staff, September 14–15, 2006.

²⁵ As noted above, annex 10-G requires an investor to choose to pursue an investment claim either in the local court system or under the investor-state dispute settlement process. Once the dispute has been submitted to a local court, the foreign investor may no longer initiate the investor-state process.

²⁶ IGPAC, *The US-Colombia Trade Promotion Agreement*, 3.

²⁷ ITAC 10, *The United States-Colombia Trade Promotion Agreement*, 7.

²⁸ Gómez, hearing transcript, 16.

²⁹ *Ibid.*, 55–56.

Colombia's constitution bans agreements, practices, procedures, or systems designed to restrict freedom of competition and to maintain or fix inequitable prices, except in limited circumstances. Specific sectors exempted from competition laws include those reserved for national security reasons, agriculture, professional sports, labor organizations, and export activities.³⁰ The Office of the Superintendent of Industry and Commerce (SIC) is the primary agency in Colombia responsible for competition policy.³¹ Additional authorities are responsible for specific sectors, including domestic public services, television, the financial and insurance sectors, and the health sector.³² Specifically in the telecommunications sector, whereas Colombia has allowed new competitors into long distance and international services, high license fees remain a significant barrier.³³ Another challenge is the sheer number of different agencies involved in enforcing competition laws, which can result in confusion regarding which authority is responsible for specific activities, as well as the possibility of differing interpretations of competition law.³⁴

Summary of Provisions

Chapter 13 of the TPA addresses competition policy, designated monopolies, and state enterprises with a view to implementing economically sound policies and proscribing behaviors subject to this chapter that would restrict bilateral trade and investment. The chapter commits the United States and Colombia to maintain competition laws that prohibit anticompetitive business conduct; to ensure that competition agencies enforce the laws; and to ensure national treatment, due process, and a nondiscriminatory application of these laws. The parties agree to cooperate in the area of competition policy and establish a working group.

The chapter also requires the parties to 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 and that they will not operate in a manner that creates obstacles to trade and investment. The chapter includes provisions covering transparency, information requests, consultations, and definitions of terms. Neither party will have recourse to dispute settlement under the provisions of this chapter pertaining to national competition laws, cooperation, the working group, or consultations.

Views of Interested Parties

The Industry Trade Advisory Committee for Services and Finance Industries (ITAC 10) reported that the U.S. express delivery industry believes that this TPA does not adequately address cross-subsidization of express delivery services operations by postal authorities that

³⁰ FTAA Negotiating Group on Competition Policy, "Inventory of Domestic Laws and Regulations."

³¹ UNCTAD, *Handbook on Competition Legislation*.

³² OECD, *Institutional Challenges of Promoting Competition*. Law 142 of 1994 defines the following services as domestic public services: water, sewage, garbage, electricity, gas distribution, basic fixed telephone service, local mobile telephony in rural areas, and national and international long distance telephone service.

³³ U.S. Department of State, "Colombia," *2006 Investment Climate Statement*.

³⁴ OECD, *Institutional Challenges of Promoting Competition*.

gain revenues and other privileges they derive from their government-granted monopoly rights and apply them towards gaining competitive advantages.³⁵

TPA Chapter 16—Intellectual Property Rights

Assessment

The intellectual property rights (IPR) provisions of the U.S.-Colombia TPA will likely benefit U.S.-based industries that rely on IPR protection and enforcement. The rigorous standards in the TPA, if fully implemented and enforced, may reduce substantial piracy rates in Colombia (box 6-3) and promote a more favorable balance of trade.³⁶ Full implementation and enforcement of the IPR chapter, and particularly the digital technology protection provisions, likely would benefit the U.S. motion picture, sound recording, business software, entertainment software, and book publishing industries. U.S. industries that may benefit from strengthened patent and confidential data protections include pharmaceuticals and agricultural chemicals. A broad range of U.S. industries may benefit from the strengthened trademark and enforcement provisions of the TPA. Implementation by the United States of its TPA obligations will likely have little effect on the U.S. economy or U.S. industries, because the United States already meets or exceeds the high standards of IPR protection contained in the TPA.

Summary of Provisions

Chapter 16 of the TPA provides enhanced standards for protection and enforcement. These standards include greater protections for digital products such as software, music, text, and videos; stronger protection for patents, trademarks, and confidential test data; and enforcement provisions focused on the deterrence of piracy and counterfeiting.³⁷ With only minor exceptions, the IPR chapter of the TPA is identical to that of the U.S.-Peru TPA.³⁸

The IPR chapter seeks to meet the negotiating objectives set by Congress in the Trade Promotion Act of 2002 (Trade Act): ensuring that IPR provisions reflect standards similar to those found in U.S. law; providing strong protection for emerging technologies, particularly with regard to the Internet; and ensuring effective enforcement.³⁹ Consistent with the Trade Act's additional requirement of respect for the November 2001 Doha Declaration on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Public Health, the IPR chapter also includes "Understandings Regarding Certain Public Health Measures," in recognition of Colombia's ability to take necessary measures to protect public health by promoting access to medicines for all.⁴⁰

³⁵ ITAC 10, *The United States-Colombia Trade Promotion Agreement*.

³⁶ Thomas, *Intellectual Property and the Free Trade Agreements*, CRS-17.

³⁷ USTR, "Free Trade with Colombia: Brief Summary of the Agreement," 1.

³⁸ The TPA includes the following provisions not included in the U.S.-Peru TPA: a commitment by Colombia to ratify or accede to the Madrid Protocol, a side letter regarding outstanding patent applications and patent linkage, and a 2-year transition period for the obligation to grant an extension when there has been an unreasonable delay in the issuance of a patent (Peru had a 1-year transition).

³⁹ Trade Act of 2002, 19 U.S.C. Sec. 3802(b)(4)(A).

⁴⁰ Trade Act of 2002, 19 U.S.C. Sec. 3802(b)(4)(C).

Box 6-3 Recent conditions of IPR protection in Colombia

Colombia has been on the USTR's Special 301 "Watch List" since 1991. Although the USTR noted in 2006 that Colombia had made progress in strengthening its IPR regime, it said that Colombia needed to further address copyright piracy, conduct effective prosecutions, impose deterrent sentences, and complete other IPR enforcement initiatives. A summary of Colombia's legal framework for IPR protection and recent conditions appears below.

The Legal Framework

National laws and regional decisions govern the protection of intellectual property in Colombia. Colombia applies the Andean Community's harmonized industrial property law that, among other things, aims to bring the patent and trademark laws of the members into compliance with TRIPS requirements. Colombia's domestic law phased in data exclusivity protections for pharmaceuticals and agricultural chemicals in 2002. Copyright protections are contained in Colombia's 1982 copyright law, as amended, and in Andean Community decisions. The World Intellectual Property Organization Performances and Phonograms Treaty and the WIPO Copyright Treaty entered into force in Colombia in 2002. Colombia's criminal code includes copyright infringement as a crime and contains provisions addressing the violation of technological protection measures and rights management information.

Copyrights and Trademarks

According to the International Intellectual Property Association (IIPA), whose member associations estimate piracy levels (the share of a country's market that consists of materials that violate IPR protections), the most pressing concerns are music, book, business software, and audiovisual copyright piracy. While high, the estimated piracy level for music in Colombia (71 percent) is substantially lower than in Bolivia (90 percent), Ecuador (90 percent), or Peru (98 percent). Colombia also has a lower rate of business software piracy (57 percent) than in Bolivia (83 percent), Ecuador (69 percent), and Peru (73 percent). Estimated trade losses due to book piracy were \$6.0 million in 2005, resulting mostly from the illegal photocopying of academic texts. In the audiovisual area, the Motion Picture Association of America has reported improved enforcement efforts targeted at film piracy, although there are still few deterrent sentences. IIPA has estimated that trade losses for business software, music, motion pictures, entertainment software, and book piracy were \$98.7 million in 2005, a 31 percent reduction from 2004 losses.

Although enforcement of trademark legislation in Colombia also has shown progress, contraband and counterfeiting of trademarked goods is an ongoing problem. Inadequate financing and personnel in Colombia's patent and trademark office have created a large backlog of applications that is expected to become more severe with the increased activity that is likely to result upon implementation of the TPA.

Patents and Trade Secrets

Although Colombia established protection for confidential test data in 2002, in 2005, the Andean Court of Justice ruled that the Colombian law exceeded the authority given to member countries to address the protection of data. This issue will have to be resolved to enable the implementation of the data protection provisions of the TPA.

Counterfeit pharmaceuticals remain a particular problem in Colombia. Recent surveys have revealed that in some rural areas there are more counterfeit pharmaceutical products than original ones, with inevitable dangers to public health.

Sources: Proexport Colombia, "Intellectual Property" USTR, "Colombia"; IIPA, "Colombia," *2006 Special 301 Report*; PhRMA, "Colombia" and U.S. Department of State, "Colombia," *2006 Investment Climate Statement*.

Trademarks, Geographical Indications, and Domain Names

The trademark section includes “major provisions” that should assist trademark owners in protecting their marks.⁴¹ In article 16.2.2, the TPA mandates the protection of collective and certification trademarks and provides that geographical indications are eligible for protection in this category rather than through a separate system. U.S. industries prefer this manner of protection, which is similar to the U.S. system, over the separate registry of geographical indications used in other countries.⁴² The TPA also prohibits the recognition of a geographical indication that is confusingly similar to a prior trademark.⁴³ Articles 16.2.6 and 16.2.7 of the TPA provide for greater protection for well-known marks, enabling owners to protect the marks against infringement by unregistered and dissimilar goods or services. This enhanced protection for well-known marks is considered particularly valuable to U.S. industry because of the frequency of infringements of well-known marks.⁴⁴ The TPA further provides, in article 16.2.9, for greater use of electronic means of interacting with trademark officials and for the establishment of online databases, with a 1-year transition period. With respect to domain names, articles 16.4.1 and 16.4.2 combine to address the problems of copyright and trademark cyberpiracy.

Copyrights and Related Rights and Protection of Certain Satellite Signals

The general provisions of the TPA require ratification of the World Intellectual Property Organization (WIPO) Copyright Treaty and WIPO Performances and Phonograms Treaty, which Colombia has accomplished. These are often referred to as the “Internet Treaties” because they seek to ensure that traditional means of IPR protection apply in the digital environment. The copyright and related rights section contains detailed provisions that require implementation of the obligations of the Internet Treaties in a manner that is consistent with the U.S. Digital Millennium Copyright Act (digital millennium act). These provisions include the requirement of clear language to ensure that temporary copies (such as those made in a computer’s RAM) are treated as regular copies and thus subject to the reproduction right; treatment that industry considers critical in the digital environment. It also includes provisions requiring that Colombia implement protections against the circumvention of technological protection measures and rights management information embodied in digital products.⁴⁵

Also, Colombia has agreed, in article 16.5.5, to extend its terms of protection to life of the author plus 70 years for most copyrighted works, a TRIPS-plus provision that industry considers important and that was included in the U.S.-Peru TPA.⁴⁶ The section further contains, in article 16.8, provisions similar to those originally included in the NAFTA, protecting against the theft of encrypted satellite signals and the manufacture of, and trafficking in, tools to steal those signals.

⁴¹ ITAC 15, *Advisory Committee Report*, 7.

⁴² *Ibid.*, 8.

⁴³ U.S.-Colombia TPA, arts. 16.2.4 and 16.3.2.

⁴⁴ ITAC 15, *Advisory Committee Report*, 8.

⁴⁵ U.S.-Colombia TPA, arts. 16.5.2, 16.6.2, 16.7.4 and 16.7.5; and ITAC 15, *Advisory Committee Report*, 12.

⁴⁶ When obtainable, however, industry prefers a 95-year term of protection, as was included in the U.S.-Oman FTA. ITAC 15, *Advisory Committee Report*, 12.

Patents

U.S. industry considers the patent section of the TPA to provide “clarifications and improvements” to the TRIPS agreement that “will improve the effectiveness of patent protection in Colombia.”⁴⁷ Colombia agreed to accede to the International Convention for the Protection of New Varieties of Plants (1991) (known as the UPOV Convention). Colombia also agreed, in article 16.9.2, to provide patent protection for transgenic plants that meet the TRIPS three-step test.⁴⁸ This provision is aimed at ensuring that transgenic plants, particularly those arising from biotechnological research, will be eligible for patent protection in Colombia.⁴⁹

The government of Colombia agreed, in article 16.9.5, to place restrictions on how a third party may use a patented invention to generate data needed for the marketing approval of generic pharmaceutical products. Article 16.9.6 requires that the government address unreasonable delays in patent approvals or marketing approvals of pharmaceutical products by restoring the patent term to compensate for the delay. Unlike certain other U.S. FTAs, the patent section does not impose additional restrictions on compulsory licensing, parallel imports, and pre-grant opposition, nor does it require the protection of “second-use” patents.⁵⁰

Measures Related to Certain Regulated Products

The provisions of the TPA build on the obligation in TRIPS article 39.3 that test data be protected against “unfair use.” Article 16.10.1(a) imposes an obligation of “non-reliance” on either the originator’s approval, or the originator’s data package itself, for a period of at least 5 years from the date of approval for a new pharmaceutical product, and 10 years from the date of approval for a new agricultural chemical product. The TPA includes a provision, in article 16.10.1(b), stating that to obtain data exclusivity protection, pharmaceutical or agricultural chemical companies may be required to seek marketing approval in Colombia within 5 years of obtaining initial approval for the new product. This 5-year cap was included to alleviate the concern that companies might attempt to extend their period of exclusivity indefinitely by delaying seeking marketing approval in different countries.

Article 16.10.2 provides that the period of protection for confidential test data submitted for marketing approval is independent from the period of protection granted for a patent. Article 16.10.3 requires Colombia to implement measures in its marketing approval process to prevent generic drugs from being approved during the term of the patent covering the pharmaceutical product (i.e., “linkage”) and requires the mandatory disclosure of the identity of the generic applicant seeking marketing approval during the patent term. In a related side letter (not included in the U.S.-Peru TPA), the government of Colombia agreed to reduce the

⁴⁷ U.S. industry prefers, however, the patent provisions contained in the FTAs with Bahrain and Oman. ITAC 15, *Advisory Committee Report*, 14.

⁴⁸ The term “transgenic” describes an organism that has had genes from another organism put into its genome through recombinant DNA techniques. The “three-step test” refers to TRIPS art. 27.1, which states, “Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step, and are capable of industrial application.”

⁴⁹ Unlike in the Morocco FTA, Colombia and Peru did not agree to provide patent protection for transgenic animals. ITAC 15, *Advisory Committee Report*, 15.

⁵⁰ ITAC 15 opposes these omissions from the U.S.-Colombia TPA. ITAC 15, *Advisory Committee Report*, 16.

backlog of patent applications by December 31, 2008. In addition, the governments of the United States and Colombia clarified that the patent linkage provision may be implemented in a variety of ways; the provision does not specify how or by whom a patent is identified to the approving authority or how a patent owner is notified of a request for marketing approval during the term of the patent.

Enforcement

U.S. industry regards the full and effective implementation of the enforcement provisions as the key to the success of this chapter in reducing piracy rates, counterfeiting, and other types of IPR infringement. The enforcement obligations, set forth in article 16.11, go well beyond TRIPS in scope and specificity, covering transparency and the dissemination of information, civil and administrative procedures and remedies, provisional measures, special requirements related to border measures, criminal procedures and remedies, and Internet service provider (ISP) liability. The provisions on ISP liability, contained in article 16.11.29 and in the ISP side letter, mirror the standards set forth in the digital millennium act and are particularly important to U.S. industry.⁵¹ U.S. industry regards the manner in which these new detailed enforcement provisions are implemented, primarily by judges, police, prosecutors, and administrative agencies, to be critical to the reduction of IPR infringement in Colombia.

Promotion of Innovation and Technological Development

The final section of the IPR chapter, article 16.12, recognizes the importance of promoting technological innovation, disseminating technological information, and building technological capacity. Accordingly, the governments of the United States and Colombia indicate that they will seek and encourage opportunities for collaborative science and technology research. This article, which is similar to one included in the U.S.-Peru TPA, is consistent with TRIPS article 7, which recognizes that IPR protection and enforcement should contribute to the promotion of technological innovation and the dissemination of technology.

Understandings on Public Health and on Biodiversity and Traditional Knowledge

The TPA includes a number of side letters or “understandings” on intellectual property matters. The side letter entitled “Understanding Regarding Certain Public Health Measures,” which is also included in the U.S.-Peru TPA, sets forth the governments’ understanding that the obligations in the IPR chapter do not adversely affect their ability to take necessary measures to protect public health by promoting access to medicines for all. The side letter further recognizes the commitment to access to medicine, as reflected in the Doha Declaration and the subsequent Decision and Statement of the General Council (collectively

⁵¹ Ibid., 24–25.

the “TRIPS/health solution”), and clarifies that the IPR chapter does not prevent the effective utilization of that TRIPS/health solution.⁵²

The TPA also includes an Understanding Regarding Biodiversity and Traditional Knowledge. The understanding recognizes the importance of obtaining informed consent prior to accessing genetic resources, equitably sharing the benefits arising from the use of traditional knowledge and genetic resources, and promoting quality patent examinations to ensure that patentability conditions are satisfied. It further recognizes that these issues can be addressed in mutually agreed contracts. This is only the second time that language regarding biodiversity and traditional knowledge has been included in the IPR chapter of a free trade agreement (the first was in the U.S.-Peru TPA). Although the United States has maintained that, because of the difficulty of defining and regulating these subjects, they are best addressed within the context of WIPO, the inclusion of these subjects in bilateral FTAs has been of particular importance to the Andean countries.

Views of Interested Parties

The U.S. intellectual property industry, as represented by ITAC 15, supports the IPR chapter of the TPA, stating that it generally meets the negotiating objectives of the Trade Act of 2002 and the needs of U.S. intellectual property-based industries, creators, and innovators.⁵³ The Advisory Committee for Trade Policy and Negotiations (ACTPN), with members drawn from industry, labor, agriculture, small business service, industries, and consumer interests, also endorsed the IPR chapter. The ACTPN particularly commended the strong IPR enforcement mechanisms and penalty provisions, including the criminalization of end-user piracy and counterfeiting, and the requirement that authorities be permitted to seize not only counterfeit goods but also the equipment used to produce them.⁵⁴

The Industry Trade Advisory Committee for Information and Communications Technologies, Services, and Electronic Commerce (ITAC 8) also expressed support for the IPR chapter because it takes into account the significant legal and technological developments that have occurred since the TRIPS and NAFTA agreements came into force, beginning in 1994. ITAC 8 noted that the TPA mirrors, and in many areas improves upon, the U.S. FTAs with Singapore, Chile, and CAFTA-DR, in the way it establishes clear precedents in key areas of IPR protection.⁵⁵

Other groups also expressed support of the TPA with respect to its IPR and biodiversity provisions. The International Intellectual Property Alliance (IIPA), a coalition of seven trade associations that collectively represents over 1,900 companies producing and distributing copyright-protected materials, supports the TPA. Specifically, the IIPA indicated that “the Colombia TPA offers a tool for encouraging compliance with other evolving international trends in copyright standards (such as fully implementing WIPO Treaties obligations and extending copyright terms of protection beyond the minimum levels guaranteed by TRIPS) as well as outlining specific enforcement provisions.”⁵⁶ IIPA noted further that copyright-based industries are among the fastest growing and most productive of any U.S. sector, and

⁵² In December 2005, WTO members agreed to incorporate the TRIPS/health solution into the text of TRIPS itself.

⁵³ ITAC 15, *Advisory Committee Report*, 3.

⁵⁴ ACTPN, *The U.S.-Colombia Trade Promotion Agreement*, 2, 5.

⁵⁵ ITAC 8, *The U.S.-Colombia Trade Promotion Agreement*, 11.

⁵⁶ Strong, “U.S.-Colombia Trade Promotion Agreement,” 2.

that effective IPR protection and enforcement can operate to reduce the piracy that causes substantial trade losses to these industries. The IIPA also stated that full implementation will benefit U.S. companies and assist in attracting new foreign investment to Colombia and new trade in valuable digital and other intellectual property-based products, particularly in the area of e-commerce.⁵⁷

By contrast, a minority of the Trade and Environment Policy Advisory Committee (TEPAC) opposes those provisions of the IPR chapter that it believes do not implement TRIPS in a manner supportive of public health and do not promote access to medicines for all, which is the goal of the Doha Declaration. According to this minority opinion, the separate Understanding Regarding Certain Public Health Measures does not sufficiently assure affordable medicines in the event of an actual epidemic or in situations that do not give rise to a national emergency. Moreover, the minority opinion expressed concern that the TPA, and other free trade agreements, may limit the ability of Congress to address the affordability of medicines for U.S. consumers, through drug re-importation or other legislation.⁵⁸

Similarly, the minority staff of the U.S. House of Representatives Committee on Government Reform has expressed concern that FTAs, including the proposed TPAs with Colombia and Peru, will restrict the ability of developing nations to acquire lifesaving medicines at affordable prices. The minority staff report objected to provisions that it believes may result in developing nations waiting longer than the United States to gain access to generic medications including: the 5-year market exclusivity provision, the grant of patent extensions to account for delays in the regulatory approval process, and the linkage of drug approval to patent status. The minority staff also objected to parallel importation prohibitions and restrictions on compulsory licensing that, while included in other free trade agreements, are not part of the TPA.⁵⁹

TPA Chapter 17—Labor⁶⁰

Assessment

The labor provisions of the U.S.-Colombia TPA focus on the enforcement of existing labor regulations. The principal labor provisions of the agreement require the parties to effectively enforce their own existing labor laws (box 6-4) and enable parties to challenge the failure to enforce such laws under certain circumstances through consultations or the dispute settlement procedures established in chapter 21 of the TPA. The labor provisions of the TPA will likely have little effect on the U.S. labor market and any effects on U.S.-Colombia trade would likely be indirect and difficult to quantify. Industry and labor groups have differing views regarding the adequacy and potential value of TPA labor provisions with respect to their effects on Colombia's labor market.

⁵⁷ Ibid., 3.

⁵⁸ TEPAC, *The U.S.-Colombia Trade Promotion Agreement*, att. 1.

⁵⁹ U.S. House of Representatives, Committee on Government Reform—Minority Staff Special Investigations Division, *Trade Agreements and Access to Medications*, I-ii.

⁶⁰ Under the Trade Act of 2002, the U.S. Department of Labor is responsible for the preparation of three reports that address the labor issues associated with each new FTA: (1) Laws Governing Exploitive Child Labor Report, (2) Labor Rights Report, and (3) United States Employment Impact Review. As of November 20, 2006, the Department of Labor had not published those reports related to the U.S.-Colombia TPA. U.S. Department of Labor, ILAB, "Labor-Related Reports for U.S. Free Trade Agreements."

Box 6-4 Labor market conditions in Colombia

Colombia has made progress toward the improvement of workers' rights protections in recent years, having increased literacy, maintained a relatively favorable environment for working women, and made efforts to reduce the violence directed towards leaders and other members of labor unions. However, several groups indicate that problems persist in Colombia's workers' rights regime, most notably with regard to freedom of association and collective bargaining.

As compared with the United States, Colombia's labor market is small and is characterized by relatively high unemployment and low labor costs. Specifically, the Colombian labor market comprised 21 million workers, posted an unemployment rate of 14.2 percent, and registered an average labor cost of \$1.34 per hour in 2003.^a In that same year, the U.S. labor market comprised 149 million workers, registered an unemployment rate of 6.0 percent, and had an average hourly labor cost of \$21.83.^b The service sector is the principal employer in both countries, having accounted for 60 percent and 76 percent of total employment in Colombia and the United States, respectively, in 2002.^c

Colombia has undertaken significant international obligations on labor standards, having ratified the eight fundamental International Labour Organization (ILO) conventions on workers' rights.^d The Colombian Government Trade Bureau contends that Colombian law provides for comprehensive workers rights,^e and a report published by the Institute for International Economics contends that, as compared to other developing economies, Colombia maintains a relatively positive record with regard to child labor, illiteracy, and women's wage rates.^f Additionally, several recent developments may have a positive effect on labor conditions in Colombia. The ILO indicates that a committee of workers, employers, and Colombian government officials have committed to a minimum wage increase and respect for fundamental labor rights.^g The Association of Floral Importers of Florida and the Association of Colombian Flower Exporters notes that the Colombian flower industry has demonstrated concern for its workers, funding housing, schooling, food programs, and other social programs for employees.^h Further, a number of sources indicate that attacks on workers and union leaders in Colombia have declined in recent years.ⁱ In testimony provided to the Commission, a Colombian government official indicated that Colombia dedicates \$25 million annually to the protection of unionists, and that the attorney generals of the United States and Colombia have discussed the possibility of establishing cooperative projects aimed at reducing the impunity from prosecution experienced by those that threatened unionists in Colombia.^j

Despite these developments, several sources report a number of remaining problems with the observance of labor standards in Colombia. Although violence towards unions has declined, the number of assassinations of unionists remains high.^k In testimony before the USTR, representatives of the AFL-CIO, the Confederation of Colombian Workers and the International Labor Rights Fund each called attention to the large number of assassinations of Colombian union leaders in recent years, and asserted that government response to these incidents has been inadequate.^l The representative of the Confederation of Colombian Workers indicated that several developments—including recent labor code and pension reforms, the elimination of the Labor Ministry, a government statement indicating that it does not intend to follow the ILO Convention on inspection and conflict mediation, and the recognition of several recent protest actions as illegal—have had a dispositive effect on labor rights in Colombia.^m The ILO reports that workers have experienced difficulties with regard to union organization and recognition, and have confronted legal and practical obstacles in their efforts to engage in collective bargaining.ⁿ The U.S. Department of State indicates that some Colombian employers undermine union bargaining leverage by offering particularly favorable wages and working conditions to certain employees.^o Further, the U.S. Department of Labor cites evidence that the Colombian mining, leather tanning, and flower industries employ child laborers that are younger than the minimum age established in Colombian law, although it indicates that only the flower industry has a direct trade relationship with the United States.^p

^aEIU, "Country Briefings: Colombia;" and World Bank, *World Development Indicators*.

^bIbid.

^cWorld Bank, *World Development Indicators*.

^dColombia's ratification of the ILO's eight core conventions took place over a period of time, with the earliest ratifications having occurred on June 7, 1963 and the most recent ratification having occurred on January 28, 2005. ILO, "Ratifications of the Fundamental Human Rights Conventions by Country."

^eColombian Government Trade Bureau, "The Importance of the U.S.-Colombia Trade Partnership."

^fElliot, "Labor Standards," 136.

^gILO, "Special Technical Cooperation Programme for Colombia."

^hMulder, "Statement for the Record."

ⁱFor example, see ILO, "Special Technical Cooperation Programme for Colombia;" Gómez, hearing transcript 73; and Elliot, "Labor Standards," 138.

^jGómez, hearing transcript, 73-74.

^kU.S. Department of State, "Colombia," *Country Reports of Human Rights Practices—2005*; and Elliot, "Labor Standards," 140.

^lRodriguez, USTR, hearing transcript, 13–18, 80–81, and 107–9.

^mGracek, USTR hearing transcript, 12–16.

ⁿILO, "Special Technical Cooperation Programme for Colombia."

^oU.S. Department of State, "Colombia," *Country Reports of Human Rights Practices-2005*.

Summary of Provisions

Chapter 17 of the TPA commits each party to effectively enforce its respective labor laws while providing for reasonable exercise of discretion regarding such enforcement. This requirement is the only provision in chapter 17 that is enforceable through the dispute settlement provisions outlined in chapter 21 of the agreement (discussed later in this chapter of the report). In addition, the parties recognize their respective right to create and modify domestic labor laws, and acknowledge that it is not appropriate to encourage trade or investment by weakening or reducing the protection afforded in those laws. The parties also reaffirm their obligations as members of the International Labour Organization (ILO), seek to make their domestic laws provide for standards consistent with internationally recognized worker rights, and strive to improve those standards.

Each party agrees to provide domestic tribunal proceedings, allowing persons with a recognized interest under its law in a particular matter to seek enforcement of its labor laws. Such proceedings must be fair, equitable, and transparent; adhere to due process of the law; and provide an opportunity for persons involved in such proceedings to support or defend their positions. Each party agrees to ensure independent review of tribunal actions, provide legal remedies to ensure enforcement, and promote public awareness of its labor laws. The TPA defines labor laws as statutes or regulations that directly relate to internationally recognized labor rights, including the right of association, the right to organize and bargain collectively, a ban on forced or compulsory labor, the protection of children and other young laborers, and standards on conditions of work, including minimum wages, hours of work, and occupational health and safety. The establishment of minimum wage standards and levels is specifically excluded from the definition of labor laws, as specified in chapter 17 of the TPA.

The TPA establishes a Labor Affairs Council that will oversee the implementation of chapter 17 provisions, prepare public reports on the implementation of the chapter, develop guidelines for the consideration of input from persons of a party, and strive to resolve matters related to cooperative labor consultations. Each party is required to designate an office within its labor ministry to serve as a contact with the other party and the public. The TPA allows each party to establish or consult existing national labor advisory committees, which may include members of the public and representatives of business and labor. The TPA also creates a Labor Cooperation and Capacity-Building Mechanism for the purpose of enhancing opportunities to improve labor standards and further advancing common commitments on labor matters, including the ILO Declaration of Fundamental Principles and Rights at Work and its Follow-up and ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

A party can request consultations with another party on matters under this chapter with a view toward finding a mutually acceptable resolution. Failing to find a mutually acceptable resolution, a party can call upon the Labor Affairs Council to consider the matter, but TPA dispute settlement actions will not be allowed except for matters regarding a party's failure to enforce its own labor laws. A separate mechanism on disputes dealing with the failure to enforce labor laws (contained in chapter 21) can result in an annual assessment of up to \$15 million payable into a fund set up and administered by the Free Trade Commission (established under chapter 20) for appropriate labor initiatives.

Views of Interested Parties

U.S. advisory groups and other organizations differ in their views on the potential effect of TPA labor provisions and on whether the TPA meets established negotiating objectives.⁶¹ The Advisory Committee for Trade Policy and Negotiations (ACTPN) report stated that the TPA fulfills U.S. negotiating objectives on labor issues, ensures that labor measures will not be employed as a disguised means of trade protection, and establishes an efficient implementation process.⁶² In testimony provided to the Commission, a Colombian government official indicated that the TPA would have a positive impact on formal employment levels, wage levels, and income distribution in Colombia.⁶³ The Association of Floral Importers of Florida and the Association of Colombian Flower Exporters also testified that the TPA would have a positive effect on Colombian employment levels.⁶⁴ The U.S.-Colombia Trade Coalition, U.S. Chamber of Commerce, and Association of American Chambers of Commerce in Latin America stated that the TPA would have a positive effect on labor rights in Colombia.⁶⁵ Similarly, the Colombian Government Trade Bureau contends that the TPA would produce increased resources and accountability that would, in turn, lead to improvements in the strength and enforcement of Colombian labor provisions.⁶⁶

By contrast, the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) report⁶⁷ stated that the agreement does not fulfill U.S. negotiating objectives, advance U.S. economic interests, or protect the rights of U.S. or Colombian workers. The LAC report made reference to Colombia's poor record regarding union rights, and noted that, inter alia, the agreement does not obligate parties to adhere to international workers' rights standards, does not preclude the weakening or elimination of labor regulations, and does not protect workers from the possible trade effects of provisions regarding safeguards and rules of origin. In testimony before the USTR regarding a proposed U.S. free trade agreement with Bolivia, Colombia, Ecuador and Peru, the AFL-CIO stated that measures requiring parties to enforce their own labor laws and providing for the assessment of fines that are distributed back to the country that has violated the agreement for the purpose of implementing labor standard improvements are insufficient to protect workers' rights.⁶⁸ The AFL-CIO contended that such measures do not guarantee that signatory governments will preserve existing labor laws or resolve deficiencies in such legislation.⁶⁹ Further, a recent study published by the Institute for International Economics argues that the labor provisions included in the TPA are somewhat weaker than those contained in CAFTA-DR, as the TPA does not direct the parties to establish a list of labor experts that would be called upon in the event of a dispute under chapter 17 of the agreement.⁷⁰

⁶¹ Under the Trade Act of 2002, U.S. negotiating objectives on labor include increasing the observance of core labor standards and eliminating or reducing regulations and measures that may comprise sustainable development.

⁶² ACTPN, *The U.S.-Colombia Trade Promotion Agreement*, 6.

⁶³ Gómez, hearing transcript, 12.

⁶⁴ Mulder, hearing transcript, 48.

⁶⁵ Gales, hearing transcript, 23.

⁶⁶ Colombian Government Trade Bureau, "The Importance of the U.S.-Colombia Trade Partnership."

⁶⁷ LAC, "Report to the President, Congress, and the United States Trade Representative," 1.

⁶⁸ Gracek, USTR hearing transcript, 82-85.

⁶⁹ Samuel, "Legislative Alert!"

⁷⁰ Elliott, "Labor Standards," 144.

TPA Chapter 18—Environment⁷¹

Assessment

The environment provisions of the U.S.-Colombia TPA will likely have little effect on the U.S. economy because of the chapter's focus on the enforcement of existing regulations. Any effects on U.S.-Colombia trade related to improved levels of environmental protection in Colombia would likely be indirect and difficult to quantify. The environmental provisions in the TPA are identical to those in the U.S.-Peru TPA. The U.S. trade negotiating objectives for the TPA regarding environmental matters were also identical to those for the U.S.-Peru TPA.⁷²

Summary of Provisions

Chapter 18 of the TPA commits each party to ensure that its environmental protection laws provide for high levels of protection and strive to improve those laws, provide appropriate and effective remedies and sanctions for violations of environmental protection laws, provide opportunities for public participation, and promote public awareness of its environmental laws. The parties agree that trade or investment should not be encouraged by weakening or reducing domestic legal protections. To that end, the parties agree to ensure that domestic judicial, quasi-judicial, or administrative proceedings should be available to sanction or remedy violations of environmental laws. Such proceedings must be fair, open, and equitable; comply with due process of law; and provide access to persons with a recognizable legal interest. The parties agree to establish an Environmental Affairs Council that will meet to consider the implementation of the environmental provisions and the separate Environmental Cooperation Agreement (ECA), and to strive to resolve any controversies that may arise regarding the environmental provisions. There is a draft text of a memorandum of understanding between the parties concerning environmental cooperation, including exchanges of experts or students, and a joint forum of government officials that will meet regularly to arrange and administer the various shared activities.

The parties agree to pursue cooperative environmental activities and provide for environmental consultations, but neither party will have recourse to dispute settlement for any matter arising under this chapter except for each party's commitment to enforce its respective domestic laws. A separate mechanism on disputes dealing with environmental claims could result in an annual assessment of up to \$15 million, payable into a fund jointly administered by the two governments for "appropriate environmental initiatives." The parties recognize the importance of conservation and sustainable use of biological diversity, and the preservation of traditional knowledge and practices that contribute to this objective. The

⁷¹ In a mandate separate from the Commission's mandate for this investigation, the USTR is tasked with providing an environmental review of the U.S.-Colombia TPA. Pursuant to the Trade Act of 2002 and the environmental review guidelines, the USTR reported to Congress in February 2005 on the probable environmental effects on the United States of a broader U.S.-Andean FTA. In its report, the USTR stated that such an FTA would be unlikely to result in any significant economically driven environmental effects in the United States but that it may have positive environmental consequences for Colombia. The USTR added that such an FTA would not be expected to have a negative effect on the ability of U.S. government authorities to enforce or maintain U.S. environmental laws or regulations.

⁷² USTR, "Letter of Notification to Congress of Intent to Negotiate FTA with Andean Countries," 5.

parties also commit to working in multilateral forums to enhance the mutual supportiveness of multilateral environmental and trade agreements.

Views of Interested Parties

The Advisory Committee for Trade Policy and Negotiations (ACTPN) report stated that the environmental provisions of the U.S.-Colombia TPA meet Congressional environmental objectives. The ACTPN endorsed the environmental provisions of the TPA and stated that they provide effective ways of contributing to environmental improvement.⁷³ The ACTPN also supports the establishment of the Environmental Cooperation Commission created under the ECA, which is intended to strengthen the ability to implement and enforce environmental laws, increase public participation, and promote clean technologies.

Overall, the Trade and Environment Policy Advisory Committee (TEPAC) reported that a majority of the committee members believe that the U.S.-Colombia TPA provides adequate safeguards to ensure that U.S. environmental negotiating objectives will be met.⁷⁴ A majority of TEPAC members were also pleased to see enhanced public participation provisions like those in CAFTA and the U.S.-Peru TPA. A majority also believe that the dispute resolution procedures are sufficient to meet U.S. environmental negotiating objectives, that the monetary penalties in the TPA (up to \$15 million per year for noncompliance with rulings confirming violations of enforcement requirements) are adequate, and that the ECA is a reasonable basis for the fulfillment of objectives regarding capacity building and sustainable development.⁷⁵ Differing views among committee members include beliefs that the increased oversight of environmental issues stemming from increased trade, the use of the “more extensive environment provisions” of other FTAs as a template for this TPA, and the integration of the Memorandum of Understanding on environmental capacity building were not necessary.⁷⁶

TPA Chapter 19—Transparency

Assessment

Transparency-related measures of the U.S.-Colombia TPA covering investment rules and enforcement and tax authority may result in benefits for U.S. firms. The U.S.-Colombia TPA continues U.S. efforts to obtain bilateral commitments to transparency disciplines for domestic regulation, though several of these provisions will not take effect until 2 years after the agreement’s entry into force. As with other recent FTAs, the provisions within the U.S.-Colombia TPA regarding transparency and the participation of civil society in settling trade dispute cases are reportedly significant improvements over existing practices.⁷⁷ Consequently, transparency-related provisions of the TPA may foster U.S.-Colombia trade and investment.

⁷³ ACTPN, *The U.S.-Colombia Trade Promotion Agreement*, 7.

⁷⁴ TEPAC, *The U.S.-Colombia Trade Promotion Agreement*, 1.

⁷⁵ *Ibid.*, 2.

⁷⁶ *Ibid.*, 3.

⁷⁷ Cohen, “U.S. Colombia Trade Promotion Agreement,” 7.

The TPA's transparency requirements reflect broad and ongoing U.S. government efforts and support existing transparency-related reforms by the government of Colombia. However, trade impediments relating to transparency remain. The USTR reports that some commodities are protected by cumbersome customs procedures, while the U.S. Department of Commerce reports that Colombia's high level of legal instability limits foreign investment, while excessive and frequently changing regulations result in additional operation costs for foreign firms.

Summary of Provisions

Chapter 19 of the U.S.-Colombia TPA is virtually identical to the corresponding section of the U.S.-Peru TPA. The TPA continues the U.S. effort to obtain bilateral commitments to transparency disciplines applicable to domestic regulation, including provisions that enhance and ensure communication and disclosure between parties. Each party is required to make publicly available all laws, regulations, and procedures regarding any matter covered by the agreement.⁷⁸ Further, each party must establish or maintain procedures to provide review and appeal capabilities to any entities that will be affected by actions, rulings, measures, or procedures under the TPA. Such review tribunals are to be impartial, independent, and empowered to override administrative actions of the TPA.⁷⁹ For example, 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 provisions within the chapter.

The TPA requires transparency and efficiency in many areas relating to customs procedures, including the agreement's rules of origin, protection for U.S. trademarks, procedures for government procurement contracts, as well as the administration and enforcement of environmental laws. Chapter 19 also includes anticorruption provisions that seek to improve the trading environment by requiring each party to establish criminal prosecution and penalty procedures for bribery and corruption. Specific commitments obligate public officials of each party to protect informers and to work in other international forums to aid and support anticorruption provisions.

Views of Interested Parties

The Industry Trade Advisory Committee for Services and Finance Industries (ITAC 10) report stated that, overall, the TPA meets the objectives of U.S. industry in achieving new and expanded trade and investment opportunities. Further, the report stated that commitments relating to transparency will help promote a more open, transparent and fair framework in which U.S. companies may participate.⁸⁰ The report said that such provisions should help service providers in a wide variety of sectors as they promote more efficient, accountable, competitive, and transparent government procurement structures. U.S. industry also favors promoting independent regulatory authorities and transparency in the regulatory process. Industry also has strong views on market access and transparency in such procurement, to the extent that U.S. representatives have proposed a WTO agreement on

⁷⁸ Colombia commits to publish laws and regulations on the Internet, and to ensure procedural certainty and fairness.

⁷⁹ Generally, such rights already exist under U.S. law.

⁸⁰ ITAC 10, *The United States-Colombia Trade Promotion Agreement*.

transparency in government procurement. The Industry Trade Advisory Committee for Information and Communications Technologies Services and Electronic Commerce (ITAC 8) report stated that industry also encourages an overall effort to ensure that product testing, licensing, and certification requirements, certificate of origin mandates, and customs procedures are fair, transparent, and streamlined.⁸¹

TPA Chapter 21—Dispute Settlement

Assessment

The dispute settlement provisions of the U.S.-Colombia TPA are likely to have little to no effect on the U.S. economy. The TPA establishes guidelines for producing a conducive environment for dispute settlement. The dispute panel procedures of the TPA require that hearings be open and public, that the public has access to the legal submissions of the parties to the panel, and that interested parties have the opportunity to submit views to the panel. Most of the major obligations of the TPA are subject to the dispute settlement provisions of the TPA.⁸² The dispute settlement provisions also require the use of special labor or environmental expertise for disputes in these areas. The dispute settlement provisions emphasize the use of consultations and trade-enhancing remedies to promote compliance. The enforcement mechanism includes the use of monetary assessments, as well as trade retaliatory measures.

Summary of Provisions

Chapter 21 of the TPA commits both parties to consult and cooperate on TPA matters: one party can invoke dispute settlement if it believes the other has a TPA-inconsistent measure or has failed to carry out a TPA obligation, or if it believes that a benefit it reasonably expected has not been given. The complaining party may choose the forum for arbitration, including the Free Trade Commission (FTC) (established in annex 20.1), the WTO, or other dispute settlement bodies available to both parties. Any party may request consultations with the other. If the consultations fail to resolve the matter by a prescribed deadline, any party can request a meeting with the FTC, followed by a request for an arbitral panel, if necessary. Once a panel constituted under the chapter has supplied its final report, the report will be made public and the parties will be obliged to agree on the resolution of the dispute in question in a manner “which normally shall conform with the determinations and recommendations, if any, of the panel.” If parties are unable to agree on a resolution, compensation can be negotiated. If nonimplementation of the agreed outcome is evident, the complainant can advise the other party that it intends to suspend benefits of equivalent effect. Labor laws and environmental laws are treated separately. In such situations, the panel may impose a monetary assessment on the violating party, not to exceed \$15 million annually, adjusted for inflation. These assessments are paid into a fund established by the FTC and are then spent on appropriate labor or environmental initiatives as directed by the Commission. The provisions of chapter 13 (Competition Policy) are not subject to dispute settlement provisions of the TPA.

⁸¹ ITAC 8, *The U.S.-Colombia Trade Promotion Agreement*.

⁸² Exceptions include SPS and TBT.

This chapter also contains provisions directing compliance reviews and 5-year reviews under the TPA. The chapter also states that parties will facilitate the use of arbitration and alternate dispute resolution to settle international commercial disputes between private parties in the free trade area and authorizes the commission to establish an advisory panel on private commercial disputes. This chapter does not apply to excepted matters covered under Article 22.1 or disputes concerning a breach of Andean Community Law. The chapter contains administrative procedures for requesting a panel, establishing a roster of panelists, selecting panelists, and issuing reports.

Views of Interested Parties

Industry response to the dispute settlement provisions is generally favorable. The Advisory Committee for Trade Policy and Negotiations (ACTPN) reported that the provisions fully meet the requirements of the Trade Act of 2002 and maintain the high standards of other U.S. agreements, especially regarding transparency.⁸³ ACTPN favors the use of monetary assessments for remedies rather than tariff measures.⁸⁴

The Intergovernmental Policy Advisory Committee (IGPAC) reported that there is a need for “clarifying language” in the investor-state provisions on dispute settlement. In order to clearly define the rule of the state court. IGPAC also recommended that the USTR and the U.S. Department of Justice consider requesting that the federal government cover expenses that state governments may incur during the dispute settlement process associated with this TPA.⁸⁵

The Industry Trade Advisory Committee for Services and Finance Industries (ITAC 10) noted that confusion among investors may arise from the provision under 10.18(a) pertaining to investment, which precludes investors from submitting a claim to dispute settlement arbitration if the claimant has previously submitted the same claim to any other binding dispute settlement proceeding.⁸⁶

⁸³ ACTPN, *The U.S.-Colombia Trade Promotion Agreement*, 7.

⁸⁴ Ibid.

⁸⁵ IGPAC, *The U.S.-Colombia Trade Promotion Agreement*, 3 and 21.

⁸⁶ ITAC 10, *The United States-Colombia Trade Promotion Agreement*, 3 and 7.

CHAPTER 7

Literature Review and Summary of Views of Interested Parties

Literature Review

The Commission found seven studies in its review of the literature that directly assess the probable economic effects of a free trade agreement involving the United States and Colombia. Those studies that analyzed an agreement similar to the negotiated U.S.-Colombia TPA and used modeling techniques similar to that used by the Commission reported estimated effects that are not significantly different from those estimated by the Commission in the current study.¹

Four studies analyze a proposed U.S.-Colombia FTA; one study analyzes a proposed U.S.-Andean FTA and other possible regional free trade agreements involving Colombia; one study examines the effect of a U.S.-Colombia FTA on the U.S. sugar industry; and one study assesses the effect of a U.S.-Colombia FTA on the U.S. agricultural sector. Although the focus of some of these studies is primarily on the effect of the agreements on Colombia or the Andean Community, they typically included some results relating to welfare and trade for the United States. The reported effects on U.S. GDP and U.S. trade generally were very small and mitigated by Colombia's existing preferential access to the U.S. market under ATPA. Additionally, estimated values by those studies reporting economy-wide effects on the United States of an agreement similar to the U.S.-Colombia TPA and using similar modeling techniques did not differ substantially from those determined by Commission analysis in this report.

DeRosa and Gilbert² use a gravity model³ and the GTAP model to analyze the potential impact of a U.S.-Colombia FTA on U.S.-Colombian bilateral trade, economic welfare, and many other economic variables. They find the economic impact of the FTA simulated by the GTAP model to be significantly smaller than the impact estimated by the gravity model. Among other things, they report that the gravity model "may partly capture added expansion of trade motivated by increased foreign direct investment . . . not captured by simulation of the GTAP model." Using the gravity model, DeRosa and Gilbert estimated that a U.S.-Colombia FTA would result in a bilateral trade expansion of 38 to 140 percent. Using the GTAP model, they reported an expected 44 percent increase in U.S. exports to Colombia, a 37 percent increase in Colombian exports to the United States, and a small welfare gain for the United States (\$227 million).

¹ In general, the economic studies included in this literature review analyzed a proposed, possible, or hypothetical U.S.-Colombia FTA, and not the final text of the actual U.S.-Colombia TPA that is the subject of this investigation. Consequently, the underlying assumptions made in the studies cited may not reflect the actual tariff and quota elimination commitments made by the two parties under the TPA, which are reflected in the Commission's analysis in chaps. 2 and 3 of this report.

² DeRosa and Gilbert, "Potential Benefits of a U.S.-Colombia FTA."

³ A gravity model is an econometric model that estimates bilateral trade flows based on, among other things, the economic sizes of (often using GDP measurements) and distance between two countries or regions.

Tanner⁴ analyzed the effect of a U.S.-Colombia FTA on U.S. consumers and producers of sugar. A simple model of supply and demand was used to estimate the welfare effects of the removal of the restrictive quota on Colombian exports of sugar to the United States. Tanner estimated that U.S. consumers would experience a welfare gain of \$400 million to \$750 million annually. U.S. producers would experience an estimated welfare loss of \$260 million to \$500 million.

Garcia and Zuleta⁵ assessed the probable impacts of a U.S.-Colombia FTA on Colombia's economy. First, they used a qualitative analysis of past trade liberalizations to examine the possible economic effects of a series of trade policies, and used a CGE model similar to and based on GTAP with a 1997 base year. Second, they used the GTAP model to simulate four FTA scenarios—ATPA unilateral preferences, a U.S.-Colombia FTA with ATPA in place for Bolivia, Ecuador, and Peru; a U.S.-Colombia FTA without ATPA; and a Free Trade Area of the Americas (FTAA). All scenarios would produce an expected net welfare gain for Colombia (0.2–0.4 percent). The model estimates that the ATPA scenario would provide the greatest welfare benefit to Colombia, but the authors explain that this is likely because of limitations of the model and that terms of trade, factor returns, and consumers prices are more favorable with bilateral and multilateral scenarios.⁶ The two scenarios that included a U.S.-Colombia FTA estimated that U.S. exports to Colombia would increase by 31 percent.⁷

Martín and Ramírez⁸ analyzed the probable effects of a U.S.-Colombia FTA on Colombia's economy. They used a general equilibrium model that incorporates data on nontariff barriers from a prior published study.⁹ They simulated two FTA scenarios—one in which the United States and Colombia eliminate only tariffs on a bilateral basis, and a second scenario in which both countries eliminate tariffs on a bilateral basis and the United States eliminates nontariff barriers with respect to Colombia. In the tariff elimination only scenario, there would be a 0.3 percent increase in Colombia's GDP, compared to a 1.1 percent increase in the scenario in which both tariffs and nontariff barriers are eliminated. Colombia's exports to the United States would increase by 2.0 percent (or by 6.2 percent in the second scenario), a rate lower than the 2.4 percent (8.3 percent) increase in Colombia's imports from the United States. In the scenario of tariff elimination, Colombia's trade deficit with the United States, as a percentage of Colombia's GDP, would increase by 2.7 percentage points, whereas in the tariff and nontariff barriers elimination scenario its trade deficit with the United States would increase by 2.5 percentage points. Also under the tariff and nontariff barrier elimination scenario, the largest sectoral gains for Colombian exports to the United States would be in apparel and leather goods (86.5 percent increase in exports); yarns, fibers, and textiles (78.1 percent); and metal and wood products (61.2 percent). The largest sectoral gains for U.S. exports to Colombia would be in agricultural products (308.4 percent increase), metal and wood products (140.9 percent), and food products (137.5 percent). Martín and Ramírez also find that an FTA that eliminates U.S. nontariff barriers would

⁴ Tanner, "The Impact of a U.S.-Colombia Free Trade Area: The Case of Sugar."

⁵ Garcia and Zuleta, "The Free Trade Agreement Between Colombia and the USA: What Can Happen to Colombia?"

⁶ Referring to implementation of ATPA and a U.S.-Colombia FTA, implementation of a U.S.-Colombia FTA without ATPA, or implementation of an FTAA.

⁷ Referring to implementation of ATPA and a U.S.-Colombia FTA or implementation of U.S.-Colombia FTA without ATPA.

⁸ Martín and Ramírez, "El Impacto Económico de un Acuerdo Parcial de Libre Comercio entre Colombia y Estados Unidos."

⁹ Data on nontariff barriers were obtained from a 1994 study of NAFTA (K. Reinert, D. Roland-Holst and C. Shiells, "North American Trade Liberalization and the Role of Nontariff Barriers," *North American Journal of Economics and Finance*, 1996).

benefit Colombia more than current ATPA preferences because Colombian exports would gain greater access to the U.S. market.

Toro et al.¹⁰ examined the probable effects of a U.S.–Colombia FTA on Colombia’s balance of payments from 2007 through 2010.¹¹ They used a CGE model to assess the impact of an FTA on Colombia’s bilateral trade in goods with the United States, and trend projection analysis to assess the impact of an FTA on foreign direct investment (FDI) in Colombia.¹² The model includes the assumption that the United States would eliminate all tariffs and all nonagricultural nontariff barriers, and that Colombia would eliminate all tariff barriers except in the agricultural sector. They find that an FTA would increase Colombian exports to the United States by \$1.0 billion (14.4 percent), and increase Colombian imports from the United States by \$1.6 billion (35.6 percent) from 2007 through 2010. The largest sectoral gains for Colombian exports to the United States would be for tobacco (2,000.0 percent increase); meats (1,081.1 percent); sugar (408.5 percent); apparel and leather goods (89.1 percent); and yarns, fibers, and textiles (81.1 percent). The largest sectoral gains for U.S. exports to Colombia would be for wheat (169.2 percent increase), metal and wood products (134.8 percent), and food products (133.9 percent). To estimate the effect of an FTA on Colombia’s balance of payments, Toro et al. simulated two scenarios—a baseline scenario in which Colombia does not have ATPA benefits, and a second scenario in which a U.S.-Colombia FTA is in place beginning January 1, 2007, derived from projected growth estimates. They estimate that an FTA would lead to a 2 percent increase in Colombia’s GDP; an increase in Colombia’s trade, as a share of GDP, of more than 3 percentage points; and a more than \$2 billion increase in FDI in Colombia from 2007 through 2010.¹³

Monteagudo and Watanuki¹⁴ examined FTAs involving Latin American countries. They used a trade-focused CGE model with variables that represented three kinds of trade barriers: ad valorem tariff equivalents, export subsidies, and domestic supports. Three scenarios were analyzed—a South American Free Trade Agreement,¹⁵ a U.S.-Andean FTA, and the FTAA. The results show a high correlation between the size of the trade agreement and the potential economic gains for Colombia. For example, the FTAA would produce the largest benefits for Colombia in terms of both GDP and total export growth (1.3 percent and 4.9 percent, respectively).¹⁶ A U.S.-Andean FTA would produce small gains for the United States (0.9 percent GDP growth and 3.0 percent total export growth) because of existing ATPA preferences and the composition of Colombia’s export, which are largely petroleum and chemicals that already face low or no barriers into the U.S. market. The authors note a large trade diversion effect in a U.S.-Andean FTA because the Andean countries would shift from third parties to U.S. sources for imports, increasing U.S. exports by 4.0 percent and U.S. imports by 0.2 percent.

¹⁰ Toro et al., “El Impacto del Tratado de Libre Comercio con Estados Unidos (TLC) en la Balanza de Pagos Hasta 2010.”

¹¹ The effects a U.S.-Colombia FTA obtained by Martín and Ramírez are “one time” effects, while those by Toro et al. are from 2007 through 2010.

¹² The effects of the impact of a U.S.-Colombia FTA on imports and exports of manufactured goods by Toro et al. were obtained from Martín and Ramírez, “El Impacto Económico de un Acuerdo Parcial de Libre Comercio entre Colombia y Estados Unidos.”

¹³ As a result of a U.S.-Colombia FTA, Toro et al. estimated Colombia’s GDP to grow at an average annual rate of 0.5 percent.

¹⁴ Monteagudo and Watanuki, “What Kind of Trade Integration Helps Latin America the Most?”

¹⁵ Encompassing Mercosur (Argentina, Brazil, Paraguay, and Uruguay), Chile, and the Andean Community countries (Bolivia, Colombia, Ecuador, Peru, and Venezuela).

¹⁶ The effect on exports and imports is measured by changes in trade in goods and excludes trade in services.

A study conducted by the American Farm Bureau Federation (AFBF) assessed the effect of the U.S.-Colombia TPA on the U.S. agricultural sector.¹⁷ The AFBF's general conclusion is that, despite the increase in U.S. sugar imports, the TPA will have a positive effect on the U.S. agricultural sector. The AFBF compares two scenarios—one assuming no TPA, and the second assuming that the TPA is implemented. Estimates were made for four commodities: major grains, oilseeds, livestock, and fiber products. For the scenario without the TPA, the AFBF estimates Colombian demand for imports in 2026 by projecting current demand and supply based on historical production trends and estimates for population and economic growth. To estimate U.S. exports of these products, the authors assume the U.S. market share in Colombia remains at its current level. For the scenario with the TPA, the authors adjust projected Colombian demand and supply in 2026 using supply, demand, price, and income elasticities developed by the United Nations Food and Agricultural Organization.¹⁸ To estimate the gain in U.S. exports of these products, the authors assume an across-the-board increase of 25 percent in U.S. market share in the Colombian market.¹⁹ The difference between the export estimates from these two scenarios is the estimated increase in U.S. exports to Colombia attributable to the TPA, or \$505 million for the four commodities combined. The authors estimate the overall increase in other agricultural products by applying the same growth rate to all U.S. agricultural exports to Colombia for an additional increase of \$185 million, and an overall increase for all U.S. agricultural exports to Colombia of \$690 million. In a separate analysis, AFBF estimates an increase of more than \$32 million in U.S. sugar imports from Colombia based on the quota increases provided under the TPA. Consequently, the AFBF's analysis estimates a TPA-related increase in the U.S. agricultural trade balance of \$658 million.

Summary of Views of Interested Parties

Government of Colombia²⁰

Ambassador Gómez stated that the U.S.-Colombia TPA will result in substantial increased flows of trade and investment, resulting in a stronger partnership for both FTA partner countries. The ambassador stated that the TPA will likely enhance key areas such as GDP and employment in Colombia and lead to increased bilateral trade. The ambassador stated that ATPA preferences have had a key role in the recovery of the Colombian economy, with more than 50 percent of Colombian exports to the United States coming in under/benefitting from these preferences, resulting in larger flows of U.S. capital to Colombia. The ambassador also stressed the need for a temporary extension of ATPA in order to allow a smooth transition while the TPA is being implemented.

The ambassador said he expects the TPA to result in increased services trade, with increased Colombian exports to the United States of Colombian services such as communications, transportation, and consulting, and increased U.S. exports to Colombia of transportation, communications, insurance, financial services, and engineering services. Colombian exports

¹⁷ AFBF, *Implications of a Colombia Trade Promotion Agreement on U.S. Agriculture*.

¹⁸ The elasticities used in the AFBF assessment are not Colombia specific, but based on regional estimates from the mid-1990s.

¹⁹ The AFBF did not provide the basis for employing this increase in market share.

²⁰ Ambassador Hernando Jose Gómez, Chief Negotiator of the U.S.-Colombia Trade Promotion Agreement and former Colombian Ambassador before the WTO, testimony before the U.S. International Trade Commission, October 5, 2006.

expected to benefit from the TPA include agricultural products, food and beverages, tobacco products, apparel, leather and leather products, metallic and wood products, and nonmetallic minerals. With respect to U.S. exports Ambassador Gómez noted expected increases in agricultural products, food and beverages, threads and textiles, chemical products, and machinery and equipment. Improvements are also expected in the areas of intellectual property rights, attraction and retention of private investment, improved governance, and promotion of transparency and accountability.

Government of the United States Virgin Islands²¹

The government of the United States Virgin Islands (GVI) stated that the U.S.-Colombia TPA recognizes the highly import-sensitive nature of low-value rum and the significant threat caused by Colombian rum producers. The GVI asserted that the 15-year duty phase-out period on low-value rum is the minimum necessary to allow the Virgin Islands rum industry to transition away from low-value rum to production of higher-value, premium rums. According to the GVI, the current duty structure for rum was carefully negotiated to protect the Virgin Islands and Caribbean rum industry. The GVI maintained that eliminating or significantly reducing duties on low-value rum in the near or medium term would severely damage the Virgin Islands rum industry and would harm the financial stability of the Virgin Islands economy. The GVI noted that U.S. federal excise taxes on Virgin Islands rum are returned to the treasury of the GVI and account for as much as 15 percent of the territory's total budget. The GVI argued that any future agreements with rum-producing nations, particularly Brazil—the leading producer of white spirits—should exclude low-value rum or provide a long phase-out period.

American Apparel & Footwear Association²²

The American Apparel & Footwear Association (AAFA) stated that it supports quick Congressional passage of the U.S.-Colombia TPA. The AAFA noted that a seamless and transparent transition between the current trade preference program and the TPA will prevent any disruption in trade patterns or uncertainty over the continuation of the current duty-free status for products made in the region using regional inputs. However, the AAFA claims that the TPA will have no impact on the U.S. economy because of the overall small size of U.S.-Colombia bilateral trade.

The AAFA noted that it generally supports the agreement's provisions for footwear which it said help foster continued growth in footwear trade between the United States and Colombia. The AAFA stated that it had, however, hoped for a more liberal rule of origin for non-import-sensitive footwear articles similar to what was negotiated in CAFTA-DR—a straightforward tariff shift approach instead of an additional 20 percent value added rule. The AAFA stated that the simpler rule, as contained in CAFTA-DR, stands the greatest chance of helping maintain and grow the footwear trade relationship with Colombia and prompting footwear firms to place more business in that country.

²¹ Peter N. Hiebert and Edward F. Gerwin, Jr., Winston and Shrawn LLP, written submission on behalf of the government of the United States Virgin Islands, October 16, 2006.

²² Steve Lamar, executive vice president, American Apparel & Footwear Association, written submission, October 16, 2006.

The AAFA stated that it is disappointed that the agreement contains, in its opinion, restrictive and unworkable rules of origin for apparel and textiles. According to the AAFA, the one exception to the restrictive rules is the single transformation rule for brassieres, which it applauded as a way to maintain a viable brassiere industry in Colombia. The AAFA also applauded the last minute inclusion of language in the TPA that allows the two parties to eventually negotiate a cumulation provision that links this agreement with other agreements in the hemisphere.

The AAFA stated that many of the provisions that CAFTA-DR contains, provisions they consider forward-looking, are missing from the Colombia agreement. According to the AAFA, the restrictive rules in the TPA will discourage new production in the region; encourage some current production to migrate elsewhere, most likely Asia; and dramatically reduce U.S. textile exports to Colombia. The AAFA also stated that it is concerned that if the Peru and Colombia free trade agreements remain on separate tracks, the sharing of inputs as permitted under the ATPDEA will be prohibited.

American Dehydrated Onion and Garlic Association²³

The American Dehydrated Onion and Garlic Association (ADOGA), representing the two firms that account for the vast majority of U.S. dehydrated onion and garlic production, said that it opposes the U.S.-Colombia TPA. ADOGA stated that Colombia poses a serious threat to the U.S. industry, primarily because Chinese-produced dehydrated onions and garlic could be transshipped through Colombia. ADOGA also stated that Colombia is a potential low-cost supplier of dehydrated onion and garlic, and that the TPA exposes U.S. industry to low-cost imports and offers little opportunity for export sales of U.S.-produced dehydrated onions and garlic.

American Farm Bureau Federation²⁴

The American Farm Bureau Federation (AFBF) stated that it represents U.S. farmers and ranchers and is the largest U.S. farm membership organization. The AFBF stated that it supports a trade agreement only if it provides a positive outcome for U.S. agriculture. The AFBF supports the TPA, stating that the agreement would have an annual net benefit of more than \$660 million for the U.S. agricultural sector after full implementation.

The AFBF stated that the TPA involves costs and benefits for U.S. agricultural sectors. The costs center on increased U.S. imports of Colombian sugar, which are likely to increase by \$32 million more by 2027 were there no TPA. The benefits will accrue to U.S. exports of major grains, oilseeds, fiber, livestock products, fruits and vegetables, tallow, and high-value processed products that together are likely to increase by \$690 million annually by 2027. The AFBF stated that the major U.S. agricultural exports likely to increase as a result of the TPA are: corn (by \$197 million by the year 2026), wheat (\$82 million), cotton (\$73 million), and soybeans (\$66 million).

²³ Irene Ringwood, Ball Janik LLP, Washington, DC, written submission on behalf of the American Dehydrated Onion and Garlic Association, October 12, 2006.

²⁴ Robert E. Young, II, chief economist, AFBF, testimony before the U.S. International Trade Commission, October 5, 2006, and written submission, October 5, 2006.

American Soybean Association²⁵

The American Soybean Association stated that it represents over 25,000 U.S. soybean producers. The American Soybean Association supports the U.S.-Colombia TPA, as U.S. soybeans, soybean flour, and soybean meal will have duty-free access to the Colombian market upon implementation. Refined soybean oil tariffs will be phased out after 5 years and crude soybean oil tariffs will be phased out over 10 years, while Colombia's price bands and domestic purchase requirements will be eliminated upon implementation. The American Soybean Association expects that in the longer term, the TPA will result in a shift of Colombia's imports from Argentina, Bolivia, and Paraguay to imports from the United States as the tariff advantages of those countries are reduced and shipping costs, where the United States has the advantage, become more important. According to the association, additional exports of U.S. soybeans would mean additional jobs not only to U.S. soybean producers but also to those involved in the logistics, processing, and banking industries, although any increase would likely be small because of the relatively small size of the Colombian market for U.S. exports.

American Sugar Alliance²⁶

The American Sugar Alliance is a national coalition of U.S. growers, processors, and refiners of sugar beets and sugarcane. The American Sugar Alliance stated that the impact of the U.S.-Colombia TPA must be analyzed within the context of existing and potential market access commitments under the WTO and existing and proposed FTAs. The American Sugar Alliance stated that increased access for U.S. sugar imports could damage the domestic industry and interfere with the operation of the current U.S. sugar program, which expires on October 1, 2007.

ANDI²⁷

The National Business Association of Colombia (ANDI) and its Cotton, Fiber, Textiles and Apparel Chamber stated that they fully support the U.S.-Colombia TPA, including mechanisms that will bridge any gaps between ATPA expiration and the date the TPA is implemented. ANDI stated that maintaining a strong textile and apparel sector in Colombia will help create viable alternative employment for Colombians, strengthen national security for Colombia and the United States, and better enable both governments to fight an effective war against narcotics traffickers and terrorists. ANDI noted that the uncertainty surrounding the gap between ATPA and the TPA has resulted in a slowdown in foreign direct investment in Colombia and fewer textile and apparel jobs. ANDI expressed concern that without legitimate jobs to absorb workers leaving coca fields, Colombia cannot eradicate the incentive to work in illicit trades. ANDI also noted that although the TPA will provide greater export opportunities and earnings for U.S. fabric manufacturers, delayed implementation of the TPA will result in diminished U.S. exports of cotton and other inputs

²⁵ Stephen Censky, chief executive officer, American Soybean Association, written submission, September 8, 2006.

²⁶ American Sugar Alliance, written submission, October 16, 2006.

²⁷ Jennifer A. Mulveny, director, Trade and Legislative Affairs, Sandler, Travis & Rosenberg on behalf of ANDI, written submission, October 16, 2006.

because there will be no incentive to use U.S. inputs (e.g. rules of origin contained in the ATPA and the TPA will not exist).

Association of Colombian Flower Exporters²⁸

The Association of Colombian Flower Exporters (ASOCOLFLORES) said that it is a Colombian export promotion organization whose membership accounts for 75 percent of the volume of Colombia's cut flower exports. ASOCOLFLORES expressed strong support for the U.S.-Colombia TPA, maintaining that it will encourage additional U.S. investment in the Colombian flower industry, enable the Colombian industry to continue to provide much needed jobs in Colombia's rural sector as well as in the United States, provide greater availability of high quality flowers at attractive prices for U.S. consumers, and continue to support vital U.S. national security interests with regard to Colombia's social and economic stability.

ASOCOLFLORES stated that since 1991, U.S. trade policy toward Colombia has focused on efforts to spur legitimate employment in Colombia through U.S. investments in Colombia's economy, particularly through ATPA. ASOCOLFLORES maintains that the Colombian floral industry is responsible for creating 205,000 agricultural jobs as an alternative to illicit activities. ASOCOLFLORES also highlighted the highly integrated nature of the U.S. and Colombian floral industries, the fact that major U.S. retailers and florists depend on Colombian supplies for their businesses, and that U.S. consumers have benefitted from lower prices and higher consumption of cut flowers.

Association of Floral Importers of Florida²⁹

The Association of Floral Importers of Florida (AFIF) said that it represents the members of the flower importing community in the greater Miami area, including importers and companies that support the flower import business such as flower bouquet production companies, brokers, and related transportation companies. It said that its member companies handle 85 percent of the volume of imported cut flowers that pass through South Florida, the port of entry that, according to AFIF, handles approximately 86 percent of total U.S. cut flower imports.

AFIF said that it strongly supports the U.S.-Colombia TPA. AFIF stated that it has actively supported ATPA, which has encouraged considerable U.S. investment in the Colombian industry. According to AFIF, the growth and stability of the Colombian flower industry has provided a base for 7,000 jobs in South Florida, and an estimated 225,000 related U.S. jobs that depend on Colombian imports, in areas including transportation, import brokerage, wholesalers, supermarkets, retail florist shops, and convenience stores. According to AFIF, ATPA's temporary nature has meant that cut flower imports from Colombia have been susceptible to the loss of duty-free treatment. For example, in the 8-month period in 2002

²⁸ Steven J. Mulder, assistant director of Government Affairs, Greenberg Traurig, written submission on behalf of the Association of Colombia Flower Exporters, October 4, 2006, and testimony on behalf of the Association of Floral Importers of Florida and the Association of Colombia Flower Exporters before the U.S. International Trade Commission, October 5, 2006.

²⁹ Christine Boldt, vice president, Association of Floral Importers of Florida, written submission, October 3, 2006.

when ATPA expired without immediate renewal, U.S. importers of flowers from the Andean region paid approximately \$2.5 million per month in duties. AFIF said that this imposed a significant hardship on an industry of predominantly small businesses with small operating margins and heavy monthly cash flow. AFIF reports that as a result of the imposition of 3–7 percent duties during that period, with average operating margins at 2–3 percent, several businesses exited the marketplace and jobs were lost. AFIF said that implementation of the TPA would eliminate the possibility of the loss of duty-free treatment for Colombian cut flowers in the future.

California Cut Flower Commission³⁰

The California Cut Flower Commission (CCFC) said that it is a nonprofit public corporation that represents California growers in the promotion of cut flowers. According to CCFC, California accounts for the vast majority of U.S. cut flower production, and its production accounted for 10 percent of U.S. consumption in recent years.

The CCFC said that they recognized the legitimacy of Colombian imports in the U.S. market and emphasized the ability of California producers to remain important players in the United States and global markets. However, the CCFC highlighted two export subsidy programs reportedly provided to Colombian cut flower growers and stated its contention that they are providing an unfair advantage to Colombia in the global market for cut flowers. The CCFC stated that the Exchange Rate Coverage Incentive, available in 2005, was in violation of Colombia's WTO commitments and that the program had been eliminated in response to U.S. objections at the end of 2005. According to the CCFC, although the Colombian government designed its successor, the Sanitary Incentive for Flowers, available in 2006, to better conform to its WTO commitments, this Colombian subsidy is still harming U.S. cut flower producers. The CCFC stated that the California industry would welcome the elimination of this and any other subsidies provided to Colombian producers at the time of implementation of the TPA.

Caterpillar, U.S. Chamber of Commerce, Association of American Chambers of Commerce in Latin America, and the U.S.-Colombia Trade Coalition³¹

Caterpillar stated it is the world-leading producer of construction and mining machines as well as diesel and gas turbine engines, and one of the largest U.S. exporters. The U.S. Chamber of Commerce stated that it is the world's largest business federation. The Association of American Chambers of Commerce in Latin America said that it represents 23 American Chambers of Commerce in 21 Latin American and Caribbean countries, and that its coalition represents over 80 percent of all U.S. investment in the region. The U.S.-Colombia Trade Coalition said that it is a growing, broad-based group of more than 300 U.S. companies, farmers, and business organizations.

³⁰ Dan Vordale, chairman, California Cut Flower Commission, written submission, October 16, 2006.

³¹ Tom Gales, vice president, Latin America division, Caterpillar, Inc., testimony before the U.S. International Trade Commission, October 5, 2006; and written submission, October 5, 2006.

These groups support the TPA, and stated that the TPA is a front-loaded and comprehensive agreement that is a critical step in U.S. efforts to promote sustainable economic growth in the Western Hemisphere through trade rather than aid. Additionally, the TPA will make the bilateral U.S.-Colombia trading relationship a more mutually beneficial, reciprocal partnership. The groups also noted that U.S. service providers will benefit greatly from the agreement, and that the bilateral trading relationship will be enhanced by improved rule of law via the TPA's provisions on intellectual property, investment protections, dispute settlement, and information technology. They stated that preliminary findings of the U.S. Chamber of Commerce concerning the impact of the TPA at the U.S. state level indicate important gains in industrial output, household earnings, and employment. The groups also noted that the TPA will enhance U.S. efforts to strengthen democracy in the Andean region and promote U.S. security interests.

In his testimony at the Commission hearing, the group's representative indicated that it is their belief that the U.S.-Colombia TPA will be even more beneficial than the U.S.-Peru TPA, because Colombia is a larger economy and has relatively high tariffs on manufactured goods. Caterpillar is expanding sales in Colombia, and duty elimination as a result of the TPA will translate into a higher standard of living and a more attractive service sector in Colombia. Additionally the group's representative noted that labor rights, protection of trademarks, patents, and copyrights, and investment protections will be enhanced due to the TPA.

Council of the Americas³²

The Council of the Americas stated that it is a business organization representing approximately 180 member companies invested in and doing business throughout the Western Hemisphere. The council expressed strong support for the U.S.-Colombia TPA. The council noted that, since 1991, the ATPA program accomplished much in the way of creating jobs in Colombia in export sectors, including cut flowers. According to the council, reciprocal market access provided in the TPA would make permanent the preferential access Colombia has to the U.S. market, while for the first time establishing preferences for the United States in Colombia. According to the council, the TPA is also likely to promote increased U.S. FDI in Colombia, which would be important for creating opportunities beyond the drug trade.

The council made the following points in its support of the TPA: (1) a bilateral agreement would lead to increased trade and investment flows while strengthening Colombia economically and politically; (2) the TPA offers important opportunities for U.S. industry and agriculture; (3) provisions in the TPA such as those for services, investment, and government procurement will enhance the transparency and accountability of governance in Colombia, promoting FDI; (4) the TPA sets the stage for an attractive regional market and potentially enhances integration and cooperation in the Andean region; and (5) passage of the TPA would enhance U.S. credibility in the hemisphere, because trade expansion is a significant means to thwart anti-U.S. sentiment in the Andean region.

³² Eric Farnsworth, vice president, Council of the Americas, written submission, October 5, 2006.

Emergency Committee for American Trade³³

The Emergency Committee for American Trade (ECAT) stated that it is an association of the chief executives of leading U.S. businesses with global operations in sectors such as agriculture, high technology, manufacturing, and services. ECAT stated that the U.S.-Colombia TPA is a strong, high-standard agreement that will promote new economic opportunities in many sectors for both the United States and Colombia.

ECAT stated that the duty elimination under the TPA will provide significant new opportunities for U.S. manufacturers as U.S. manufactured exports to Colombia have been growing in recent years (from \$3.1 billion in 2003 to \$4.7 billion in 2005). However, ECAT expressed disappointment with the commitments made in the apparel sector, as the TPA provides for immediate duty-free treatment only to products meeting certain rules of origin, similar to what currently exists under ATPA. ECAT stated that without more flexibility and liberalization in the rules of origin, the TPA will not provide for many new opportunities in bilateral textile and apparel trade.

ECAT stated that the TPA provides for the elimination of many important cross-border services restrictions. As a result, ECAT noted that new growth opportunities will be available in sectors such as audiovisual services, construction and engineering, and financial services (including banking and insurance). Further, ECAT noted the inclusion of provisions that allow for enhanced distribution services in Colombia.

ECAT noted that duty elimination under the TPA for U.S. agricultural exports, including high quality beef, cotton, wheat, soybeans, and many processed food products will present significant opportunities, as U.S. agricultural exports to Colombia grew from \$301 million in 2000 to \$482 million in 2005. However, ECAT expressed disappointment that barriers remain regarding the import of Colombia sugar into the United States.

Finally, ECAT said that it is encouraged by the TPA provisions that strengthen rules regarding transparency, investment, government procurement, and intellectual property rights. ECAT believes that these provisions will ensure that the ultimate goals of the TPA will be achieved.

International Intellectual Property Alliance³⁴

The International Intellectual Property Alliance (IIPA) stated that it is a coalition of seven trade associations collectively representing more than 1,900 companies producing and distributing materials protected by copyright laws throughout the world, including computer software, films, home videos, music, and other publications (in both electronic and print media).

The IIPA expressed support for the TPA and said the TPA offers a tool for encouraging compliance with evolving international trends in copyright standards and outlines specific enforcement provisions. The IIPA said that the TPA, once fully implemented, will attract new foreign investment in Colombia and new trade in valuable digital and other intellectual

³³ Calman J. Cohen, president, Emergency Committee for American Trade, written submission to the Commission received, October 16, 2006.

³⁴ Maria Strong, vice president and general counsel, IIPA, written submission, October 13, 2006.

property-based products, particularly in the area of e-commerce. The IIPA said that ineffective enforcement has been the copyright industries' primary problem in Colombia, and that more police and other legal actions are needed. The IIPA said that estimated losses in Colombia, as reported by three copyright industry sectors, amounted to at least \$98 million in 2005.

National Cattlemen's Beef Association³⁵

The National Cattlemen's Beef Association (NCBA) said that it is the oldest and largest trade association representing cattle farmers and ranchers. It is also the marketing organization for the largest segment of the U.S. agriculture. The NCBA said that it supports the U.S.-Colombia TPA and stated that the TPA is the best free trade agreement for the U.S. beef industry that has been negotiated to date, providing increased export market opportunities while maintaining adequate protection for the U.S. industry. The NCBA stated that the key to export market opportunities in Colombia are side letters to the agreement that specify the terms under which Colombia will re-open its market to U.S. beef in accordance with the World Organization of Animal Health guidelines for bovine spongiform encephalopathy. The NCBA stated that these provisions are so important that it would withdraw support for the agreement if Colombia fails to meet these commitments. The NCBA also stated that Colombia's side letter commitment to continue to recognize the equivalence of the U.S. food inspection is also important to increased market access for U.S. beef in Colombia. The NCBA stated that these side letter provisions, along with unlimited duty-free access for U.S. Prime and Choice beef, and duty-free access under TRQs for standard quality beef and beef variety meats, will allow the U.S. cattle and beef industry to be competitive suppliers in the Colombian market. Furthermore, the NCBA does not expect any impact from Colombian beef exports to the United States because it does not foresee Colombia achieving sanitary status relative to foot and mouth disease that would allow exports to the United States.

National Pork Producers Council³⁶

The National Pork Producers Council (NPPC) said that it represents 44 affiliated state associations representing more than 67,000 U.S. pork producers. The NPPC said that it supports the U.S.-Colombia TPA and stated that the agreement will provide significant benefits to U.S. pork producers by significantly increasing exports of U.S. pork to Colombia through the elimination of tariffs and resolution of outstanding sanitary and technical issues. The NPPC supports the TPA because the pork industry has benefitted from significantly increased market access in the past; the value of pork exports have increased by more than 361 percent since implementation of NAFTA in 1994. NPPC said that its analysis indicates that this trend will continue. The analysis estimated that U.S. pork exports to Colombia could increase by 50,000 mt, worth \$77 million, by 2017 when the agreement is fully implemented for pork items, which would add \$1.63 to the value of each U.S. hog, or about 14 percent to the current per hog profit.

³⁵ Jay Truitt, vice president, Government Affairs, National Cattlemen's Beef Association, written submission, October 16, 2006.

³⁶ Dermot Hayes, Iowa State University, on behalf of National Pork Producers Council, testimony before the U.S. International Trade Commission, October 5, 2006; and Joy Philippi, president, National Pork Producers Council, written submission, October 16, 2006.

Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America³⁷

Ranchers-Cattlemen's Action Legal Fund, United Stockgrowers of America (R-CALF) said that it represents over 18,000 members from 47 states including cow-calf operators, cattle backgrounders, and feedlot owners. R-CALF stated that the TPA likely would do little to promote exports of U.S. beef because of the small size of the Colombian economy and the Colombian market. R-CALF stated its concern about the potential for adverse impact that the U.S.-Colombia TPA may have on the U.S. domestic cattle and beef industry. Specifically, R-CALF stated that the potential for U.S. beef exports is limited to high-quality beef targeted at the restaurant industry, the agreement could subject the U.S. industry to substantial risk from increased beef imports because of Colombia's potential to increase domestic beef production through increased domestic slaughter, and because the rule of origin conveys origin by a shift from chapter 1 (live cattle) to chapter 2 (beef), beef from live cattle imported from other South American countries and slaughtered in Colombia could be exported to the United States as Colombian beef. Finally, R-CALF stated its concern that the quantity-based safeguard does not extend beyond the end of the transition period, and, therefore, does not protect U.S. producers from abrupt price fluctuations after the quota expires.³⁸

Sweetener Users Association³⁹

The Sweetener Users Association (SUA) said that it represents companies that use nutritive sweeteners, including sugar, in the confectionery, baking, cereal, beverage, dairy product, and other food manufacturing industries, as well as associations that represent these industries.

The SUA supports the additional 50,000 mt of sugar TRQ. The SUA stated that analysis of the impact of the U.S.-Colombia TPA must consider the effects on U.S. sugar consumers, other U.S. agricultural producers, and bilateral agricultural and food trade. The SUA stated that the U.S. market requires imported sugar, and the additional access under the TPA represents a minor share of the U.S. sugar market. The increase in supply from Colombia will increase competition in the U.S. market, help stem job losses in sugar-using industries, generate foreign exchange for Colombia to import other U.S. food and agricultural products, and benefit U.S. sugar consumers.

Travel Goods Association⁴⁰

The Travel Goods Association (TGA) stated that it is a national association of manufacturers, distributors, and retailers of luggage, leather goods, business and travel accessories, business and computer cases, handbags, and other products for people who travel. The TGA stated that the U.S.-Colombia TPA will have a marginal impact on the U.S.

³⁷ Chuck Kiker, president, R-CALF, USA, written submissions, September 29, 2006; and October 16, 2006, and Doug Zalesky, chair, R-CALF USA Trade Committee, testimony before the U.S. International Trade Commission, October 5, 2006.

³⁸ This topic is discussed in ch. 3 of this report.

³⁹ Sweetener Users Association, written submission, October 16, 2006.

⁴⁰ Michele Marini Pittenger, president, Travel Goods Association, written submission, October 16, 2006.

economy—particularly on the travel goods industry—because of the agreement’s restrictive rules of origin for textile travel goods. The TGA noted that the fabric-forward rule of origin for textile travel goods is so restrictive that it “effectively renders the TPA useless for U.S. travel goods firms.” However, the TGA stated that it supports the TPA’s provisions to provide immediate and reciprocal duty-free entry for all travel goods, and commends the agreement’s simple and flexible “substantial transformation” style rules of origin for nontextile travel goods in the TPA.

The TGA stated that it is “deeply disappointed and frustrated” that the TPA does not establish immediate duty-free treatment for all travel goods (both textile and nontextile) under simple and flexible rules of origin such as those in CAFTA-DR. The TGA stated that treating all travel goods the same, such as under CAFTA-DR, would have greatly simplified and improved the TPA for travel goods firms. The TGA stated its concern about the increasingly likely gap between ATPA expiration and implementation of the TPA, noting that any such gap would further erode trade patterns. According to the TGA, delays in implementation of the TPA could incur huge costs for U.S. industry such as those that have resulted from the delay in the implementation of CAFTA-DR. According to the TGA, many U.S. firms could choose to place their business elsewhere.

United States Association of Importers of Textiles and Apparel⁴¹

The U.S. Association of Importers of Textiles and Apparel (USA-ITA) stated that it is a national organization representing U.S. distributors, retailers, importers, and related service providers. The USA-ITA supports the U.S.-Colombia TPA, and noted that the importance of duty breaks is greater now that only two countries are currently restricted by quotas and because there is substantially increased competition among U.S. trading partners who receive duty-free status through either FTAs or preferential agreements. However, the USA-ITA stated that the final terms of the agreement with respect to textile and apparel trade do not offer the benefits that USA-ITA member companies had advocated. Specifically, the USA-ITA stated it is concerned about (1) the overly restrictive rules of origin, (2) the loss of flexibility caused by the separate implementation of the Peru and Colombia FTA agreements,⁴² and (3) the fact that the issue of “cumulation” was not resolved and is not part of the immediate implementation of the agreement.

The USA-ITA noted that Colombia’s trade in apparel products to the United States declined nearly 20 percent by quantity in the last year, and now accounts for one-half of one percent of total apparel imports for the year ending August 2006. The USA-ITA attributed the decline, in part, to the slow pace of the free trade agreement negotiations; to the recognition by U.S. brands and importers that even after the agreement is approved by the U.S. Congress, it may be months before the agreement is implemented; and to the rules of origin

⁴¹ Laura E. Jones, executive director, United States Association of Importers of Textiles and Apparel, written submission, October 16, 2006.

⁴² The USA-ITA noted that under ATPA, Colombian and Peruvian firms may use each other’s inputs to produce apparel eligible to enter the U.S. free of duty. Once ATPA expires, that option will be lost, pending enforcement of the TPA.

established under the TPA which, according to the USA-ITA,⁴³ create new restrictions on sourcing options rather than offering the flexibilities needed to encourage business.

U.S. Grains Council, National Corn Growers Association, National Barley Growers Association, and the National Sorghum Producers⁴⁴

The U.S. Grains Council stated that it is a nonprofit organization promoting U.S. grain exports. The National Corn Growers Association, the National Barley Growers Association, and the National Sorghum Producers stated that they are U.S. membership organizations representing U.S. grain farmers. These groups support the TPA and stated in their joint written submission that “the provisions of the agreement will provide both immediate and long-term benefits to U.S. producers and processors of corn, barley, and sorghum.” They stated that the TPA will negate the adverse effects of Colombian policies on the U.S. feed grain industry and provide enhanced access through the elimination of tariffs.

⁴³ According to the USA-ITA, the most important provision for its member companies is the issue of “cumulation” which has not yet been resolved and is not part of the immediate implementation of the agreement. The USA-ITA noted that it continues to strongly advocate for the establishment of cumulation rules as a means of attaining regional integration. USA-ITA also stated that the requirement that pocketing fabrics must originate in a TPA country is very restrictive and is not compensated by single transformation rules for garments, such as boxer shorts or girls’ dresses in CAFTA-DR.

⁴⁴ Kevin Natz, director of trade policy, U.S. Grains Council, National Corn Growers Association, National Barley Association, and National Sorghum Producers, written submission, October 16, 2006.

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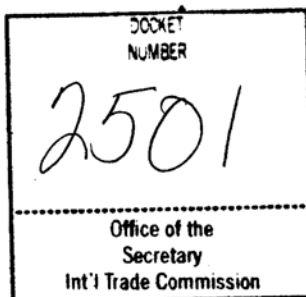
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APPENDIX A
REQUEST LETTER FROM THE USTR

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

The Honorable Daniel R. Pearson
Chairman
U.S. International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436



AUG 25 2006

AUG 23 AM 9:55

Dear Chairman Pearson:

As you know, the United States and Colombia have completed the negotiation of the United States — Colombia Trade Promotion Agreement, a comprehensive free trade agreement. The advice that the U.S. International Trade Commission ("Commission") provided over the course of these negotiations assisted us greatly in bringing the negotiations to a successful conclusion.

The President notified Congress of his intent to enter into this Agreement with Colombia on August 24, 2006. Pursuant to authority delegated to me by the President and in accordance with section 2104(f) of the Trade Act of 2002 (Trade Act), I request the Commission to prepare a report as specified in section 2104(f)(2)-(3) of the Trade Act assessing the likely impact of the Agreement on the United States economy as a whole and on specific industry sectors and the interests of U.S. consumers.

I would greatly appreciate it if the Commission could issue its report as soon as possible. USTR staff will provide the Commission with the details of the Agreement and will be available to answer questions or provide additional information. The text of the Agreement that will be the subject of legal review is available on the USTR website.

Thank you for your continued cooperation and assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan C. Schwab".

Susan C. Schwab

APPENDIX B
***FEDERAL REGISTER* NOTICE**

The foregoing notice is published in the **Federal Register** pursuant to 43 CFR 3410.2-1(c)(1).

Dated: August 25, 2006.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. E6-15544 Filed 9-18-06; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 2, 2006. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by October 4, 2006.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

ARIZONA

Pima County

DeGrazia Gallery in the Sun Historic District, 6300 N. Swan Rd., Tucson, 06000932.

COLORADO

Larimer County

Snogo Snow Plow, Rocky Mountain National Park, Estes Park, 06000934.

HAWAII

Maui County

Maui High School Administration Building, 100 Holomua Rd., Paia, 06000933.

INDIANA

Ohio County

Rising Sun Historic District, Roughly bounded by the Union and Soldier's Cemeteries, High St., Front St., and Maiden Ln., Rising Sun, 06000935.

MASSACHUSETTS

Berkshire County

Montville Baptist Church, 5 Hammertown Rd., Sandisfield, 06000936.

MONTANA

Flathead County

Bruyer Granary, 1355 Whitefish Stage Rd., Kalispell, 06000937.

OREGON

Klamath County

Bisbee Hotel, 229 S. 6th St., Klamath Falls, 06000938.

WYOMING

Laramie County

Cheyenne South Side Historic District, Roughly bounded by Warren Ave., Russell Ave., E. Tenth St., and E Fifth St., Cheyenne, 06000939.

A request for REMOVAL has been made for the following resource:

IOWA

Johnson County

Opera House Block, 210-212 S. Clinton St. Iowa City, 78001228.

[FR Doc. E6-15497 Filed 9-18-06; 8:45 am]

BILLING CODE 4312-51-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA-2104-023]

U.S.-Colombia Trade Promotion Agreement: Potential Economy-Wide and Selected Sectoral Effects

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: September 14, 2006.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) on August 25, 2006, the Commission instituted investigation No. TA-2104-023, *U.S.-Colombia Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects*, under section 2104(f) of the Trade Act of 2002 (19 U.S.C. 3804(f)), for the purpose of assessing the likely impact of the U.S. Trade Promotion Agreement (TPA) with Colombia on the United States economy as a whole and on specific industry sectors and the interests of U.S. consumers.

FOR FURTHER INFORMATION CONTACT:

Project Leaders James Stamps, Office of Economics (202-205-3227; james.stamps@usitc.gov) or Michelle Vaca-Senecal, Office of Industries (202-205-3356; michelle.vaca@usitc.gov). For information on legal aspects, contact William Gearhart of the Office of the General Counsel (202-205-3091; william.gearhart@usitc.gov). The media should contact Margaret O'Laughlin,

Office of External Relations (202-205-1819; margaret.olaughlin@usitc.gov).

Background: As requested by the USTR, the Commission will prepare a report as specified in section 2104(f)(2)-(3) of the Trade Act of 2002 assessing the likely impact of the U.S. Trade Promotion Agreement with Colombia on the U.S. economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports and imports; aggregate employment and employment opportunities; the production, employment, and competitive position of industries likely to be significantly affected by the agreement; and the interests of U.S. consumers.

In preparing its assessment, the Commission will review available economic assessments regarding the agreement, including literature concerning any substantially equivalent proposed agreement, and will provide in its assessment a description of the analyses used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the various analyses and conclusions, including those of the Commission regarding the agreement.

Section 2104(f)(2) requires that the Commission submit its report to the President and the Congress not later than 90 days after the President enters into the agreement, which he can do 90 days after he notifies the Congress of his intent to do so. On August 24, 2006, the President notified the Congress of his intent to enter into a TPA with Colombia. The USTR requested that the Commission provide the report as soon as possible.

Public Hearing: A public hearing in connection with the investigation is scheduled to begin at 9:30 a.m. on October 5, 2006, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than 5:15 p.m., September 25, 2006. Any prehearing briefs should be filed no later than 5:15 p.m., September 29, 2006, and any posthearing briefs or statements should be filed no later than 5:15 p.m., October 16, 2006; all such briefs and statements must be submitted in accordance with the requirements below under "written submissions." In the event that, as of the close of business on September 25, 2006, no witnesses are

scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after September 25, 2006, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. To be assured of consideration by the Commission, written statements related to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than 5:15 p.m., October 16, 2006.

All written submissions must conform with the provisions of § 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or edis@usitc.gov).

Any submissions that contain confidential business information must also conform with the requirements of § 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "nonconfidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the

Secretary to the Commission for inspection by interested parties.

The Commission intends to prepare only a public report in this investigation. The report that the Commission sends to the President and the Congress and makes available to the public will not contain confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) <http://edis.usitc.gov>. Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission.

Issued: September 14, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–7780 Filed 9–18–06; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that five meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

Learning in the Arts (application review): October 4–6, 2006 in Room 716. A portion of this meeting, from 3:30 p.m. to 4 p.m. on October 6th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 5 p.m. on October 4th and 5th and from 9 a.m. to 3:30 p.m. and from 4 p.m. to 4:30 p.m. on October 6th, will be closed.

Learning in the Arts (application review): October 10–13, 2006 in Room 716. A portion of this meeting, from 4:15 p.m. to 5 p.m. on October 13th, will be open to the public for a policy discussion. The remainder of the meeting, from 8:30 a.m. to 6 p.m. on October 10th and 12th, from 8:30 a.m.

to 5:30 p.m. on October 11th, and from 8:30 a.m. to 4:15 p.m. and from 5 p.m. to 6 p.m. on October 13th, will be closed.

Learning in the Arts (application review): October 25, 2006 in Room 716. A portion of this meeting, from 3:45 p.m. to 4:15 p.m., will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 3:45 p.m. and from 4:15 p.m. to 4:45 p.m., will be closed.

Learning in the Arts (application review): October 26–27, 2006 in Room 716. A portion of this meeting, from 5:30 p.m. to 6 p.m. on October 27th, will be open to the public for a policy discussion. The remainder of the meeting, from 8:30 a.m. to 6:30 p.m. on October 26th and from 8:30 a.m. to 5:30 p.m. and from 6 p.m. to 6:45 p.m. on October 27th, will be closed.

Design (application review): October 30–31, 2006 in Room 730. This meeting, from 9 a.m. to 5 p.m. on October 30th and from 9 a.m. to 2 p.m. on October 31st, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: September 12, 2006.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E6–15496 Filed 9–18–06; 8:45 am]

BILLING CODE 7537–01–P

APPENDIX C

HEARING PARTICIPANTS

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject: U.S.-Colombia Trade Promotion Agreement: Potential Economywide and Selected Sectoral Effects

Inv. No.: TA-2104-23

Date and Time: October 5, 2006 - 9:30 a.m.

Sessions were held in connection with this investigation in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, D.C.

EMBASSY APPEARANCE:

**Embassy of Colombia
Colombian Ministry of Trade, Industry, and Tourism
Washington, D.C.**

Ambassador Hernando Jose Gomez, Chief Negotiator of the U.S.-Colombia Trade Promotion Agreement and Former Colombian Ambassador before the WTO

ORGANIZATION AND WITNESS:

U.S.-Colombia Trade Coalition
U.S. Chamber of Commerce
Association of American Chambers of
Commerce in Latin America (AACCLA)

Tom Gales, Vice President, Latin America Division,
Caterpillar, Inc.

National Pork Producers Council
Washington, D.C.

Dermot Hayes, Economist, Iowa State University, on
behalf of National Pork Producers Council

ORGANIZATION AND WITNESS:

R-CALF United Stockgrowers of America (“R-CALF USA”)
Washington, D.C.

Doug Zalesky, Chair, R-CALF USA Trade Committee

American Farm Bureau Federation
Washington, D.C.

Bob Young, Chief Economist

Greenberg Traurig
Washington, D.C.
on behalf of

Association of Floral Importers of Florida (“AFIF”)
Association of Colombian Flower Exporters (“ASOCOLFLORES”)

Steven J. Mulder, Assistant Director, Government Relations

APPENDIX D
U.S.-COLOMBIA TPA:
CHAPTER-BY-CHAPTER SUMMARY

TPA Chapter 1—Initial Provisions and General Definitions

The text states that the parties establish the TPA, consistent with the 1994 General Agreement on Tariffs and Trade (GATT), and reaffirm that the existing bilateral rights and obligations continue to apply between the parties. Among the general definitions in the TPA, the term "territory" is defined by each party to include the land, maritime, and air space under its sovereignty and the continental shelf over which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law. In the case of the United States, foreign trade zones are included as part of the territory of the United States along with the customs territory and certain areas outside the territorial seas in which the United States may control seabed and subsoil and their natural resources. In the case of Colombia, various islands and offshore areas that belong to Colombia are included in its territory. The general definition of "customs duty" indicates that import-related duties or charges are included, including surtaxes or surcharges, but not antidumping or countervailing duties, certain fees equivalent to internal taxes, or customs administrative fees or charges. The chapter includes definitions of certain terms with respect to Colombia as well.

TPA Chapter 2—National Treatment and Market Access for Goods

The basic commitments on national treatment and market access are similar in form to the corresponding provisions of the GATT 1994. Under this chapter, the parties agree to eliminate their customs duties on originating goods according to the attached schedules, and to refrain from increasing any duty rate, imposing a new rate, or imposing or expanding performance requirements related to a TPA benefit. Further, they can agree to accelerate the elimination of any duty. Duty level ceilings are provided in the event that a concession must be withdrawn; a party can impose a duty authorized by the WTO Dispute Settlement Body or return to a higher TPA scheduled rate after a unilateral duty reduction.

Other provisions in this chapter are similar to those of other FTAs and deal with temporary importations, re-entry of repaired or altered goods, and other customs procedures. Article XI of GATT 1994 controls whether a specific nontariff measure is allowed under the TPA. Legitimate prohibitions or restrictions on trade with third countries are to be allowed and are recognized under this article. Import licensing must comply with the WTO agreement on that subject, and the partners are barred from restricting or banning imports from another party on the grounds of alleged violations of local law. Still other provisions will ban consular transactions and the U.S. merchandise processing fee (the so-called "customs user fee") on originating goods, and require other fees and charges that are not duties or their equivalent to be directly related to administrative services being rendered. All fees and charges on trade in goods are required to be published on the Internet. Colombia is required to recognize Bourbon Whiskey and Tennessee Whiskey as distinctive U.S. products; the parties can request that the TPA Committee on Trade in Goods offer amendments to the agreement to recognize a good as a distinctive product. The agreement will establish a Committee on Trade in Goods to consider matters arising under Chapter 4—Rules of Origin and Origin Procedures and Chapter 5—Customs Administration and Trade Facilitation.

The agreement also sets forth definitions of key terms and specific provisions regarding the parties' exceptions from coverage. The Agricultural Market Access Text (section G) deals with the implementation and administration of TRQs, agricultural export subsidies and

export state trading enterprises, agricultural safeguard measures, a sugar compensation mechanism, and consultations on trade in chickens, and establishes a Committee on Agricultural Trade. An annex contains agricultural safeguard measures for prime and choice beef, chickens, chicken leg quarters, dried beans, and rice. Separate agricultural tariff schedules and appendixes are presented for both parties, as well as both parties' industrial and textile tariff schedules. The United States will apply TRQs to specific imports of beef, dairy products, tobacco, sugar, and preparations containing sugar or dairy; Colombia will apply TRQs to U.S. exports of specified meats, milk powder and other dairy products, dried beans, corn, sorghum, glucose, pet food and animal feeds, rice, and crude soybean oil. Colombia will not apply any price band system to U.S. agricultural shipments; it could apply a duty lower than that set forth in its schedule but not a higher rate. There is also a side letter in which Colombia acknowledges its commitment to become a full participant in the WTO Information Technology Agreement (ITA) no later than December 31, 2007.

TPA Chapter 3—Textiles and Apparel

The U.S.-Colombia TPA will immediately eliminate all tariffs on U.S. trade with Colombia in textiles and apparel that meet the TPA rules of origin (“originating goods”), thereby making permanent the duty-free benefits currently available under ATPA for almost all U.S. imports of Colombian apparel.¹ The TPA will grant duty-free treatment for the first time to U.S. imports of textiles from Colombia and to U.S. exports of textiles and apparel to Colombia. The rules of origin under the TPA for textiles and apparel will generally be based on the “yarn-forward rule” found in most other U.S. FTAs, which requires that imports of such goods from the TPA party be made in the United States or Colombia from the yarn stage forward to qualify for duty-free benefits.² Although ATPA also generally requires apparel to be made in beneficiary countries from the yarn stage forward to qualify for duty-free preferences, the TPA contains provisions relating to allowable foreign content and application of the rules of origin that will likely provide the parties more flexibility than ATPA in using third-country inputs. However, the TPA does not contain certain provisions found in other recent U.S. FTAs that expand opportunities for parties to use third-country inputs, such as tariff preference levels (TPLs) and cumulation provisions (discussed below).

The TPA rules of origin for textiles and apparel (annex 3.2 to TPA chapter 3) are based on changes in tariff classification from third-country inputs to goods processed or made in one or both parties. The rules will generally apply only to the component that determines the tariff classification of the garment, rather than to all fabric components of the garment, as is the case under ATPA. For example, a garment subject to the yarn-forward rule will be eligible for TPA preferences if the component that determines the tariff classification of the good is made of originating yarns and fabrics, without regard to the source of any collar, cuffs, or most other components incorporated into the garment.³ Apparel components that

¹ U.S. imports of textiles and apparel from Colombia totaled \$618 million in 2005 and consisted primarily of apparel (data are from the U.S. Department of Commerce, OTEXA). Apparel and a few textile articles (textile luggage and handloomed, handmade, and folklore articles) are eligible for special tariff benefits under ATPA, as provided for in subchap. XXI of chap. 98 of the HTS (subheadings 9821.11.01 through 9821.11.25).

² A “fiber-forward rule” applies to a limited number of articles (mainly yarns and knit fabrics).

³ ATPA allows originating garments to contain findings, trimmings, and interlinings of foreign origin if the value of these items (e.g., zippers, buttons, and lace trim) does not exceed 25 percent of the cost of the components of the assembled article.

must be originating include certain visible linings,⁴ narrow elastic fabrics,⁵ sewing thread, and pocketing fabrics.

In addition, the de minimis foreign content rule under the TPA will, like in CAFTA-DR, permit up to 10 percent of the total weight of the component that determines the tariff classification of the good to consist of third-country fibers or yarns, except for elastomeric yarns, which must be made in a TPA party. By contrast, the ATPA de minimis foreign content rule permits third-country yarns to account for not more than 7 percent of the total weight of the garment. Unlike ATPA, the TPA will grant duty-free benefits to garments made in Colombia from U.S. fabrics that are dyed, printed, and finished in Colombia and to unlimited quantities of garments made in Colombia from Colombian fabrics of U.S. or Colombian yarns.⁶

Notwithstanding these enhancements of ATPA, the TPA does not contain certain provisions found in other recent U.S. FTAs that permit the parties to use third-country inputs in originating goods.⁷ For example, the TPA does not include any TPLs that would provide duty preferences to specified quantities of U.S. imports of specific apparel articles made in Colombia from third-country inputs. It also does not contain a single-transformation rule that permits certain garments to be made of third-country fabrics as long as the fabrics are cut and sewn in an agreement party.⁸ With respect to cumulation provisions, which permit the use of inputs from other FTA partner countries in originating goods, the TPA contains a single, limited specific rule (introduced in ATPA) that allows the use of nylon filament yarn only from pre-1995 FTA partner countries (Canada, Mexico, and Israel) in originating apparel (article 3.3(11)).

Chapter 3 of the TPA also sets out the general legal principles on origin (article 3.3), including a consultation provision for the parties to consider whether to revise the rules of origin after the agreement has been implemented to address issues of availability of fibers, yarns, or fabrics. Article 3.3 also provides an expedited process to add to the “short supply list” a fiber, yarn, or fabric in an unrestricted or restricted quantity, if the United States determines that such input is not available in commercial quantities in a timely manner in any party, or if no interested entity objects to the request.⁹ TPA chapter 3 also includes authority to apply bilateral textile safeguard measures (article 3.1), under which either party may reinstate MFN tariffs if imports from the other party cause serious damage or threat of serious damage to the domestic industry. It has detailed customs enforcement and cooperation provisions to ensure the accuracy of claims of origin, to prevent circumvention of the agreement, and to enforce measures affecting textiles and apparel (article 3.2).

⁴ Applies only to the visible lining fabric in the main body of certain suits, sport coats, skirts, and coats (excluding sleeves), which covers the largest surface area; it does not apply to removable linings. The fabrics include woven fabrics of wool, cotton, and manmade fibers (except certain artificial-filament-yarn fabric), and certain pile, warp, and other knitted fabrics.

⁵ Applies to narrow fabrics of HTS subheading 5806.20 (woven) or heading 6002 (knitted), of a width not exceeding 30 centimeters, containing by weight 5 percent or more of elastomeric yarn or rubber thread.

⁶ ATPA grants duty-free treatment to U.S. imports of apparel made in Andean countries from fabrics formed in the Andean region of U.S. or Andean yarns, subject to an annual cap (the cap for the 12-month period ending Sept. 30, 2005, had a fill rate of just 3.5 percent).

⁷ The tighter regime under the TPA, compared with other recent U.S. FTAs, likely reflects the fact that Colombia has an integrated textile and apparel sector with the capacity to produce fibers, yarns, and fabrics.

⁸ CAFTA-DR contains a single-transformation rule for certain boxer shorts, pajamas, and girls’ dresses of woven fabrics; umbrellas; and textile luggage.

⁹ The United States may, within 6 months after adding a restricted quantity of a fiber, yarn, or fabric to the list, modify or eliminate the restriction. A total of 20 yarns and fabrics are included in the short supply list in annex 3.3 to TPA chap. 3.

TPA Chapter 4—Rules of Origin and Origin Procedures

The TPA's tariff benefits will apply to "originating goods" unless otherwise provided. Such goods fall into two categories—namely, those wholly derived in the parties with no foreign inputs, and those complying with rules of origin based largely on specified changes in tariff classification from foreign inputs to finished goods (including those containing allowable *de minimis* foreign content that does not comply). Eligibility for some goods containing third-party inputs are covered by regional value content or other specified requirements. Goods containing *de minimis* foreign content that does not undergo the requisite tariff shifts (limited in the aggregate for all such materials to 10 percent of the adjusted value of the good, with the component-based formula applicable to textile and apparel products¹⁰) can also qualify as originating, though their value will still be counted as "nonoriginating" when a regional value content test applies. A limited number of products—all in the agricultural sector and primarily sensitive commodities covered by TRQs—cannot use the *de minimis* rule to gain treatment as originating goods. In general, the principles used parallel the rules in NAFTA and in FTAs with several other trading partners.

The substantive provisions of this chapter are similar to those in recent FTAs. An originating material of one party that is used in another party to make a good will be considered to originate in the latter party; a good involving production in multiple parties or by multiple firms within the region will be considered to originate if it meets the specific tests of this chapter. Rules and formulas for computing regional value content are provided, with two types of computations—the build-down method (based on the value of nonoriginating materials) and the build-up method (based on the value of originating materials)—designed to take into account all nonoriginating content as negotiated for types of goods. As is true under existing U.S. FTAs and preference programs, a good that undergoes subsequent production or other operations outside the parties (not counting minor preservation or loading operations) will not be considered originating. Rules for goods classified as sets pursuant to Harmonized System (HS) general interpretive rule 3 are provided, along with rules for the treatment of fungible goods and of accessories, spare parts, and tools. Packaging materials and containers holding a good for retail sale are to be disregarded in determining origin with tariff shift rules if classified with the good, and originating packaging and containers may be counted toward value-content requirements. Packaging for shipment is to be disregarded in determining the origin of goods.

Other provisions of the chapter deal with consultations among the parties and the verification and documentation of origin needed under the TPA. Benefits are to be given unless the parties learn that particular goods do not qualify and make a written determination that the claim is invalid. Importers who make errors are not to be punished if they act in good faith or promptly correct the entry documents and pay necessary duties due. An importer may make a post entry claim for benefits of the agreement up to 1 year after importation with proper documentation. Written or electronic certifications of origin can be required and are valid for 4 years from the date of issuance; records must be kept for 5 years after entry to establish the origin of goods. The parties are to publish agreed "common guidelines for the interpretation, application, and administration" of the rules, preferably before the date of entry into force of the agreement. Colombia and Peru are directed to implement electronic origin certifications and certain other procedures within 3 years of the date of entry into force of the agreement.

¹⁰ Chap. 3 of the TPA covers aspects of rules of origin specifically applicable to textiles and apparel.

TPA Chapter 5—Customs Administration and Trade Facilitation

Chapter 5 of the TPA reinforces many of the GATT goals in the areas of fees and formalities (GATT article VIII) and publication and administration of trade regulations (GATT article X) (table D-1). The TPA will likely facilitate the goods clearance process¹¹ through greater use of information technology to enhance automation, establish procedures for resolving disputes, and improve risk management and cooperation among parties. The parties will commit to immediate cooperation in the areas of information exchange, technical advice and assistance for trade facilitation, and enforcement of customs rules and regulations. They will also continue to explore other means of cooperation.¹²

Additionally, chapter 5 calls for the immediate implementation of articles that provide for customs automation,¹³ the use of risk maintenance systems,¹⁴ the advanced publication of Colombian customs regulations,¹⁵ confidential information guidelines,¹⁶ review and appeal of customs matters,¹⁷ and penalties for customs violations.¹⁸

The express shipments section,¹⁹ which will be subject to a 2-year deferment,²⁰ includes two noteworthy provisions that will further liberalize such activity: such shipments will not be limited by a maximum weight or customs value, and express shipments valued at \$200 or less will not be assessed duties or taxes and will not require any formal entry documents, except when expressly identified by each party's laws and regulations. The TPA will require each party to adopt separate customs administration measures for express shipments.²¹ These measures will facilitate express shipment processing by allowing (1) electronic submission of document; (2) prearrival processing of information; and (3) submission of a single manifest covering all goods in an express shipment, as well as minimize release documentation, where possible. Chapter 5 requires release of express shipments within 6 hours.²² Staggered implementation schedules will also defer the entry into force of other provisions. Simplified release procedures will be deferred for 1 year,²³ and Internet access to Colombian customs information and assistance will be subject to a 2-year deferment.²⁴ The requirement that importers be able to obtain binding advanced rulings will not apply to Colombia until 3 years after the date of entry into force of the TPA.²⁵ The United States already has a system in place allowing requests for advance rulings.

¹¹ Parties are committed to release goods from port within 48 hours. Colombian importers currently may wait up to 7 days for the release of goods. Gómez, hearing transcript, 132.

¹² *U.S.-Colombia TPA*, art. 5.5.

¹³ *U.S.-Colombia TPA*, art. 5.3.

¹⁴ *U.S.-Colombia TPA*, art. 5.4.

¹⁵ *U.S.-Colombia TPA*, art. 5.1.3.

¹⁶ *U.S.-Colombia TPA*, art. 5.6.

¹⁷ *U.S.-Colombia TPA*, art. 5.8.

¹⁸ *U.S.-Colombia TPA*, art. 5.9.

¹⁹ *U.S.-Colombia TPA*, art. 5.7.

²⁰ Deferral of certain provisions is provided for in the TPA to allow parties to develop the necessary technical capacity through such programs as trade capacity building.

²¹ Colombia currently has a system in place to process express delivery shipments, but will establish a fully separate system for such goods under the TPA. Gómez, hearing transcript, 133.

²² Express deliveries are currently released within 24–48 hours in Colombia. Gómez, hearing transcript, 132.

²³ *U.S.-Colombia TPA*, art. 5.2.

²⁴ *U.S.-Colombia TPA*, art. 5.1.1–5.1.2.

²⁵ *U.S.-Colombia TPA*, art. 5.10.

Table D-1 Selected GATT articles and U.S.-Colombia TPA commitments related to customs administration

GATT	U.S.-Colombia TPA
Article VIII—Fees and Formalities 1.(c) <i>Minimize the incidence and complexity of import/export formalities.</i>	Article 5.2—Release of Goods 1. Shall adopt or maintain <i>simplified customs procedures</i> for the efficient release of goods (1-year deferment).
Article X—Publication and Administration of Trade Regulations 1. (in part) <i>Laws, regulations, etc. shall be published promptly and in such a manner as to enable government and traders to become acquainted with them; trade policy agreements in force shall be published.</i> 2. <i>No measures may be enforced to change import duties or charges or other customs administrative practices before official publication.</i>	Article 5.1—Publication 1. <i>Internet publication of laws, regulations, and administrative procedures</i> (2-year deferment). 2. Designate or maintain customs inquiry points and provide procedural information for inquiries via Internet (2-year deferment). 3. <i>Advance publication of regulations</i> governing proposed customs matters and comment period (immediate).
Article X—Publication and Administration of Trade Regulations 2. <i>No measures may be enforced to change import duties or charges or other customs administrative practices before official publication.</i>	Article 5.5—Cooperation 1. <i>Advance notice</i> of significant modifications of administrative policy likely to substantially effect Agreement's operation (immediate).
Article X—Publication and Administration of Trade Regulations 1. (in part) <i>Prevents disclosure of confidential information.</i>	Article 5.6—Confidentiality 1. Designated <i>confidential information</i> shall be maintained as such and <i>will not be disclosed without prior permission</i> (immediate). 2. Parties may decline to provide such information if confidentiality has not been maintained (immediate). 3. Adopt or maintain procedures to protect unauthorized disclosure (immediate).
Article X—Publication and Administration of Trade Regulations 3. (b) Maintain and establish <i>independent tribunals to review and correct customs administrative actions.</i>	Article 5.8—Review and Appeal Importers will have access to <i>independent administrative review and judicial review of determinations</i> (immediate).

Sources: U.S.-Colombia TPA; WTO, *Trade Facilitation Documents*.

TPA Chapter 6—Sanitary and Phytosanitary Measures

Chapter 6 of the TPA covers the protection of human, animal, or plant life or health in the parties' territories, insofar as they directly or indirectly affect trade between them, and is meant to enhance the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (WTO SPS agreement). The United States and Colombia agree to establish a Standing Committee on Sanitary and Phytosanitary Matters to coordinate administration of the chapter (article 6.3). The standing committee will provide a forum for enhancing mutual understanding of each government's SPS measures, resolving future bilateral SPS matters, coordinating technical assistance programs, and consulting on issues and positions in fora such as the WTO and various Codex committees. The chapter further outlines the process by which the standing committee will review issues of interest to either the United States or Colombia. The chapter specifies that no party has recourse to dispute settlement under the TPA for any matter arising under the chapter. Any SPS issue that requires formal dispute

resolution are to be resolved through the formal process established under the WTO SPS agreement.

The TPA includes three letters of exchange on SPS issues between the United States and Colombia.²⁶ The letters confirm that (1) Colombia will continue to recognize the U.S. meat and poultry inspection system as equivalent to its own and will not require approval of individual U.S. establishments by the Colombian Ministry of Agriculture or any other Colombian ministry or sanitary authority,²⁷ (2) Colombia will permit imports of U.S. poultry and poultry products from all U.S. states no later than May 15, 2006, in recognition that the United States meets the guidelines set by the World Organization for Animal Health (OIE) on AI, (3) Colombia will permit, no later than October 31, 2006, the importation of all beef and beef products²⁸ from the United States in recognition that the United States has taken measures with regard to BSE consistent with the OIE, and (4) Colombia and the United States will cooperate to address SPS issues within the framework of their laws, develop technical and scientific cooperation, and support the development of Colombia's SPS system to enhance bilateral trade.

TPA Chapter 7—Technical Barriers to Trade

Chapter 7 of the TPA requires both parties to intensify efforts to improve transparency, enhance bilateral cooperation on standards-related issues, increase mutual acceptance of one another's regulations and procedures, and reduce or eliminate unnecessary technical trade barriers.²⁹ As such, the chapter largely affirms and improves on the implementation of the WTO TBT Agreement rather than substantively expanding it.³⁰ To improve transparency,³¹ each party is to allow persons from the other party to participate in the development of its standards, technical regulations, and conformity assessment procedures; to transmit proposals for new technical regulations and conformity assessment procedures electronically to the other party at the same time they are transmitted to the WTO pursuant to the TBT agreement; to allow the other party at least 60 days to review and comment on such proposals; and to publish or otherwise make available to the public its responses to significant comments no later than the date it publishes the final technical regulation or conformity assessment procedure.³² The chapter encourages each party to consider a broad range of alternatives for accepting the results of the other's conformity assessment procedures and technical regulations, and when this is not possible, to explain why.³³ Finally, the chapter establishes a Committee on Technical Barriers to Trade, comprising representatives of each party, to monitor the implementation and administration of the

²⁶ Ministerio de Comercio, Industria y Turismo, República de Colombia, and USTR, "SPS Letter Exchange," February 26, 2006; "Other SPS Letter Exchange," May 8, 2006, and "Letter Exchange," August 21, 2006.

²⁷ U.S. meat and poultry exports must be accompanied by an Export Certificate of Wholesomeness issued by the USDA, Food Safety and Inspection Service.

²⁸ Excluding certain risk materials and subject to additional certification statements as specified in the annex to the "Letter Exchange on Beef SPS Issues," August 21, 2006.

²⁹ *U.S.-Colombia TPA*, arts. 7.1–7.3.

³⁰ U.S. government official, interview by Commission staff, May 25, 2006; and U.S. industry representatives, telephone interviews by Commission staff, September 19–26, 2006.

³¹ The transparency provisions of the U.S.-Colombia TPA TBT chapter are consistent with overall U.S. trade negotiating objectives of increased "[t]ransparency: public access, [and] timely publication." Schott, "Free Trade Between the United States and Colombia," 9.

³² *U.S.-Colombia TPA*, art. 7.6.

³³ *U.S.-Colombia TPA*, arts. 7.4–7.5.

chapter and address any issues arising from the other's standards, technical regulations, or conformity assessment procedures.³⁴

TPA Chapter 8—Trade Remedies

Chapter 8 of the TPA provides the legal framework to allow bilateral safeguards on originating goods under the TPA, under terms similar to corresponding provisions of existing TPAs/FTAs with other countries. A party must notify the other party when an investigation is initiated and consult before taking any action under the safeguard provisions. A bilateral TPA safeguard measure can be taken only if a party determines that, as a result of the reduction or elimination of duty under the TPA, an article is being imported from the other party in such increased quantities (in absolute terms or relative to domestic production) as to be a substantial cause of serious injury or threat thereof to a domestic industry producing a like or directly competitive good. The measure imposed can take the form of (1) a suspension of the further reduction of the TPA duty rate on such goods, or (2) an increase in that duty to a level not exceeding the lower of the MFN duty rate at the time the action is taken or the applied MFN rate on the day before the date of entry into force of the TPA. Such a safeguard is aimed at preventing or remedying serious injury and facilitating adjustment. A party may not invoke a safeguard after the transition period (10 years after entry into force of the TPA). During the transition period, a safeguard can be imposed for an initial period of up to 2 years, and may be extended up to 2 additional years if deemed necessary by the proper authorities. Measures continuing longer than 1 year must be progressively liberalized, and the party invoking a TPA safeguard cannot subsequently impose another such measure on the same originating good.

The rate of duty to be applied when the safeguard measure terminates may be no higher than the TPA rate that would have been in effect 1 year after application of the safeguard. Under the chapter, the parties agree to try to provide compensation that will be mutually acceptable and will liberalize trade. Concerning antidumping and countervailing measures, the TPA provisions simply state that each party retains its rights and obligations under the WTO, and that the TPA does not impose any rights or obligations on the United States or Colombia with respect to antidumping or countervailing measures.

TPA Chapter 9—Government Procurement

Chapter 9 of the TPA applies to covered government procurement of goods and services by any contractual means where the value concerned exceeds thresholds set out in an annex to the chapter. The thresholds will be adjusted every 2 years, with the first adjustment taking place on January 1, 2008, according to a formula set out in the annex. The chapter sets out definitions, general principles such as national treatment and nondiscrimination, criteria on the rules of origin used in the normal course of trade, and restrictions on the use of offsets. The chapter's provisions also set forth advanced notice requirements for intended procurements, time frames for the tendering process, documentation requirements, rules on the declaration of technical specifications, conditions for participation, criteria for awarding contracts, requirements concerning the publication of information on selected tenders, and a mechanism for the review of challenges that suppliers submit relating to the application of

³⁴ *U.S.-Colombia TPA*, arts. 7.7–7.8.

the TPA's provisions by a procuring entity of a party's government. The chapter also sets forth procedures and conditions pertaining to selective tendering and limited tendering, and provides for establishment of a Committee on Procurement consisting of representatives of each party to handle matters related to implementation of the government procurement provisions.

The annex to chapter 9 lists covered entities, covered purchases, and exclusions, and establishes the threshold amounts for purchases of goods and services by covered entities. In general, most goods and services are covered by the agreement; however, both the United States and Colombia exclude certain purchases and service sectors. For example, at the federal level, Colombia excluded certain procurements of the Ministries of National Defense, Agriculture and Rural Development, Social Protection, Mining and Energy, Transportation, and procurements for the preparation and conduct of elections. In the case of the United States, exclusions include certain procurements by the Departments of Agriculture, Commerce, Defense, Energy, Homeland Security, Transportation, and the General Services Administration. Subcentral provisions apply to all 32 of Colombia's departments (analogous to U.S. states) and the U.S. states of Arkansas, Colorado, Florida, Illinois, Mississippi, New York, Texas, and Utah as well as to Puerto Rico.

As noted above, the annex also contains the threshold adjustment formula. Thresholds at the federal level are at the same level as found in NAFTA; these amounts are lower than WTO levels, thereby opening up relatively more contracts for U.S. bidders.³⁵ On construction services, the United States' threshold is \$7,407,000, while, for the first 3 years of the TPA, Colombia's is the higher of \$7,407,000, as adjusted by the threshold adjustment formula, or \$8 million; after this period, Colombia's threshold adjusts to match the U.S. threshold.

The TPA stipulates that the state-owned *Empresa Colombiana de Petróleos* (ECOPETROL), which is not required to follow the government's procurement procedures, may follow procedures that are comparable to those in the TPA, and allows it more flexibility with regard to the tendering period, specifying a minimum 10-day bidding period. Most FTAs and TPAs require a 40-day tendering period, but the Chile, Australia, and Peru agreements provide for a slightly shorter period. In addition, all agreements allow the time period to be reduced to 10 days in certain cases, e.g., when an annual procurement plan is published. The TPA will allow for a reduction of the tendering period by up to 10 days, provided that the United States determines that Colombia has a robust electronic procurement system.³⁶

A list of special covered entities—entities in Colombia that are not subject to Colombia's government procurement law, conduct their procurement under private law, and compete in the commercial market—is provided in section D of the annex. This is groundbreaking in that this is the first U.S. FTA or TPA with such a list. While Colombia only agreed to cover these entities with regard to the national treatment obligation, their inclusion in the annex

³⁵ For example, for entities of the central level of government listed in each party's schedule, the threshold for procurement of goods and services is \$64,786. For entities at the subcentral level of government listed in each party's schedule, the threshold for procurement of goods and services is \$526,000. For construction services, the thresholds are the same as at the central level of government. There are also thresholds set forth for other covered entities.

³⁶ "If Colombia notifies the United States in writing that it has implemented an electronic procurement system that would enable it to comply with paragraph 3 of article 9.5 and the United States does not object within 60 days of the receipt of the notification, Colombia may reduce the time limit for submission of a tender pursuant to paragraph 3 of article 9.5. If the United States objects, Colombia shall not reduce its time limit for tendering under paragraph 3 of article 9.5." *U.S.-Colombia TPA*, "Side Letter on 30-Day Tendering."

means that U.S. firms will be assured of the same treatment that these companies give to Colombian companies.

Section H of the annex includes a small business reservation for Colombia,³⁷ which is comparable to that of the United States. Colombia's program is capped at \$125,000, while the U.S. reservation has no dollar limitation.

TPA Chapter 10—Investment

Chapter 10 of the U.S.-Colombia TPA outlines the rights of investors and the rules that govern new cross-border investment, and provides a clear outline of the investor-state dispute settlement process. Section A of the chapter outlines the rules governing new investments and sets forth the types of investments to which these rules apply.³⁸ Specifically, the TPA requires each party to give national and MFN treatment to investors and covered investments of the other party. The treatment of investors under the TPA must comply with customary international law. Other provisions are as follows:

- Expropriation will be only for a public purpose; it must be nondiscriminatory and accompanied by payment of prompt, adequate compensation in accordance with due process of law.
- All financial transfers relating to covered investments, including, but not limited to, contributions to capital, payment of interest, and payments under contracts, may cover the full value of the investment and may be made freely and without delay.
- Neither party will impose performance requirements as a condition of investment.³⁹
- Neither party will require that senior management or boards of directors be of any particular nationality.

The benefits of this chapter may be denied only in limited, delineated instances, as outlined in the TPA annexes of nonconforming measures. This section of the chapter also deals with nonconforming measures, special formalities, and information requirements, and provides for consultation and negotiation of disputes.

Section B of this chapter provides detailed information and procedures on the investor-state dispute settlement process, including submission of claims to arbitration, selection of arbitrators, conduct of the arbitration, transparency of the arbitral proceedings, governing law, and awards of monetary damages (not including punitive damages) or restitution. Under the terms of the provisions of section B, each party will consent to claims being submitted according to the process outlined in the TPA. The awards made by any arbitration tribunal

³⁷ “This Chapter does not apply to the reservation of contracts below \$125,000 for the benefit of Micro, Small and Medium-sized Companies (MIPYMES), including any type of preferences, such as the exclusive right to provide a good or a service, and measures conducive to facilitate the transfer of technology and sub-contracting.” *U.S.-Colombia TPA*, annex 9.1, sec. H.

³⁸ Investment related to financial services is covered separately in the financial services chapter (TPA chap. 12).

³⁹ Such provisions may include requirements to export a given level or percentage of goods or services, to purchase goods produced in a party's territory, or to transfer a certain technology or other proprietary information.

will have binding force only between the disputants and with regard to the particular case. The chapter also contains definitions of terms and relevant conventions for use in the resolution of investment disputes. An annex defines “customary international law” for purposes of the chapter, while another deals with expropriation (direct and indirect) in some detail. To be considered expropriation, a party’s action or series of actions must interfere “with a tangible or intangible property right or property interest in an investment,” and be based on clear transfers of title or outright seizure. Other annexes deal with the service of documents in such matters and the establishment of a possible future appellate body.⁴⁰

The investment chapter incorporates an additional four annexes, all of which are identical to the annexes in the U.S.-Peru TPA, but different from previous U.S. bilateral FTAs. All four of these annexes safeguard the rights of the Colombian and U.S. governments in the case of a dispute resolved through the investor-state process. Annex 10-E applies special dispute settlement provisions to the TPA, requiring that investors wait a minimum of 12 months before sending a claim to arbitration, and ensuring that investors have the opportunity to invest returns from investments in cases where they are not permitted to transfer capital outside of Colombia. Annex 10-F disallows claims related to the rescheduling of sovereign debt from arbitration under the investor-state dispute settlement process, unless there is a claim that the rescheduling agreement violates national treatment or MFN treatment. Annex 10-G requires an investor to choose to pursue an investment claim either in the host country’s court system or under the TPA’s investor-state dispute settlement process. This provision states that once the dispute has been submitted to a local court, the foreign investor may no longer initiate the investor-state process.

Nonconforming Measures Related to Investment

Colombia has two investment-related horizontal reservations under annex I. The first states that foreign investors may make portfolio investments in Colombian securities only through a foreign capital investment fund (*fondo de inversión de capital extranjero*). The second reservation states that if Colombia chooses to privatize a state-owned entity, the shares of that company may first be offered to employees or employee organizations before being offered to the public. In annex II, Colombia lists three horizontal reservations. Under the first, Colombia reserves the right to limit foreign ownership of real estate in border areas, on the coasts, and in insular territory. Border and coastal areas are defined as those within 2 km of the border or the coast; insular territory is undefined.⁴¹ The second reservation accords differential treatment to countries that have signed international agreements with Colombia before the entry into force of the TPA, specifically including agreements involving aviation, fisheries, or maritime matters. The third reservation permits Colombia to adopt measures “for reasons of public order,” provided that Colombia promptly informs the United States of the measure, that the measure responds to a serious threat to society, and that it meets certain other conditions. If such a measure is adopted, a claimant may submit a claim for compensation to investor-state arbitration, although there will be no award if the tribunal determines that Colombia has followed all the procedures outlined in the nonconforming measure.

⁴⁰ Under annex 10-D, within 3 years after the date of entry into force of the TPA, Colombia and the United States will consider whether to establish an appellate body to review awards resulting from arbitration under the TPA’s dispute settlement mechanism.

⁴¹ According to USTR, “insular” will probably be defined or changed in the final legal scrub.

Horizontal reservations taken by the United States under annex I address the programs of the Overseas Private Investment Corporation and the registration of public offerings of securities, as well as existing nonconforming measures at the state level. Under annex II, the first horizontal reservation listed by the United States appears to ensure that U.S. obligations under the TPA concerning the cross-border services trade or establishment of a service enterprise are equivalent to those undertaken in the GATS. The second horizontal reservation taken by the United States mirrors the reservation taken by Colombia, which accords differential treatment to countries under international agreements that were signed before the U.S.-Colombia TPA.

The specific sectors for which investment-related reservations are listed in annexes I and II are presented in table D-2.⁴² Each nonconforming measure is different, and will have varied effects on U.S. investment in the named sector. The inclusion of a sector in an annex does not mean that the entire sector has been exempted from coverage under the investment disciplines of the TPA.

TPA Chapter 11—Cross-Border Trade in Services

Chapter 11 of the TPA covers services other than financial services and air transport services.⁴³ The TPA will guarantee national and MFN treatment for providers of the covered services. Local presence is not required, and regulation of services and qualification requirements may not be unduly burdensome. There are transparency requirements in addition to those set out in TPA chapter 19 on transparency. The parties are permitted but not required to recognize education, experience, licenses, or certifications obtained in particular nonparty countries.

The parties commit to permit unfettered transfers and payments relating to the cross-border supply of services, and must allow such transactions to occur in a freely usable currency at the prevailing exchange rate on the date of transfer, subject to explicit exceptions. The benefits of this chapter may be denied under limited circumstances if the service supplier is controlled by persons of a nonparty. Chapter 11 includes specific language on express delivery services that defines the scope of coverage, confirms the desire to maintain market access no less favorable than that in effect when the TPA was signed, delineates the relationship between covered services and each party's postal monopoly, places limits on state subsidies, and ensures the independent regulation of state postal services (annex 11-D).

In annex 11-A, the parties agree that if a party establishes or maintains a fund to promote a particular service within its territory, discriminatory disbursement of such funds will be allowed under the TPA, even when the fund is administered in part or wholly by a privately owned entity. In annex 11-B, the parties agree to encourage relevant bodies to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers. This annex permits the parties, by mutual agreement, to encourage the relevant bodies in their respective territories to develop procedures for the temporary licensing of one another's professionals. Moreover, this annex establishes a Working Group

⁴² Investment-related reservations related to financial services, including insurance, are listed in annex III, and are presented in table 4-2 (services section) of this report.

⁴³ The covered measures include those adopted or maintained by central, regional, or local governments and authorities and by nongovernmental bodies exercising powers delegated by such governments and authorities.

Table D-2 U.S.-Colombia TPA: Industry sectors subject to nonconforming measures related to investment

Colombia		United States	
Current measures (Annex I)	Potential measures (Annex II)	Current measures (Annex I)	Potential measures (Annex II)
Fishing	Social services	Communications: Radio	Minority affairs
Private security and surveillance services	Minorities and ethnic groups	Atomic energy	Satellite broadcasting
Journalism	Cultural industries and activities	Mining	Social services
Domiciliary public services, including water, sewage, public refuse disposal, electric power and fuel gas distribution, basic public switched telephone services, and related activities	Jewelry design	Transportation services: Air transportation	Transportation services: Maritime transportation
	Performing arts	Customs brokerage	Insurance
	Music	Banking and other financial services	
	Visual arts	Insurance	
Cinematography	Publishing		
Free-to-air television	Handicraft industries		
Subscription television	Audiovisual services		
Toxic waste services	Advertising		
Specialty air services	Traditional expressions		
	Interactive audio and/or video services		

Source: *U.S.-Colombia TPA*, annex I, annex II, and annex III.

Note: Nonconforming measures are found in annexes I through III of the TPA. Annex I contains reservations for cross-border services, excluding financial services, to preserve existing measures that are inconsistent with the disciplines concerning nondiscrimination, performance requirements, and senior personnel. Annex II contains reservations for cross-border services, excluding financial services, to ensure that a party maintains flexibility to impose measures in the future that may be inconsistent with the disciplines of the TPA. Annex III contains both existing and future nonconforming measures related to financial services, including insurance. For information on the nonconforming measures related to financial services, see table 4-2.

on Professional Services, including representatives of each party, to facilitate the activities listed previously, with priority consideration given to engineering, architecture, and accounting services. At its first meeting, the working group is to consider establishing procedures for the temporary licensing of engineers with consultation by relevant professional bodies in its territory. Annex 11-C will allow Colombia to reserve the right to maintain certain limitations regarding nationality and local content requirements for specified professions, except to the extent that these limitations restrict the ability of enterprises to employ professionals and specialty personnel of other parties on a temporary basis. Annex 11-E addresses dealer protection laws, revising or eliminating automatic penalties imposed on companies upon termination of a commercial agency contract. Finally, the TPA includes a U.S. side letter and Colombian confirmation reply concerning the review of permanent residency and citizenship requirements in the states of New York, New Jersey, California, Texas, and Florida, and in the District of Columbia, for the following services subsectors: engineering, accounting, architecture, legal services, nursing, dentistry, medical general practitioners, and paramedics.

TPA Chapter 12—Financial Services

Chapter 12 of the TPA will generally require each party to allow cross-border trade in financial services, accord national treatment and MFN treatment to investors of the other party, and provide market access for financial institutions without limitations on the number of financial institutions, value of transactions, number of service operations, or number of persons employed.

As in previous bilateral U.S. FTAs, cross-border trade is limited to certain segments of the financial services industry, as outlined in annex 12.5.1. For insurance, TPA coverage of cross-border trade in insurance is limited to marine, aviation, and transit insurance; reinsurance; and insurance intermediation services such as brokerage and agency services. However, for Colombia, these cross-border insurance commitments will not become effective until Colombia has adopted legislation to modify its current law, but must become binding no later than 4 years after the entry into force of the agreement. For banking and securities, TPA coverage of cross-border trade is limited to the provision and transfer of financial information and financial data processing, advisory, and other auxiliary financial services as defined in the text of the chapter, although Colombia reserves the right to prohibit advisory services related to credit reference and analysis. Cross-border intermediation services (i.e., deposit-taking and lending) are prohibited.

Annex 12.15 outlines specific commitments of the two parties related to financial services.⁴⁴ For the United States, one specific commitment allows Colombian financial institutions to provide investment advice and portfolio management services to collective investment schemes located in the United States. The United States also commits to work with the National Association of Insurance Commissioners in its review of states that do not permit non-U.S. insurance companies to establish through branches. For Colombia, specific commitments include the following, most of which apply no later than 4 years after the entry into force of the TPA:

- allow U.S. financial institutions to provide investment advice and portfolio management services to collective investment schemes located in Colombia;
- allow banks to establish as branches;
- allow insurance companies to establish as branches;
- allow persons located in Colombia, or Colombian nationals outside its territory, to purchase insurance services from financial service suppliers located in the territory of any other party, outside of Colombia; and
- allow U.S. financial service providers to supply services related to Colombia's SAFPs.

Each party will be required to permit a financial institution of the other party to provide new financial services similar to those that it permits its own domestic institutions to provide, without additional legislative action. The chapter will not require either party to furnish or

⁴⁴ See box 4-2 (services section) for the Commission's estimate of the tariff rate equivalent of Colombia's commitments under the TPA in the banking sector.

allow access to information related to individual customers or confidential information, the disclosure of which would impede law enforcement, be contrary to the public interest, or prejudice legitimate commercial concerns.

Under chapter 12, a party could not require financial institutions of the other party to hire individuals of a particular nationality as senior managers or other essential personnel, and could not require more than a simple majority of the board of directors to be nationals or residents of the party. The parties agree that transparent regulations and policies are important, commit to publishing in advance all regulations of general application, and agree to maintain or establish mechanisms to respond to inquiries from interested persons. Where a party requires membership in a self-regulatory organization, the chapter provides that such organizations are subject to the national treatment and MFN obligations of this chapter. The two parties state that they recognize the importance of maintaining and developing expedited procedures for offering insurance services.

The TPA will establish a financial services committee to implement the provisions of chapter 12. Chapter 12 also provides for consultations and dispute resolution, and includes cross-references to the provisions covering dispute settlement procedures. Under the TPA, parties may retain specific financial services measures that do not conform to the TPA by including the measures in annex III of the agreement. An understanding incorporated into the chapter makes clear that parties have the right to designate a monopoly to supply some activities and services, as long as it is consistent with the TPA provisions on national treatment and MFN.

TPA Chapter 13—Competition Policy

Chapter 13 of the TPA addresses competition policy, designated monopolies, and state enterprises with a view to implementing economically sound policies and proscribing behaviors subject to this chapter that would restrict bilateral trade and investment. The chapter commits the United States and Colombia to maintain competition laws that prohibit anticompetitive business conduct; to ensure that competition agencies enforce the laws; and to ensure national treatment, due process, and a nondiscriminatory application of these laws. The parties agree to cooperate in the area of competition policy and establish a working group.

The chapter also requires the parties to 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 and that they will not operate in a manner that creates obstacles to trade and investment. The chapter includes provisions covering transparency, information requests, consultations, and definitions of terms. Neither party will have recourse to dispute settlement under the provisions of this chapter pertaining to national competition laws, cooperation, the working group, or consultations.

TPA Chapter 14—Telecommunications

Chapter 14 of the TPA commits each party to ensure a high degree of openness, transparency, and nondiscrimination for the provision of both basic and value-added telecommunication services. For example, it requires each party to ensure that enterprises of the other party have access to and use of any public telecommunication service offered

in its territory on reasonable and nondiscriminatory terms and conditions. The chapter imposes pro-competitive obligations on telecommunication service providers related to interconnection, number portability, dialing parity, and resale services.⁴⁵ In addition, major suppliers⁴⁶ of one party are also required to offer telecommunication services to entities of the other party on terms no less favorable than those accorded to their own subsidiaries, affiliates, and nonaffiliated partners,⁴⁷ particularly regarding the availability, provisioning, rates, and technical quality of such services. Major suppliers also face additional obligations related to network unbundling, colocation, interconnection, leased circuits, resale services, and access to poles, ducts, conduits, rights-of-way, and submarine cable systems.⁴⁸

Chapter 14 requires the governments of the United States and Colombia to make all regulations and measures publicly available, ensure the independence of the national telecommunications regulator, maintain dispute resolution procedures, and bestow regulatory entities with the authority to enforce compliance with TPA obligations. The chapter also contains commitments and obligations related to universal service, licensing, and the allocation/use of scarce resources. Chapter 14 also allows each party to exercise latitude regarding the application of regulations to public telecommunication services, if the telecommunications regulatory body determines that enforcement is not necessary to protect consumers, promote competition, or prevent discriminatory practices. Two annexes to chapter 14 establish exemptions, in both the United States⁴⁹ and Colombia,⁵⁰ for the provision of telecommunication services in rural areas.

⁴⁵ Par. 2 (resale), par. 3 (number portability), and par. 4 (dialing parity) of art. 14.3 (Obligations Relating to Suppliers of Public Telecommunications Services) do not apply to suppliers of commercial mobile services.

⁴⁶ Chap. 14 defines “major supplier” as a supplier of public telecommunication services that has the ability to materially affect the terms of participation in the relevant market due to its market position and control over essential facilities.

⁴⁷ Each party is required to maintain measures preventing major suppliers from engaging in anticompetitive practices. Such practices include, inter alia, cross-subsidization, using information obtained from competitors with anticompetitive results, and not making relevant technical and commercial information available to suppliers on a timely basis.

⁴⁸ Par. 1 (treatment by major suppliers), subpar. (2)(b)(iii) (availability of technical information), par. 3 (resale), par. 4 (unbundling), par. 5 (interconnection), par. 6 (leased circuits), par. 7 (colocation), and par. 8 (access to poles, ducts, conduits, and rights-of-way) of art. 14.4 (Additional Obligations Relating to Major Suppliers of Public Telecommunications Services) do not apply to major suppliers of mobile services.

⁴⁹ In the United States, a regulatory authority at the regional level may exempt a rural local exchange carrier from obligations contained in par. 2 (resale), par. 3 (number portability), and par. 4 (dialing parity) of art. 14.3 (Obligations Relating to Suppliers of Public Telecommunications Services). Art. 14.4 (Additional Obligations Relating to Major Suppliers of Public Telecommunications Services) does not apply to the United States with respect to a rural telephone company, unless a regulatory authority at the regional level orders that the requirements described in that article be applied.

⁵⁰ In Colombia, rural telephone companies may be exempted from obligations contained in par. 2 (resale), par. 3 (number portability), and par. 4 (dialing parity) art. 14.3 (Obligations Relating to Suppliers of Public Telecommunications Services) and the obligations in art. 14.4 (Additional Obligations Relating to Major Suppliers of Public Telecommunications Services). In addition, Colombia may exempt service suppliers that supply public telecommunications services in rural areas from the obligations contained in par. 2 (resale), par. 3 (number portability), and par. 4 (dialing parity) of art. 14.3 (Obligations Relating to Suppliers of Public Telecommunications Services) and from the obligations contained in par. 3 (resale), par. 4 (unbundling), par. 6 (leased circuits), and par. 7 (colocation) of art. 14.4 (Additional Obligations Relating to Major Suppliers of Public Telecommunications Services).

TPA Chapter 15—Electronic Commerce

Chapter 15 of the TPA includes provisions that reflect the increasingly important contribution that electronic services provides to global trade and local economies. Broadly, the parties have committed to nondiscriminatory treatment of digital products, agreed that customs duties will not be imposed on digital products transmitted electronically, and agreed to cooperate in numerous policy areas related to e-commerce. The e-commerce chapter of the TPA recognizes the importance of avoiding economic, regulatory, and technical barriers to e-commerce, and recognizes the applicability of WTO rules to e-commerce. Chapter 15 also affirms the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices.

The TPA allows for nondiscriminatory treatment of digital products, providing broad national treatment and MFN provisions. A party may not apply customs duties, fees, or other charges on or in connection with the import or export of digital products by electronic transmission. The customs value of imported carrier media that includes a digital product must be determined by the cost of the medium alone, without regard to the value of the digital products stored on the carrier medium.⁵¹ A party may not accord less favorable treatment to some digital products than it accords to other like digital products on the grounds that the digital products were created, stored, transmitted, published, or first made commercially available outside its territory, or on the basis of the nationality of the author, performer, producer, developer, or distributor of such digital products. The TPA also promotes e-commerce by requiring publication of laws, regulations, and other measures relating to e-commerce; providing flexibility for parties to mutually determine the appropriate authentication method for their electronic transactions; and encouraging paperless trade administration. However, the chapter does not prevent any party from imposing internal taxes, charges, or other fees on the domestic sale of such products, provided they are imposed in a manner consistent with the TPA.

As a result of the TPA, Colombia has agreed to sign the WTO ITA, which requires signatories to remove tariff and nontariff barriers to trade in IT products.⁵² Colombia's ITA membership is likely to promote e-commerce, reduce or eliminate duties on technology products and components, and result in stronger intellectual property protection. U.S. exporters of IT products that facilitate e-commerce, notably software, personal computers, and networking equipment, are also likely to benefit, as a preponderance of the ancillary goods and services that facilitate e-commerce are imported from the United States. To join the ITA, Colombia must present a schedule of tariff commitments, which must be approved by the ITA committee.

TPA Chapter 16—Intellectual Property Rights

Chapter 16 of the TPA provides enhanced standards for protection and enforcement. These standards include greater protections for digital products such as software, music, text, and videos; stronger protection for patents, trademarks, and confidential test data; and

⁵¹ Currently, countries use different methods to apply customs duties.

⁵² See box 5-1 (trade facilitation section) for more on the WTO Information Technology Agreement.

enforcement provisions focused on the deterrence of piracy and counterfeiting.⁵³ With only minor exceptions, the IPR chapter of the TPA is identical to that of the U.S.-Peru TPA.⁵⁴

The IPR chapter seeks to meet the negotiating objectives set by Congress in the Trade Promotion Act of 2002 (Trade Act): ensuring that IPR provisions reflect standards similar to those found in U.S. law; providing strong protection for emerging technologies, particularly with regard to the Internet; and ensuring effective enforcement.⁵⁵ Consistent with the Trade Act's additional requirement of respect for the November 2001 Doha Declaration on TRIPS and Public Health, the IPR chapter also includes "Understandings Regarding Certain Public Health Measures," in recognition of Colombia's ability to take necessary measures to protect public health by promoting access to medicines for all.⁵⁶

Trademarks, Geographical Indications, and Domain Names

The trademark section includes "major provisions" that should assist trademark owners in protecting their marks.⁵⁷ In article 16.2.2, the TPA mandates the protection of collective and certification trademarks and provides that geographical indications are eligible for protection in this category rather than through a separate system. U.S. industries prefer this manner of protection, which is similar to the U.S. system, over the separate registry of geographical indications used in other countries.⁵⁸ The TPA also prohibits the recognition of a geographical indication that is confusingly similar to a prior trademark.⁵⁹ Articles 16.2.6 and 16.2.7 of the TPA provide for greater protection for well-known marks, enabling owners to protect the marks against infringement by unregistered and dissimilar goods or services. This enhanced protection for well-known marks is considered particularly valuable to U.S. industry because of the frequency of infringements of well-known marks.⁶⁰ The TPA further provides, in article 16.2.9, for greater use of electronic means of interacting with trademark officials and for the establishment of online databases, with a 1-year transition period. With respect to domain names, articles 16.4.1 and 16.4.2 combine to address the problems of copyright and trademark cyberpiracy.

Copyrights and Related Rights and Protection of Certain Satellite Signals

The general provisions of the TPA require ratification of the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, which Colombia has accomplished. These are often referred to as the "Internet Treaties" because they seek to ensure that traditional means of IPR protection apply in the digital environment. The copyright and related rights section contains detailed provisions that require implementation of the obligations of the Internet treaties in a manner that is consistent with the U.S. Digital Millennium Copyright Act. These provisions include the requirement of clear language to ensure that temporary copies (such

⁵³ USTR, "Free Trade with Colombia: Brief Summary of the Agreement," 1.

⁵⁴ The TPA includes the following provisions not included in the U.S.-Peru TPA: a commitment by Colombia to ratify or accede to the Madrid Protocol, a side letter regarding outstanding patent applications and patent linkage, and a 2-year transition period for the obligation to grant an extension when there has been an unreasonable delay in the issuance of a patent (Peru had a 1-year transition).

⁵⁵ Trade Act of 2002, 19 U.S.C. Sec. 3802(b)(4)(A).

⁵⁶ Trade Act of 2002, 19 U.S.C. Sec. 3802(b)(4)(C).

⁵⁷ ITAC 15, *Advisory Committee Report*, 7.

⁵⁸ *Ibid.*, 8.

⁵⁹ U.S.-Colombia TPA, arts. 16.2.4 and 16.3.2.

⁶⁰ ITAC 15, *Advisory Committee Report*, 8.

as those made in a computer's RAM) are treated as regular copies and thus subject to the reproduction right; treatment that industry considers critical in the digital environment. It also includes provisions requiring that Colombia implement protections against the circumvention of technological protection measures and rights management information embodied in digital products.⁶¹

Also, Colombia has agreed, in article 16.5.5, to extend its terms of protection to life of the author plus 70 years for most copyrighted works, a TRIPS-plus provision that industry considers important and that was included in the U.S.-Peru TPA.⁶² The section further contains, in article 16.8, provisions similar to those originally included in NAFTA, protecting against the theft of encrypted satellite signals and the manufacture of, and trafficking in, tools to steal those signals.

Patents

U.S. industry considers the patent section of the TPA to provide “clarifications and improvements” to the TRIPS agreement that “will improve the effectiveness of patent protection in Colombia.”⁶³ Colombia agreed to accede to the International Convention for the Protection of New Varieties of Plants (1991) (known as the UPOV Convention). Colombia also agreed, in article 16.9.2, to provide patent protection for transgenic plants that meet the TRIPS three-step test.⁶⁴ This provision is aimed at ensuring that transgenic plants, particularly those arising from biotechnological research, will be eligible for patent protection in Colombia.⁶⁵

The government of Colombia agreed, in article 16.9.5, to place restrictions on how a third party may use a patented invention to generate data needed for the marketing approval of generic pharmaceutical products. Article 16.9.6 requires that the government address unreasonable delays in patent approvals or marketing approvals of pharmaceutical products by restoring the patent term to compensate for the delay. Unlike certain other U.S. FTAs, the patent section does not impose additional restrictions on compulsory licensing, parallel imports, and pre-grant opposition, nor does it require the protection of “second-use” patents.⁶⁶

⁶¹ U.S.-Colombia TPA, arts. 16.5.2, 16.6.2, 16.7.4 and 16.7.5; and ITAC 15, *Advisory Committee Report*, 12.

⁶² When obtainable, however, industry prefers a 95-year term of protection, as was included in the U.S.-Oman FTA. ITAC 15, *Advisory Committee Report*, 12.

⁶³ U.S. industry prefers, however, the patent provisions contained in the FTAs with Bahrain and Oman. ITAC 15, *Advisory Committee Report*, 14.

⁶⁴ The term “transgenic” describes an organism that has had genes from another organism put into its genome through recombinant DNA techniques. The “three-step test” refers to TRIPS art. 27.1, which states, “Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step, and are capable of industrial application.”

⁶⁵ Unlike in the Morocco FTA, Colombia did not agree to provide patent protection for transgenic animals. ITAC 15, *Advisory Committee Report*, 15.

⁶⁶ ITAC 15 opposes these omissions from the U.S.-Colombia TPA. ITAC 15, *Advisory Committee Report*, 16.

Measures Related to Certain Regulated Products

The provisions of the TPA build on the obligation in TRIPS article 39.3 that test data be protected against “unfair use.” Article 16.10.1(a) imposes an obligation of “non-reliance” on either the originator’s approval, or the originator’s data package itself, for a period of at least 5 years from the date of approval for a new pharmaceutical product, and 10 years from the date of approval for a new agricultural chemical product. The TPA includes a provision, in article 16.10.1(b), stating that to obtain data exclusivity protection, pharmaceutical or agricultural chemical companies may be required to seek marketing approval in Colombia within 5 years of obtaining initial approval for the new product. This 5-year cap was included to alleviate the concern that companies might attempt to extend their period of exclusivity indefinitely by delaying seeking marketing approval in different countries.

Article 16.10.2 provides that the period of protection for confidential test data submitted for marketing approval is independent from the period of protection granted for a patent. Article 16.10.3 requires Colombia to implement measures in its marketing approval process to prevent generic drugs from being approved during the term of the patent covering the pharmaceutical product (i.e., “linkage”) and requires the mandatory disclosure of the identity of the generic applicant seeking marketing approval during the patent term. In a related side letter (not included in the U.S.-Peru TPA), the government of Colombia agreed to reduce the backlog of patent applications by December 31, 2008. In addition, the governments of the United States and Colombia clarified that the patent linkage provision may be implemented in a variety of ways; the provision does not specify how or by whom a patent is identified to the approving authority or how a patent owner is notified of a request for marketing approval during the term of the patent.

Enforcement

U.S. industry regards the full and effective implementation of the enforcement provisions as the key to the success of this chapter in reducing piracy rates, counterfeiting, and other types of IPR infringement. The enforcement obligations set forth in article 16.11 go well beyond TRIPS in scope and specificity, covering transparency and the dissemination of information, civil and administrative procedures and remedies, provisional measures, special requirements related to border measures, criminal procedures and remedies, and ISP liability. The provisions on ISP liability, contained in article 16.11.29 and in the ISP side letter, mirror the standards set forth in the digital millennium act and are particularly important to U.S. industry.⁶⁷ U.S. industry regards the manner in which these new detailed enforcement provisions are implemented, primarily by judges, police, prosecutors, and administrative agencies, to be critical to the reduction of IPR infringement in Colombia.

Promotion of Innovation and Technological Development

The final section of the IPR chapter, article 16.12, recognizes the importance of promoting technological innovation, disseminating technological information, and building technological capacity. Accordingly, the governments of the United States and Colombia indicate that they will seek and encourage opportunities for collaborative science and technology research. This article, which is similar to one included in the U.S.-Peru TPA, is

⁶⁷ Ibid., 24–25.

consistent with TRIPS article 7, which recognizes that IPR protection and enforcement should contribute to the promotion of technological innovation and the dissemination of technology.

Understandings on Public Health and on Biodiversity and Traditional Knowledge

The TPA includes a number of side letters or “understandings” on intellectual property matters. The side letter entitled “Understanding Regarding Certain Public Health Measures,” which is also included in the U.S.-Peru TPA, sets forth the governments’ understanding that the obligations in the IPR chapter do not adversely affect their ability to take necessary measures to protect public health by promoting access to medicines for all. The side letter further recognizes the commitment to access to medicine, as reflected in the Doha Declaration and the subsequent Decision and Statement of the General Council (collectively the “TRIPS/health solution”), and clarifies that the IPR chapter does not prevent the effective utilization of that TRIPS/health solution.⁶⁸

The TPA also includes an Understanding Regarding Biodiversity and Traditional Knowledge. The understanding recognizes the importance of obtaining informed consent prior to accessing genetic resources, equitably sharing the benefits arising from the use of traditional knowledge and genetic resources, and promoting quality patent examinations to ensure that patentability conditions are satisfied. It further recognizes that these issues can be addressed in mutually agreed contracts. This is only the second time that language regarding biodiversity and traditional knowledge has been included in the IPR chapter of a free trade agreement (the first was in the U.S.-Peru TPA). Although the United States has maintained that, because of the difficulty of defining and regulating these subjects, they are best addressed within the context of WIPO, the inclusion of these subjects in bilateral FTAs has been of particular importance to the Andean countries.

TPA Chapter 17—Labor

Chapter 17 of the TPA commits each party to effectively enforce its respective labor laws while providing for reasonable exercise of discretion regarding such enforcement. This requirement is the only provision in chapter 17 that is enforceable through the dispute settlement provisions outlined in chapter 21 of the agreement (discussed later in this chapter of the report). In addition, the parties recognize their respective right to create and modify domestic labor laws, and acknowledge that it is not appropriate to encourage trade or investment by weakening or reducing the protection afforded in those laws. The parties also reaffirm their obligations as members of the ILO, seek to make their domestic laws provide for standards consistent with internationally recognized worker rights, and strive to improve those standards.

Each party agrees to provide domestic tribunal proceedings, allowing persons with a recognized interest under its law in a particular matter to seek enforcement of its labor laws. Such proceedings must be fair, equitable, and transparent; adhere to due process of the law;

⁶⁸ In December 2005, WTO members agreed to incorporate the TRIPS/health solution into the text of TRIPS itself.

and provide an opportunity for persons involved in such proceedings to support or defend their positions. Each party agrees to ensure independent review of tribunal actions, provide legal remedies to ensure enforcement, and promote public awareness of its labor laws. The TPA defines labor laws as statutes or regulations that directly relate to internationally recognized labor rights, including the right of association, the right to organize and bargain collectively, a ban on forced or compulsory labor, the protection of children and other young laborers, and standards on conditions of work, including minimum wages, hours of work, and occupational health and safety. The establishment of minimum wage standards and levels is specifically excluded from the definition of labor laws, as specified in chapter 17 of the TPA.

The TPA establishes a Labor Affairs Council that will oversee the implementation of chapter 17 provisions, prepare public reports on the implementation of the chapter, develop guidelines for the consideration of input from persons of a party, and strive to resolve matters related to cooperative labor consultations. Each party is required to designate an office within its labor ministry to serve as a contact with the other party and the public. The TPA allows each party to establish or consult existing national labor advisory committees, which may include members of the public and representatives of business and labor. The TPA also creates a Labor Cooperation and Capacity-Building Mechanism for the purpose of enhancing opportunities to improve labor standards and further advancing common commitments on labor matters, including the ILO Declaration of Fundamental Principles and Rights at Work and its Follow-up and ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

A party can request consultations with another party on matters under this chapter with a view toward finding a mutually acceptable resolution. Failing to find a mutually acceptable resolution, a party can call upon the Labor Affairs Council to consider the matter, but TPA dispute settlement actions will not be allowed except for matters regarding a party's failure to enforce its own labor laws. A separate mechanism on disputes dealing with the failure to enforce labor laws (contained in chapter 21) can result in an annual assessment of up to \$15 million payable into a fund set up and administered by the Free Trade Commission (established under chapter 20) for appropriate labor initiatives.

TPA Chapter 18—Environment

Chapter 18 of the TPA commits each party to ensure that its environmental protection laws provide for high levels of protection and strive to improve those laws, provide appropriate and effective remedies and sanctions for violations of environmental protection laws, provide opportunities for public participation, and promote public awareness of its environmental laws. The parties agree that trade or investment should not be encouraged by weakening or reducing domestic legal protections. To that end, the parties agree to ensure that domestic judicial, quasi-judicial, or administrative proceedings should be available to sanction or remedy violations of environmental laws. Such proceedings must be fair, open, and equitable; comply with due process of law; and provide access to persons with a recognizable legal interest. The parties agree to establish an Environmental Affairs Council that will meet to consider the implementation of the environmental provisions and the separate Environmental Cooperation Agreement (ECA), and to strive to resolve any controversies that may arise regarding the environmental provisions. There is a draft text of a memorandum of understanding between the parties concerning environmental cooperation,

including exchanges of experts or students, and a joint forum of government officials that will meet regularly to arrange and administer the various shared activities.

The parties agree to pursue cooperative environmental activities and provide for environmental consultations, but neither party will have recourse to dispute settlement for any matter arising under this chapter except for each party's commitment to enforce its respective domestic laws. A separate mechanism on disputes dealing with environmental claims could result in an annual assessment of up to \$15 million, payable into a fund jointly administered by the two governments for "appropriate environmental initiatives." The parties recognize the importance of conservation and sustainable use of biological diversity, and the preservation of traditional knowledge and practices that contribute to this objective. The parties also commit to working in multilateral forums to enhance the mutual supportiveness of multilateral environmental and trade agreements.

TPA Chapter 19—Transparency

Chapter 19 of the U.S.-Colombia TPA is virtually identical to the corresponding section of the U.S.-Peru TPA. The TPA continues the U.S. effort to obtain bilateral commitments to transparency disciplines applicable to domestic regulation, including provisions that enhance and ensure communication and disclosure between parties. Each party is required to make publicly available all laws, regulations, and procedures regarding any matter covered by the agreement.⁶⁹ Further, each party must establish or maintain procedures to provide review and appeal capabilities to any entities that will be affected by actions, rulings, measures, or procedures under the TPA. Such review tribunals are to be impartial, independent, and empowered to override administrative actions of the TPA.⁷⁰ For example, 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 provisions within the chapter.

The TPA requires transparency and efficiency in many areas relating to customs procedures, including the agreement's rules of origin, protection for U.S. trademarks, procedures for government procurement contracts, as well as the administration and enforcement of environmental laws. Chapter 19 also includes anticorruption provisions that seek to improve the trading environment by requiring each party to establish criminal prosecution and penalty procedures for bribery and corruption. Specific commitments obligate public officials of each party to protect informers and to work in other international forums to aid and support anticorruption provisions.

TPA Chapter 20—Administration of the Agreement and Trade Capacity Building

Chapter 20 of the TPA establishes a Free Trade Commission of cabinet-level representatives to supervise the implementation of the TPA, consider all types of matters raised under it,

⁶⁹ Colombia commits to publish laws and regulations on the Internet and to ensure procedural certainty and fairness.

⁷⁰ Generally, such rights already exist under U.S. law.

resolve disputes that may arise regarding the interpretation or application of this agreement, establish and task working groups, and fulfill other similar duties. The Free Trade Commission includes the USTR and the Colombian Ministro de Comercio, Industria y Turismo; Peru's Ministro de Comercio Exterior y Turismo is also a member. Under this chapter, each party also designates a TPA coordinator to prepare for Free Trade Commission meetings and follow up on its decisions. The chapter also includes provisions on administering dispute settlement proceedings.

Because trade capacity building is recognized as a catalyst for the reforms and investments needed to foster trade-driven economic growth and reduce poverty, section B of this chapter establishes a Committee on Trade Capacity Building. This committee will seek to prioritize trade capacity-building projects and invite the participation of international donor organizations, private sector entities, and nongovernmental organizations to encourage trade and reform. The committee also will provide oversight to a working group on customs administration and trade facilitation created under the provisions of this chapter, but directed to focus first on implementing the provisions of Chapter 5—Customs Administration and Trade Facilitation.

TPA Chapter 21—Dispute Settlement

Chapter 21 of the TPA commits both parties to consult and cooperate on TPA matters: one party can invoke dispute settlement if it believes the other has a TPA-inconsistent measure or has failed to carry out a TPA obligation, or if it believes that a benefit it reasonably expected has not been given. The complaining party may choose the forum for arbitration, including the Free Trade Commission (established in annex 20.1), the WTO, or other dispute settlement bodies available to both parties. Any party may request consultations with the other. If the consultations fail to resolve the matter by a prescribed deadline, any party can request a meeting with the Free Trade Commission, followed by a request for an arbitral panel, if necessary. Once a panel constituted under the chapter has supplied its final report, the report will be made public and the parties will be obliged to agree on the resolution of the dispute in question in a manner “which normally shall conform with the determinations and recommendations, if any, of the panel.” If parties are unable to agree on a resolution, compensation can be negotiated. If nonimplementation of the agreed outcome is evident, the complainant can advise the other party that it intends to suspend benefits of equivalent effect. Labor laws and environmental laws are treated separately. In such situations, the panel may impose a monetary assessment on the violating party, not to exceed \$15 million annually, adjusted for inflation. These assessments are paid into a fund established by the Free Trade Commission and are then spent on appropriate labor or environmental initiatives as directed by the commission. The provisions of chapter 13 (Competition Policy) are not subject to dispute settlement provisions of the TPA.

This chapter also contains provisions directing compliance reviews and 5-year reviews under the TPA. The chapter also states that parties will facilitate the use of arbitration and alternate dispute resolution to settle international commercial disputes between private parties in the free trade area and authorizes the commission to establish an advisory panel on private commercial disputes. This chapter does not apply to excepted matters covered under Article 22.1 or disputes concerning a breach of Andean Community Law. The chapter contains administrative procedures for requesting a panel, establishing a roster of panelists, selecting panelists, and issuing reports.

TPA Chapter 22—Exceptions

This chapter discusses general exceptions to various chapters of the TPA and mentions specific provisions of various WTO agreements, which are incorporated by reference. This chapter exempts the disclosure of essential security, taxation, or other information, which would impede law enforcement or be contrary to the public interest.

TPA Chapter 23—Final Provisions

This chapter defines the legal scope of the agreement and contains the mechanisms for acceding to the TPA and putting it into force. The parties must consult on any changes made to provisions of the WTO agreement incorporated in this text to determine if the same principle will apply herein. If the parties agree, any country or group of countries may accede to the TPA. The TPA will enter into force 60 days after the exchange of written notifications by the United States and Colombia that each has completed its respective domestic legal procedures and agree that “The English and Spanish texts of this Agreement are equally authentic.”⁷¹ Any withdrawal from the TPA will take effect 6 months after written notice.

⁷¹ *U.S.-Colombia TPA*, art. 23.6.

APPENDIX E
COLOMBIA: ECONOMIC PROFILE AND
U.S.-COLOMBIA BILATERAL TRADE
TABLES

COLOMBIA

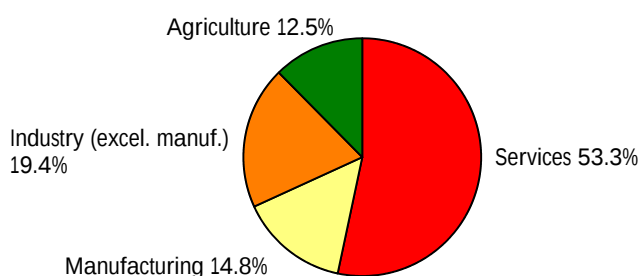


ECONOMIC PROFILE

Economic indicators

	2001	2005
Population (mn)	42.8	45.6
GDP (US\$ bn)	82.0	122.3
GDP per capita (US\$)	1,915.9	2,682.0
Real GDP growth (%)	1.5	5.1
Goods exports (US\$ mn)	12,848.0	21,726.0
Goods imports (US\$ mn)	12,268.0	20,132.0
Trade balance (US\$ mn)	580.0	1,594.0

GDP by sector, 2005
(nominal GDP = \$122.3)



Colombia's main trade commodities, US\$ million, 2005

Exports		Imports	
Petroleum & related products	5,558.0	Intermediate goods and raw materials ..	9,505
Coal	2,598	Capital goods	7,694
Coffee	1,470	Consumer goods ...	3,981

Peru's main trading partners, percent of total, 2005

Exports		Imports	
United States	40.4	United States	28.1
Venezuela	9.2	Venezuela	6.4
Ecuador	5.7	Mexico	5.9
Peru	3.5	Brazil	5.5

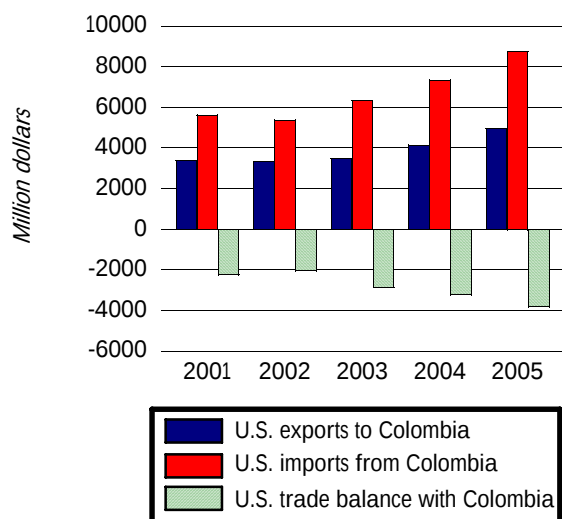
Economic profile sources: USITC, *Dataweb*; EIU, *Country Commerce*; EIU, *Country Profile*, 2005; EIU *Colombia Economic Structure*; Embassy of Colombia, "Colombia Trade News"; and UNCTAD, Investment Instruments.

Economic overview

- ▶ Colombia is a lower-middle-income country located in the Andean region of South America. Its population is approximately one-seventh that of the United States and its GDP was less than 1 percent of the U.S. GDP.
- ▶ Colombia's economy is relatively diversified. In the late 1980s, the government moved from its import substitution industrialization policies to a market-oriented economy, increased liberalization of trade and financial flows, and significantly reduced the state's role in the Colombian economy.
- ▶ Agriculture accounts for 13 percent of GDP and consists primarily of cattle rearing and coffee growing. After the Netherlands, Colombia is the world's second-largest exporter of cut flowers. Livestock and fish products also represent significant agricultural exports, and Colombia is the world's 13th-largest meat producer..
- ▶ Although mining represents only 5 percent of GDP, it accounts for approximately one-third of exports. The sector is driven primarily by petroleum, gas, and coal production. The main manufacturing sector industries are food processing and beverages, textiles and apparel, chemicals, and heavy industry. These industries also account for the main exported manufacturing products, and the sector is dominated by large private companies.

COLOMBIA-CONTINUED

U.S. merchandise trade with Colombia, 2001-2005



Preferential trade agreements

- ▶ Colombia is a member of the Andean Community customs union and free trade area that also includes Bolivia, Peru, and Venezuela. Andean Community members are also part of the Andean-Mercosur (Argentina, Brazil, Paraguay, and Uruguay) FTA, which was implemented in January 2005, and is expected to be fully phased in by 2016.
- ▶ Colombia has full or partial bilateral trade agreements with the Caribbean Community (Caricom), Chile, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.
- ▶ Colombia, Mexico, and Venezuela form the Group of Three free trade agreement. The three countries have been gradually eliminating tariffs and nontariff barriers among themselves since July 2004.
- ▶ Colombia has signed bilateral investment treaties with Chile, Cuba, Italy, Peru, Spain, and the United Kingdom.

U.S.-Colombia bilateral trade in goods

- ▶ U.S. trade with Colombia is small, accounting for approximately 0.6 percent of total U.S. goods exports and 0.5 percent of total U.S. goods imports in 2005. Colombia ranked as the 28th largest market for U.S. exports and the 31st largest import supplier for the United States in 2005.
- ▶ The United States is Colombia's largest bilateral trading partner, supplying 40 percent of Colombia's global imports and purchasing 40 percent of Colombia's total exports in 2005.
- ▶ The U.S. trade deficit increased with Colombia from 2001 through 2005, primarily as a result of increased imports from Colombia, driven substantially by increasing values of energy-related products.
- ▶ U.S. exports to Colombia in 2005 totaled more than \$4.9 billion and consisted mainly of cereals (such as corn and wheat); machinery (such as telecommunications, drilling and boring, and data processing equipment); and chemicals (such as vinyl chloride, propylene, and styrene).
- ▶ U.S. imports from Colombia in 2005 totaled more than \$8.7 billion and consisted mainly of energy-related products (such as crude petroleum and coal), minerals (including gold and ferronickel); agricultural products (including coffee, cut flowers, and bananas); and apparel.
- ▶ Exports from Colombia classified in approximately 6,300 tariff lines or products are eligible to enter the United States free of duty under ATPA.

Economic profile sources: USITC, *Dataweb*; EIU, *Country Commerce*; EIU, *Country Profile*, 2005; EIU *Colombia Economic Structure*; Embassy of Colombia, "Colombia Trade News"; and UNCTAD, Investment Instruments.

Leading U.S. exports to Peru, US\$ million, 2005

Machinery and parts	709.2
Plastics and chemicals	357.5
Mineral fuels and oils	216.4
Cereals	107.2
Vehicles	73.3
Other	574.4
Total	2,038.0

Leading U.S. imports from Peru, US\$ million, 2005

Precious stones and metals	1,827.4
Mineral fuels & organic chemicals	777.4
Apparel	746.6
Copper & related articles	592.7
Vegetables	160.6
Other	1,017.9
Total	5,122.6

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table E-1 Leading U.S. exports to Colombia, total U.S. exports to the world, and Colombian share of total, 2005

HTS subheadings	Description	U.S. exports to Colombia	U.S. exports to world	Colombian share
		US\$ thousands		Percent
1005.90	Corn (maize), other than seed corn	228,228	4,860,457	4.7
2903.21	Vinyl chloride (chloroethylene)	214,873	668,429	32.1
2710.19	Petroleum oils & oils (not light) from bituminous minerals or preps nesoi 70%+ by wt. from petroleum oils or bitum. min.	143,292	9,653,155	1.5
1001.90	Wheat (other than durum wheat), and meslin	126,667	3,266,140	3.0
9880.00	Estimate of non-Canadian low value export shipments; compiled low value shipments to Canada; and shipments not identified by kind to Canada	113,638	20,443,326	0.6
2901.22	Propene (propylene)	108,475	186,719	58.1
8525.20	Transmission apparatus incorporating reception apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television	106,858	3,266,140	3.3
8431.43	Parts for boring or sinking machinery, nesoi	88,634	5,680,174	1.6
8473.30	Parts and accessories for automatic data processing machines and units thereof, magnetic or optical readers, transcribing machines, etc., nesoi	87,260	12,171,725	0.7
2902.50	Styrene (vinylbenzene; phenylethylene)	83,741	1,332,304	6.3
3100.00	Fertilizers (exports only; includes crude fertilizers from other areas)	68,592	2,906,094	2.4
8431.39	Parts for lifting, handling, loading or unloading machinery, nesoi	66,869	1,271,584	5.3
8431.49	Parts and attachments, nesoi, for derricks, cranes, self-propelled bulldozers, graders etc. and other grading, scraping, etc. machinery	60,271	3,022,815	2.0
5201.00	Cotton, not carded or combed	52,297	3,920,176	1.3
8803.30	Parts of airplanes or helicopters, nesoi	51,696	14,702,468	0.4
3004.90	Medicaments, in measured doses, etc. (excluding vaccines, etc., coated bandages etc. and pharmaceutical goods), nesoi	49,584	9,879,554	0.5
8471.49	Digital automatic data processing machines and units thereof presented in the form of systems, n.e.s.o.i.	42,199	2,922,5942	1.4
1201.00	Soybeans, whether or not broken	41,685	6,424,528	0.6
8706.00	Chassis fitted with engines for tractors, motor vehicles for passengers, goods transport vehicles and special purpose motor vehicles	40,786	168,139	24.3
2304.00	Soybean oilcake and other solid residues resulting from the extraction of soy bean oil, whether or not ground or in the form of pellets	38,127	1,130,743	3.4
	Subtotal	1,813,772	108,707,231	1.7
	Other	3,148,363	695,284,659	0.5
	Total	4,962,135	803,991,890	0.6

Source: U.S. Department of Commerce.

Table E-2 Colombia: Selected nontariff impediments

Topic	Selected nontariff issue	Source year (latest)	Relevant TPA chapter(s) ^a
Agriculture	Discretionary import licensing bans imports of milk powder and poultry parts.	2006 ^b	2
Agriculture	Price band system on sensitive agricultural products.	2006 ^{f, g}	2
Automotive products	Andean Community Common Automotive Policy favors local investment through minimum local content requirements for reduced import duties.	2006 ^{c, f, g}	2, 4
Discriminatory taxes	35 percent value added tax on imported whiskey aged for less than 12 years, which is more characteristic of U.S. whiskey, compared to a rate of 20 percent for whiskey aged for 12 or more years, most of which comes from Europe. The consumption tax regime discriminates against imported distilled spirits by applying arbitrary breakpoints.	2006 ^b	2
Government procurement	A number of provisions favor domestic suppliers in government procurement.	2006 ^b	9
Government procurement	Lack of transparency in exemption regimes.	2006 ^{b, d}	9
IPR	Infringement of IPR remains a serious problem in Colombia, especially in the area of trafficking and producing counterfeit goods. Issues concern lack of uniformity and consistency in IPR registration and oversight procedures, lax customs enforcement, and the inability to conclude legal cases.	2006 ^b	16, 19
Professional services	Economic needs tests and labor composition requirements hamper provision of professional services.	2006 ^{b, d}	11
Regulatory	Labeling requirement for textile products.	2006 ^b	2, 3
Regulatory	Sanitary registration required for imports of processed foods, pharmaceuticals, cosmetics, and household insecticides.	2006 ^f	
Remanufactured goods	Colombia treats remanufactured goods as used goods, thereby limiting the market access for major U.S. makers of high-quality remanufactured goods.	2006 ^{b, e}	2, 4
Remanufactured goods	Colombia maintains prohibition on various remanufactured items, including agricultural equipment, aircraft and related goods, automotive/transportation and related parts, construction equipment, environmental goods, infrastructure and machinery goods, and medical and scientific equipment.	2006 ^{e, g}	2, 4
Services	Restrictions on transborder transportation, and requirement that natural or legal persons provide land cargo transportation.	2006 ^b	
SPS	SPS measures banning U.S. exports of cattle and beef.	2006 ^b	6
Telecommunication services	Substantial barriers to entry stemming from government regulations.	2006 ^{b, d}	14
Textiles, apparel, and footwear	Various restrictions such as requirement that importer present a list of suppliers, buyers, and clients to Colombian customs and restrictions on number of tariff subheadings and import value.	2006 ^b	2, 3, 5

Sources: As cited.

Note: Examples selected based on survey of standard sources regarding nontariff trade impediments. Citations represent the Colombian environment in the year of publication; no assumptions are made as to whether these represent the current environment.

^aIncluding annexes and side letters. *U.S.-Colombia TPA*.

^bUSTR, "Colombia," *2006 National Trade Estimate Report on Foreign Trade Barriers*.

^cEuropean Commission, *EU Market Access Sectoral and Trade Barriers Database*.

^dUSCS and U.S. Department of State, *Doing Business in Colombia*.

^eU.S. Department of Commerce, ITA, Industry Trade Policy reports.

^fEIU, *Colombia: Country Commerce*.

^gWTO, *Trade Policy Review—Colombia*.

Table E-3 Leading U.S. imports from Colombia, total U.S. imports from the world, and Colombian share of total, 2005

HTS subheadings	Description	U.S. imports from Colombia	U.S. imports from world	Colombian share
		1,000 dollars		Percent
2709.00.20	Petroleum oils and oils from bituminous minerals, crude, testing 25 degrees A.P.I. or more	1,902,754	88,895,796	2.1
2709.00.10	Petroleum oils and oils from bituminous minerals, crude, testing under 25 degrees A.P.I.	1,236,986	48,435,154	2.5
2701.12.00	Coal, bituminous, whether or not pulverized, but not agglomerated	637,934	1,021,738	62.4
0901.11.00	Coffee, not roasted, not decaffeinated	552,959	2,222,981	24.9
2710.19.05	Distillate and residual fuel oil (including blends) derived from petroleum or oils from bituminous minerals, testing under 25 degrees A.P.I.	528,603	23,819,186	2.2
9999.95.00	Estimated imports of low valued transactions	389,228	18,226,139	2.1
2701.19.00	Coal, other than anthracite or bituminous, whether or not pulverized, but not agglomerated	312,989	388,799	80.5
7108.12.10	Gold, nonmonetary, bullion and dore	297,391	3,573,530	8.3
0603.10.60	Roses, fresh cut	189,069	274,736	68.8
6203.42.40	Men's or boys' trousers and shorts, not bibs, not knitted or crocheted, of cotton, not containing 15% or more by weight of down, etc	163,098	5,050,256	3.2
2710.11.25	Napthas (exc. motor fuel/mtr fuel blend. stock) fr petroleum oils & bitumin minerals (o/than crude) or preps 70%+ by wt. fr petroleum oils	146,214	6,615,774	2.2
0803.00.20	Bananas, fresh or dried	146,006	1,041,128	14.0
0603.10.80	Cut flowers and flower buds suitable for bouquets or ornamental purposes, fresh cut, nesoi	103,086	290,325	35.5
0603.10.70	Chrysanthemums, standard carnations, anthuriums and orchids, fresh cut	96,732	108,745	89.0
2523.29.00	Portland cement (other than white cement), whether or not colored	78,333	1,229,886	6.4
9801.00.10	U.S. goods returned without having been advanced in value or improved in condition while abroad	71,121	34,453,683	0.2
6204.62.40	Women's or girls' trousers, breeches and shorts, not knitted or crocheted, of cotton, nesoi	63,590	5,909,064	1.1
7103.91.00	Rubies, sapphires and emeralds, worked, whether or not graded, but n/strung (ex. ungraded temporarily strung), mounted or set	54,331	411,919	13.2
0803.00.30	Plantains, fresh	49,876	92,664	53.8
3904.10.00	Polyvinyl chloride, not mixed with any other substances, in primary forms	46,354	380,843	12.2
	Subtotal	7,066,654	242,442,346	2.9
	Other	1,703,616	1,419,937,323	0.1
	Total	8,770,270	1,662,379,669	0.5

Source: U.S. Department of Commerce.

Table E-4 U.S. imports for consumption from Colombia, by duty treatment, 2003–05

Item	2003	2004	2005
<i>1,000 dollars</i>			
Total imports	6,292,060	7,127,245	8,603,279
Dutiable ^a —total	1,147,053	802,828	877,626
Duty-free ^b —total	5,145,007	6,324,417	7,725,654
Duty-free by program:			
NTR ^c	2,049,927	2,248,742	2,865,399
GSP ^d	159,186	186,525	188,907
ATPA/ATPDEA ^e	2,909,818	3,888,696	4,653,127
Other duty-free ^f	27,077	455	18,221
<i>Percent</i>			
Total imports	100.0	100.0	100.0
Dutiable	18.2	11.3	10.2
Duty-free	81.8	88.7	89.8
Duty-free by program:			
NTR	39.8	35.6	37.1
GSP	3.1	2.9	2.4
ATPA/ATPDEA	56.5	61.5	60.2
Other duty-free	0.5	(^g)	(^g)

Source: Compiled from official statistics of the U.S. Department of Commerce.

Note: Because this table corrects entries reported in inappropriate categories of dutiability, it includes data that differ from their counterparts in the other tables. Data in all other tables are based on entries as reported. Also, total imports in this table may not reflect total imports in other tables because U.S. imports from ATPA countries that enter through the U.S. Virgin Islands are excluded.

Note: Figures may not add to totals shown because of rounding.

^aDutiable value excludes the U.S. content entering under HTS heading 9802.00.80 and heading 9802.00.60, and misreported imports.

^bCalculated as total imports less dutiable value.

^cValue of imports which have an NTR duty rate of free.

^dReduced by the value of NTR duty-free imports and ineligible items that were misreported as entering under the GSP program.

^eIncludes imports under both ATPA and ATPDEA. ATPDEA amended ATPA to authorize duty-free treatment for certain products previously excluded under ATPA. ATPA/ATPDEA data are reduced by the value of an NTR duty-free imports and ineligible items that were misreported as entering under ATPA. ATPA, as amended, is scheduled to expire on December 31, 2006.

^fCalculated as a remainder, and represents imports entering free of duty under column 1-special and non-dutiable U.S. value of imports entering under HTS 9802.00.60 and 9802.00.80.

^gLess than 0.5 percent.

APPENDIX F
ANDEAN TRADE PREFERENCE ACT

Andean Trade Preference Act

Colombia is a beneficiary of the Andean Trade Preference Act (ATPA).¹ The United States enacted ATPA in 1991 to encourage the South American Andean countries of Bolivia, Colombia, Ecuador, and Peru to promote broad-based economic development and viable economic alternatives to coca cultivation and cocaine production in the region. ATPA expired in 2001, but was renewed retroactively and amended in 2002 by the Andean Trade Promotion and Drug Eradication Act (ATPDEA).²

ATPA provides duty-free treatment to qualifying products from the four designated beneficiary countries. ATPDEA expanded preferential treatment to additional products previously ineligible under the original ATPA, namely certain textiles and apparel, footwear, tuna in foil or other flexible airtight packages (not cans), petroleum and petroleum derivatives, and certain watches and watch parts. In all, nearly 6,300 tariff rate lines are covered by ATPA trade preferences, of which about 700 were added by ATPDEA.³ The following products are excluded from preferential tariff treatment under ATPA: textile and apparel articles not otherwise eligible for preferential treatment under ATPDEA; canned tuna; above-quota imports of certain agricultural products subject to tariff-rate quotas, including sugars, syrups, and sugar-containing products; and rum and tafia.

Colombia and the other ATPA beneficiaries also are designated beneficiary developing countries under the U.S. Generalized System of Preferences (GSP) program.⁴ ATPA and GSP provisions are similar in many ways, and many products can enter the United States free of duty under either program. However, Andean producers tend to prefer the more comprehensive ATPA for three reasons. First, ATPA authorizes duty-free treatment on more tariff categories than the GSP, including some textile and apparel articles ineligible for the GSP. Second, unlike the GSP, imports under ATPA are not subject to competitive need limits and country income restrictions. This provision means that preferential treatment is not forfeited if imports of a product or national income exceed a certain threshold.⁵ Third, ATPA-qualifying rules of origin for products are more liberal than those of the GSP; the GSP requires that 35 percent of the value of the product be added in a single beneficiary country or in a specified association of GSP-eligible countries, whereas ATPA allows regional aggregation within ATPA plus U.S. and Caribbean content.

Duty-free treatment under both the ATPA (as amended by ATPDEA) and GSP programs is due to expire on December 31, 2006. This report assumes that TPAs enter into force for both

¹ Public Law 102-182, title II; 105 STAT. 1236, 19 U.S.C. 3201–3202.

² Public Law 107-210, title XXXI. Use of the acronym “ATPA” refers to ATPA as amended by ATPDEA.

³ USTR, “Fact Sheet: New Andean Trade Benefits.” Accordingly, approximately 90 percent of U.S. tariff rate lines accord duty-free treatment to U.S. imports from the ATPA region (60 percent are free of duty under ATPA and 30 percent have normal trade relations (NTR) rates of free). U.S. imports under the remaining approximately 10 percent of tariff rate lines are dutiable.

⁴ The U.S. GSP program originally was enacted for 10 years pursuant to title V of the Trade Act of 1974 (Public Law 93-618, 88 Stat. 2066 et seq.). The program has expired and been renewed several times.

⁵ Under the GSP, a beneficiary developing country loses benefits for an eligible product when U.S. imports of the product exceed either a specific, annually adjusted value or 50 percent of the value of total U.S. imports of the product in the preceding calendar year—known as the competitive need limit. See sec. 503(c)(2) of the Trade Act of 1974, as amended. As mentioned above, ATPA has no competitive need limits.

Colombia and Peru, and that ATPA is not renewed for Bolivia and Ecuador.⁶ Upon entry into force of their respective TPAs, both Colombia and Peru are to be removed from enumeration as designated ATPA and GSP beneficiaries.

⁶ The Commission's June 2006 report on the U.S.-Peru TPA considered two scenarios—one in which ATPA preferences continue for the remaining three beneficiaries (Bolivia, Colombia, and Ecuador), and one in which ATPA preferences expire for the remaining beneficiaries. Because ATPA is a unilateral U.S. preferential trade program, the impact of these scenarios was on U.S. imports. The Commission found the effects in the scenario in which ATPA expires to be driven largely by Colombia's loss of preferential tariff treatment relative to Peru, particularly in the crops sector, which includes cut flowers (of which Colombia is the region's largest supplier). USITC, *U.S.-Peru Trade Promotion Agreement*.

APPENDIX G

GTAP MODEL AND TABLES

The GTAP Model

The discussion that follows focuses on the quantitative analysis incorporated in this report—the CGE analysis presented in chapter 2. This appendix details the procedures used to adapt the standard GTAP model in order to assess the likely effects of the U.S.-Colombia TPA. In the first section, the basic features of the static GTAP model are introduced. In the second section, the adjustments made to the standard database are discussed. The third and fourth sections present various aspects of the baseline construction and model solution techniques. The fifth section discusses the estimation of the likely economic effects of the U.S.-Colombia TPA and model limitations.

The Standard GTAP Model¹

The GTAP project consists of a documented global database on international trade, economy-wide interindustry relationships, and national income accounts (the GTAP database), and a standard modeling framework to organize and analyze the data (the GTAP model). It allows for comparisons of the global economy in two environments: one in which the base values of policy instruments such as tariffs or export restrictions are unchanged, and one in which these measures are changed, or “shocked,” to reflect the policies that are being studied. A change in policy makes itself felt throughout the economies depicted in the model. The static model by design does not produce information about the speed with which changes occur or about what happens to various dimensions of the economies in the meantime.

Results from the GTAP model are based on established global trade patterns. This means that the model is unable to estimate changes in trade in commodities that historically have not been traded. That is to say, if a particular commodity is not traded between two economies, the model will assume that there will always be no trade in that commodity. Furthermore, patterns of trade may exist for such reasons as the distance between countries or cultural preferences, which are imperfectly captured by the model. The GTAP model does not directly account for historical or cultural factors as determinants of trade patterns. The model assumes that these factors are unaffected by the trade policy change.

In the GTAP model, domestic products and imports are consumed by firms, governments, and households. Product markets are assumed to be perfectly competitive (implying zero economic profit for the firm), with imports as imperfect substitutes for domestic products (i.e., consumers are aware of the source of the products and may distinguish between them based on the foreign or domestic origin), and sectoral production determined by global demand and supply of the output.

¹ For further information, see Hertel, ed., *Global Trade Analysis*.

Updating the GTAP Database

The current version of the GTAP database (release 6.1) covers trade in 56 commodity and service aggregates, or GTAP sectors, among 92 economies.² For the purpose of the present analysis, the database has been aggregated into 8 economies, leaving all 56 sectors disaggregated (table G-1).

In addition to the data on bilateral trade in each of the sectors in the model, data are incorporated on the domestic production and use of each sector (including use in the production of other commodities and services); the supply and use of land, labor, and capital; population; and GDP. The database also contains information on tariffs, some nontariff barriers, and other taxes. An additional component of the data is a set of parameters which, in the context of the model's equations, determine economic behavior. These are principally a set of elasticity values that determine, among other things, the extent to which imports and domestically produced goods are substitutes for one another.

The standard GTAP data are based on the year 2001—i.e., trade flows and barriers and other data refer to the world in that year. For the purpose of the present study, the standard data were projected to reflect conditions that may prevail in 2007; the benchmark update incorporates actual increases in U.S. and Colombian trade flows, as well as U.S. trade flows with the world at large, through 2005,³ and projections of regional and global GDP growth through 2007.⁴ Data are from the U.S. Department of Commerce (U.S. imports and exports, as well as U.S.-Colombia bilateral trade), and the World Bank (GDP projections). The trade protection data were also adjusted to reflect policy measures ratified under the Uruguay Round and the Agreement on Textiles and Clothing (ATC), ATPA as amended by ATPDEA, full implementation of NAFTA, implementation of the U.S.-Peru TPA, tariff liberalization in the metals sector stemming from the U.S.-Chile FTA, and preferences on sugar imports granted to members of the U.S. FTA with Central America and the Dominican Republic. Other recent bilateral FTAs between the United States and Australia, Bahrain, Morocco, and Singapore are reflected only in the updated U.S. import and export flows. Trade with these countries is aggregated into the larger groups “rest of the Americas” and “rest of the world,” in which their contribution to average tariff rates is small.

Key Assumptions

The Commission's simulation liberalizes trade completely in all goods subject to liberalization under the U.S.-Colombia TPA. There is no implicit or explicit time elapsing in the model, and no adjustment costs are considered. This assumption means, first, that all provisions of the TPA are assumed to be fully phased in immediately on January 1, 2007, rather than staged in over many years per the TPA. The assumption also means that the modeled results are long-run effects of a fully implemented TPA in an economy otherwise

² The previously published version of GTAP, version 6.0, includes 87 economies. Among those additional economies in version 6.1 is Ecuador.

³ Compiled from official statistics of the U.S. Department of Commerce. The years over which the model was updated span a period of tremendous growth in certain commodity prices, particularly oil, in 2005. As a consequence, it was not possible to fully update trade flows in this product. Note, however, that a relatively small amount of oil is traded between Colombia and the United States.

⁴ USDA, ERS, “Real Projected Gross Domestic Product.”

Table G-1 GTAP commodity and regional aggregation

Commodities and Services		Regions (Economies)	
No.	Description	No.	Description
1	Paddy (unprocessed) rice	29	Leather products
2	Wheat	30	Wood products
3	Cereal grains n.e.c. ^a	31	Paper products, publishing
4	Vegetables, fruit, nuts	32	Petroleum and coal products
5	Oil seeds	33	Chemical, rubber, plastic products
6	Sugar cane, sugar beet	34	Mineral products n.e.c.
7	Plant-based fibers	35	Ferrous metals
8	Crops n.e.c. ^b	36	Metals n.e.c.
9	Bovine cattle, sheep and goats, horses	37	Metal products
10	Animal products n.e.c.	38	Motor vehicles and parts
11	Raw milk	39	Transport equipment n.e.c.
12	Wool	40	Electronic equipment
13	Forestry	41	Machinery and equipment n.e.c.
14	Fishing	42	Manufactures n.e.c.
15	Coal	43	Electricity
16	Oil	44	Gas manufacture and distribution
17	Gas	45	Water
18	Minerals n.e.c.	46	Construction
19	Bovine meat products	47	Trade
20	Meat products n.e.c. ^c	48	Transport n.e.c.
21	Vegetable oils and fats	49	Water transport
22	Dairy products	50	Air transport
23	Processed rice	51	Communication
24	Sugar	52	Financial services n.e.c.
25	Food products n.e.c.	53	Insurance
26	Beverages and tobacco products	54	Business services n.e.c.
27	Textiles	55	Recreational and other services
28	Wearing apparel	56	Public administration, defense, education, health

Note: The abbreviation “n.e.c.” stands for “not elsewhere classified.”

^aIncludes corn and sorghum.

^bIncludes coffee and cut flowers.

^cIncludes pork and poultry.

identical to the benchmark 2007 economy—i.e., an economy with the same resources, population, and other characteristics as the 2007 economy.

A full list of the initial measured trade barriers in the model is shown in table G-2. These barriers essentially constitute price gaps, or wedges, between world prices and domestic prices in the importing country. The differences are accounted for principally by tariffs and other barriers.⁵ As tabulated, they consist of tariffs and price premiums due to TRQs,

⁵ A price gap summarizes the price impact of several border measures: ad valorem duties, specific duties, and variable levies (such as the price band support systems in Colombia) that insulate domestic prices from (continued...)

Table G-2 U.S.-Colombia TPA benchmark tariffs, estimates for 2007

Sector	Tariffs on Colombia's imports from the	Tariffs on U.S. imports from Colombia
	United States	
	Percent	
Paddy (unprocessed) rice	80.1	0.0
Wheat	12.5	0.0
Cereal grains n.e.c.	14.9	0.0
Vegetables, fruit, nuts	13.9	0.0
Oil seeds	10.1	0.0
Sugar cane, sugar beet	10.0	0.0
Plant-based fibers	10.0	0.0
Crops n.e.c.	6.4	0.0
Bovine cattle, sheep and goats, horses . . .	5.7	0.0
Animal products n.e.c.	7.6	0.0
Raw milk	0.0	0.0
Wool, silk-worm cocoons	10.0	0.0
Forestry	8.5	0.0
Fishing	16.0	0.0
Coal	5.0	0.0
Oil	0.0	0.0
Gas	0.0	0.0
Minerals n.e.c.	5.3	0.0
Bovine meat products	16.2	2.7
Meat products n.e.c.	19.8	0.0
Vegetable oils and fats	16.6	1.4
Dairy products	18.3	16.5
Processed rice	80.0	0.0
Sugar	19.7	38.1
Food products n.e.c.	16.0	2.6
Beverages and tobacco products	16.2	0.0
Textiles	0.8	2.8
Wearing apparel	1.0	2.7
Leather products	0.8	0.6
Wood products	16.3	0.0
Paper products, publishing	12.4	0.0
Petroleum and coal products	9.4	1.2
Chemical, rubber, plastic products	8.1	2.3
Mineral products n.e.c.	13.4	0.0
Ferrous metals	12.2	0.0
Metals n.e.c.	9.9	0.0
Metal products	14.3	0.0
Motor vehicles and parts	14.5	0.0
Transport equipment n.e.c.	2.3	0.0
Electronic equipment	5.6	0.0
Machinery and equipment n.e.c.	9.2	0.0
Manufactures n.e.c.	16.5	0.0
Services	NA	NA

Source: Commission calculations and GTAP version 6.1.

Note: Benchmark tariffs include tariff equivalents of agricultural TRQs facing both U.S. and Colombian imports.

Note: Sugar imports to the United States are subject to tariff-rate quotas. Treatment of sugar and sugar-containing products is discussed in more detail in chap. 3 of this report. In the model analysis, the U.S. duty on imports of sugar from Colombia was not directly removed, but rather the quota level was adjusted.

Note: Colombia's tariffs on unprocessed and processed rice were adjusted to account for Colombia's domestic price support programs, and Colombia's tariffs on textiles, apparel, and leather products were adjusted for the duty-free treatment accorded to most of Colombia's imports of these goods.

⁵ (...continued)

short-term fluctuations in world markets. These price gaps are modeled as constant ad valorem gaps between domestic and world prices.

measured in the GTAP database as AVEs.⁶ The sectors listed in table G-2, and their corresponding import tariff equivalent measures, are highly aggregated. For example, the “other crops” category includes commodities such as coffee, tea, cut flowers, cotton, spices, and tobacco. As a result, the listed import tariff equivalent measures are trade-weighted averages of the measures faced by the individual commodities composing the aggregates. The tariff equivalents listed here include the effects of TRQs imposed on certain agricultural products. As shown in table G-2, the tariffs on Colombia’s imports from the United States (i.e., U.S. exports) are significantly higher than the tariffs on U.S. imports from Colombia. Services are restricted by nontariff barriers but these barriers are not measured in the GTAP data, precluding a quantitative assessment of the TPA on this sector. In addition, the Commission did not explicitly model the impact of rules of origin, but the simulation performed is consistent with the existence of such rules. In the simulation, it is assumed that traded commodities are differentiated by country of origin, which implies a limit to the substitutability of imports sourced from a third country.

Solution Technique

The analysis employs a comparative static framework in which a benchmark equilibrium depiction of the U.S. economy, as of January 1, 2007, is derived through a set of balanced accounts of trade, production, consumption, and taxes. Once this benchmark has been created, policy shocks are imposed on the balanced model. A policy shock simply means a change in policy imposed on the model to measure its effect. In this analysis, the policy shocks consist of the reduction or elimination of tariffs and measurable TRQs agreed to in the TPA shown in table G-2.

To estimate the marginal effect of the TPA, the trade policies (tariffs and TRQs) shown in table G-2 are replaced with new levels (generally zero) to represent the new, post-TPA economic state. The model is rebalanced, and new values for trade flows, outputs, employment, welfare, and GDP are generated. The difference between the benchmark values of these variables and their new values is the estimated marginal effect of the removal of tariffs and measurable TRQs under the TPA. It is expected that sectors facing relatively high trade barriers will show relatively larger effects as a result of the implementation of the TPA. For sugar, the rate reported is the gap between the world price of sugar and its price in the United States resulting from duties and TRQs. This tariff equivalent is not directly changed, but sugar imports from Colombia are moved up to a higher quota level, as provided for in the TPA. The assumption in this simulation is that over 15 years, imports of sugar from Colombia increase by 200 percent, which would represent the proportional value of the increase of 60,500 mt in the quota for Colombia, on base imports of 30,760 mt.

As is typical of experiments conducted in the standard GTAP framework, this analysis measures the long-term effects of a one-time, full implementation of an agreement.⁷ The model assumes that sufficient time is allowed to let the full effect of the agreement work its way through the economy. However, since the model is static and not dynamic, it does not

⁶ Version 6.1 of the GTAP data has not been published or publicly released at the time of this writing. Version 6 has been released and is documented online at

https://www.gtap.agecon.purdue.edu/databases/v6/v6_doco.asp. Version 5 is described in Dimaranan and McDougall (2002). Version 6.1 includes additional information, including data for Ecuador.

⁷ See, for example, USITC, *The Impact on the U.S. Economy*; or USITC, *Overview and Analysis of the Economic Impact of U.S. Sanctions*.

allow for growth in the overall economy. Reported figures show the marginal effects of a trade policy shock as it would have appeared in the base year of the data. Said differently, effects are expressed in terms of proportional effects relative to the projected 2007 economy, although those effects would take several years to be actually felt.

Measuring the Impacts of the TPA and Model Limitations

The probable effects of the U.S.-Colombia TPA reported are simply the deviations of the relevant variables from their levels in the projected baseline at any given solution point. Reported deviations in economic variables, such as production, trade, and income, indicate the likely degree to which the policy causes the modeled economies to deviate from the baseline levels. As stated, changes in the variables of interest are calculated as percentage deviations from the baseline, and are quite stable with respect to changes in the baseline. That is to say, if the actual levels of trade in 2007 differ from the values projected in this analysis (as is likely), the marginal percent change effects of the TPA on trade flows estimated by the model will still likely be similar to those presented here, relative to the new baseline.

Economic models capture the most important factors for the question under consideration. They are limited in their ability to reflect the degree of complexity evident in the real world, however;⁸ thus, a number of caveats are in order regarding this modeling framework. One source of bias, found in virtually any quantitative analysis of economic data, arises from the process of data aggregation. In particular, international trade occurs in thousands of different products and services. The United States collects trade data under about 17,000 statistical categories and some 10,000-plus tariff rate lines. For most general equilibrium analyses, these groupings represent far too much detail to be tractable computationally. Furthermore, analysis and comparison of data collected from different economies require that data be aggregated into categories that are generally comparable from one economy to another. This aggregation process introduces two general types of bias into a modeling exercise.

One type involves the calculation of tariffs for aggregated product categories. In this study, trade-weighted average tariffs were calculated. The value of trade in a tariff line provides the weight for the tariff in that line. This procedure tends to mask the importance of those products within the aggregate that have particularly high tariffs, and that therefore present a greater barrier to imports than would be the case if all goods within the aggregation had the same average tariff. As a result, the analysis may understate the effect of reducing the tariff of a high-tariff component of the aggregate.

Another type of aggregation bias is the likelihood that goods within an aggregate may not be close substitutes for one another. Imported goods of a particular category may be quite dissimilar to an economy's domestic product in that category. However, when the price of an import falls, for example, the model may indicate a certain amount of substitution of that

⁸ Examples of real world complexities that are difficult to reflect in the model include the changing relative growth of different economies; politically motivated, export-oriented investment; relationships between multinational subsidiaries that influence trade patterns; and such things as catastrophic weather or violence that are inherently unpredictable (at least in their details).

import for the domestic product when, in fact, they are not close substitutes. In this case, the model would overstate the effect of a given average tariff reduction.⁹

Despite these limitations, the simulations performed here can be quite useful in providing insights on the effects of an FTA, stemming solely from the implementation of the FTA's tariff and TRQ liberalization, on a number of economic measures. The model presents a unified framework in which to assess the likely effects of the policy.

As there are many model sectors that exhibit minimal changes, the data underlying figure 2-3 presented in chapter 2 of this report are presented below in table G-3, expanded to include all sectors in the GTAP analytical model. Table G-4 shows the simulated effects of the TPA on U.S. global trade for all sectors in the GTAP model. Table G-5 shows the simulated effects on U.S. output and employment for all model sectors.

⁹ This type of bias is reduced in empirical trade models, like the GTAP model, that apply the Armington assumption, which treats products produced in different economies as imperfect substitutes.

Table G-3 U.S.-Colombia TPA: Simulated effects on U.S.-Colombia bilateral trade,^a by sector, from a projected 2007 baseline

GTAP sector	U.S. exports to Colombia ^b			U.S. imports from Colombia		
	Base before TPA	Change after TPA		Base before TPA	Change after TPA	
	Million dollars		Percent	Million dollars		Percent
Paddy (unprocessed) rice	0	1	6,896.4	0	0	12.5
Wheat	170	19	11.2	0	0	0.0
Cereal grains n.e.c.	211	42	19.8	0	0	14.5
Vegetables, fruit, nuts	26	8	31.6	193	8	3.9
Oil seeds	47	5	9.8	0	0	7.3
Sugar cane, sugar beet	0	0	0.0	0	0	5.4
Plant-based fibers	60	6	10.5	0	0	5.7
Crops n.e.c.	14	3	18.5	1,414	73	5.2
Bovine cattle, sheep and goats, horses . .	1	3	3.2	2	0	5.0
Animal products n.e.c.	12	0	3.8	26	1	2.5
Raw milk	0	0	0.0	0	0	11.0
Wool	0	0	71.7	0	0	0.0
Forestry	1	0	11.5	0	0	6.4
Fishing	0	0	21.1	5	0	2.1
Coal	0	0	12.5	895	12	1.3
Oil	0	0	-0.7	2,969	51	1.7
Gas	0	0	0.0	0	0	0.0
Minerals n.e.c.	10	0	2.3	0	0	1.0
Bovine meat products	6	3	46.2	1	0	33.1
Meat products n.e.c.	23	16	72.3	33	4	13.4
Vegetable oils and fats	34	13	37.8	10	2	20.6
Dairy products	4	5	110.2	3	5	188.6
Processed rice	2	14	645.7	0	0	10.2
Sugar	1	1	97.3	73	105	142.7
Food products n.e.c.	87	31	36.2	167	24	14.3
Beverages and tobacco products	1	0	19.1	65	1	2.0
Textiles	152	-2	-1.4	144	0	0.0
Wearing apparel	26	0	-1.7	676	0	0.0
Leather products	7	0	-1.7	58	0	0.0
Wood products	13	10	72.6	62	5	8.8
Paper products, publishing	180	50	27.9	101	8	8.4
Petroleum and coal products	56	8	14.5	162	9	5.7
Chemical, rubber, plastic products	1,575	357	22.6	104	26	24.6
Mineral products n.e.c.	86	36	41.4	384	24	6.2
Ferrous metals	73	33	45.7	188	15	7.8
Metals n.e.c.	21	15	70.6	315	40	12.8
Metal products	69	39	56.4	117	12	10.4
Motor vehicles and parts	241	106	43.8	14	2	10.7
Transport equipment n.e.c.	400	-2	-0.6	60	11	18.8
Electronic equipment	646	51	8.0	2	0	14.6
Machinery and equipment n.e.c.	1,289	191	14.9	140	19	13.2
Manufactures n.e.c.	90	54	60.1	169	19	11.1

Table G-3 U.S.-Colombia TPA: Simulated effects on U.S.-Colombia bilateral trade, by sector,^a from a projected 2007 baseline—*Continued*

GTAP sector	U.S. exports to Colombia ^b			U.S. imports from Colombia		
	Base before TPA	Change after TPA		Base before TPA	Change after TPA	
	Million dollars		Percent	Million dollars		Percent
Electricity	1	0	-4.2	0	0	6.9
Gas manufacture and distribution	0	0	0.0	0	0	0.0
Water	9	0	-4.1	1	0	6.9
Construction	1	0	-2.4	0	0	4.6
Trade	206	-6	-2.9	20	1	4.4
Transport n.e.c.	97	-3	-2.7	82	3	4.2
Water transport	13	0	-1.7	2	0	4.0
Air transport	308	-5	-1.7	100	4	4.1
Communication	112	-3	-2.7	24	1	4.1
Financial services n.e.c.	178	-4	-2.4	3	0	4.0
Insurance	118	-3	-2.3	1	0	4.0
Business services n.e.c.	287	-7	-2.3	5	0	4.2
Recreational and other services	290	-8	-2.7	6	0	4.3
Public admin, defense, education, health	461	-13	-2.9	41	2	4.4
Total	7,714	1,060	13.7	8,840	487	5.5

Source: Commission calculations and GTAP version 6.1.

Note: Benchmark tariffs include tariff equivalents of agricultural TRQs facing both U.S. and Colombian imports. The abbreviation "n.e.c." stands for "not elsewhere classified." Zero values for million dollars indicate values less than \$500,000. Zero values for percent indicate values less than 0.05 percent in absolute value.

^aOn a landed, duty-paid basis. Since services are restricted by nontariff barriers, which are not measured in the GTAP model, the effects on the services sector of the removal of these barriers are not quantitatively assessed.

^bData represent Colombian imports from the United States.

^cColombia's tariff on unprocessed and processed rice were adjusted to account for Colombia's domestic price support programs.

^dTreatment of sugar and sugar-containing products is discussed in more detail in chapter 3 of this report. In the model analysis, the U.S. duty on imports of sugar from Colombia was not directly removed, but rather the quota level was adjusted.

^eColombia's tariffs on textiles, apparel, and leather products were adjusted for the duty free treatment accorded to most of Colombia's imports of those goods.

Table G-4 U.S.-Colombia TPA: Simulated effects on U.S. global trade^a from a projected 2007 baseline

GTAP sector	U.S. exports to the world (f.o.b.)			U.S. imports from the world		
	Base	Change after TPA		Base	Change after TPA	
	before TPA	Million dollars	Percent	before TPA	Million dollars	Percent
Paddy (unprocessed) rice	530	0	0.0	42	0	0.3
Wheat	4,915	20	0.4	185	1	0.4
Cereal grains n.e.c.	5,881	53	0.9	399	1	0.2
Vegetables, fruit, nuts	8,242	0	0.0	9,169	6	0.1
Oil seeds	6,701	3	0.1	329	1	0.2
Sugar cane, sugar beet	0	0	-0.3	1	0	0.1
Plant-based fibers	3,935	7	0.2	186	0	0.1
Crops n.e.c.	3,236	-4	-0.1	8,165	10	0.1
Bovine cattle, sheep and goats, horses . .	494	0	-0.1	1,315	1	0.1
Animal products n.e.c.	3,098	0	0.0	1,831	1	0.0
Raw milk	0	0	-0.3	32	0	0.2
Wool	42	0	0.3	27	0	0.1
Forestry	1,561	0	0.0	467	0	0.0
Fishing	307	0	0.0	1,269	0	0.0
Coal	2,938	-3	-0.1	1,074	3	0.3
Oil	11	0	-0.1	120,544	1	0.0
Gas	294	0	-0.1	18,377	4	0.0
Minerals n.e.c.	2,644	0	0.0	3,408	1	0.0
Bovine meat products	1,991	1	0.1	4,444	4	0.1
Meat products n.e.c.	5,588	14	0.2	2,255	4	0.2
Vegetable oils and fats	1,071	15	1.4	1,827	2	0.1
Dairy products	1,369	3	0.2	1,626	3	0.2
Processed rice	853	11	1.3	322	0	0.1
Sugar	539	0	0.0	1,232	42	3.4
Food products n.e.c.	16,948	28	0.2	23,974	3	0.0
Beverages and tobacco products	3,713	0	0.0	14,140	3	0.0
Textiles	13,685	-1	0.0	40,395	6	0.0
Wearing apparel	4,373	0	0.0	62,698	19	0.0
Leather products	1,467	0	0.0	27,485	4	0.0
Wood products	9,968	4	0.0	59,104	28	0.1
Paper products, publishing	21,570	47	0.2	28,801	17	0.1
Petroleum and coal products	8,249	10	0.1	30,770	2	0.0
Chemical, rubber, plastic products	181,660	314	0.2	161,150	96	0.1
Mineral products n.e.c.	19,274	29	0.2	26,045	13	0.1
Ferrous metals	6,450	34	0.5	29,019	16	0.1
Metals n.e.c.	21,168	3	0.0	32,415	21	0.1
Metal products	19,948	32	0.2	35,479	23	0.1
Motor vehicles and parts	73,684	104	0.1	190,581	64	0.0
Transport equipment n.e.c.	72,172	-36	-0.1	37,992	24	0.1
Electronic equipment	122,139	15	0.0	226,673	70	0.0
Machinery and equipment n.e.c.	160,063	181	0.1	292,757	140	0.0
Manufactures n.e.c.	19,605	49	0.3	76,422	27	0.0
Electricity	3,386	-2	-0.1	766	0	0.0

Table G-4 U.S.-Colombia TPA: Simulated effects on U.S. global trade^a from a projected 2007 baseline—*Continued*

GTAP sector	U.S. exports to the world (f.o.b.)			U.S. imports from the world		
	Base		Change after TPA	Base		Change after TPA
	before TPA	Change after TPA		before TPA	Change after TPA	
	Million dollars	Percent		Million dollars	Percent	
Gas manufacture and distribution	1,489	-1	-0.1	10	0	0.1
Water	1,749	-1	-0.1	140	0	0.1
Construction	9,383	-4	0.0	527	0	0.0
Trade	56,645	-32	-0.1	17,264	7	0.0
Transport n.e.c.	58,544	-26	0.0	27,241	9	0.0
Water transport	5,351	-2	0.0	1,758	1	0.0
Air transport	52,047	-23	0.0	26,752	7	0.0
Communication	23,801	-14	-0.1	4,838	2	0.0
Financial services n.e.c.	37,741	-17	0.0	4,686	2	0.0
Insurance	20,094	-10	-0.1	3,661	1	0.0
Business services n.e.c.	205,827	-74	0.0	33,127	12	0.0
Recreational and other services	73,108	-30	0.0	8,081	3	0.0
Public admin, defense, education, health .	138,644	-53	0.0	18,452	8	0.0
Total	1,520,185	645	0.0	1,721,726	711	0.0

Source: Commission calculations and GTAP version 6.1.

Note: The abbreviation “n.e.c.” stands for “not elsewhere classified.” Zero values for million dollars indicate values less than \$500,000. Zero values for percent indicate values less than 0.05 percent in absolute value.

^aOn a landed, duty-paid basis. Since services are restricted by nontariff barriers, which are not measured in the GTAP model, the effects on the services sector of the removal of these barriers are not quantitatively assessed.

Table G-5 U.S.-Colombia TPA: Simulated effects on U.S. output and employment, from a projected 2007 baseline

GTAP sector	Output		Labor quantity	
	Quantity	Revenue	Skilled	Unskilled
	Percent changes			
Paddy (unprocessed) rice	0.0	0.1	0.0	0.0
Wheat	0.2	0.3	0.2	0.2
Cereal grains n.e.c.	0.3	0.3	0.3	0.3
Vegetables, fruit, nuts	-0.1	0.0	-0.1	-0.1
Oil seeds	0.0	0.1	0.0	0.0
Sugar cane, sugar beet	-0.3	-0.2	-0.3	-0.3
Plant-based fibers	0.0	0.1	0.1	0.1
Crops n.e.c.	-0.1	-0.1	-0.1	-0.1
Bovine cattle, sheep and goats, horses	0.0	0.0	0.0	0.0
Animal products n.e.c.	0.0	0.0	0.0	0.0
Raw milk	0.0	0.0	0.0	0.0
Wool	0.1	0.1	0.1	0.1
Forestry	0.0	0.0	0.0	0.0
Fishing	0.0	0.0	0.0	0.0
Coal	0.0	-0.1	-0.1	-0.1
Oil	0.0	0.0	0.0	0.0
Gas	0.0	0.0	0.0	0.0
Minerals n.e.c.	0.0	0.0	0.0	0.0
Bovine meat products	0.0	0.0	0.0	0.0
Meat products n.e.c.	0.0	0.0	0.0	0.0
Vegetable oils and fats	0.1	0.1	0.1	0.1
Dairy products	0.0	0.0	0.0	0.0
Processed rice	0.4	0.5	0.4	0.4
Sugar	-0.3	-0.3	-0.3	-0.3
Food products n.e.c.	0.0	0.0	0.0	0.0
Beverages and tobacco products	0.0	0.0	0.0	0.0
Textiles	0.0	0.0	0.0	0.0
Wearing apparel	0.0	0.0	0.0	0.0
Leather products	0.0	0.0	0.0	0.0
Wood products	0.0	0.0	0.0	0.0
Paper products, publishing	0.0	0.0	0.0	0.0
Petroleum and coal products	0.0	0.0	0.0	0.0
Chemical, rubber, plastic products	0.0	0.1	0.0	0.0
Mineral products n.e.c.	0.0	0.0	0.0	0.0
Ferrous metals	0.0	0.0	0.0	0.0
Metals n.e.c.	0.0	0.0	0.0	0.0
Metal products	0.0	0.0	0.0	0.0
Motor vehicles and parts	0.0	0.0	0.0	0.0
Transport equipment n.e.c.	0.0	0.0	0.0	0.0
Electronic equipment	0.0	0.0	0.0	0.0
Machinery and equipment n.e.c.	0.0	0.0	0.0	0.0
Manufactures n.e.c.	0.0	0.1	0.0	0.0
Electricity	0.0	0.0	0.0	0.0
Gas manufacture and distribution	0.0	0.0	0.0	0.0

Table G-5 U.S.-Colombia TPA: Simulated effects on U.S. output and employment, from a projected 2007 baseline—*Continued*

GTAP sector	Output		Labor quantity	
	Quantity	Revenue	Skilled	Unskilled
	Percent changes			
Water	0.0	0.0	0.0	0.0
Construction	0.0	0.0	0.0	0.0
Trade	0.0	0.0	0.0	0.0
Transport n.e.c.	0.0	0.0	0.0	0.0
Water transport	0.0	0.0	0.0	0.0
Air transport	0.0	0.0	0.0	0.0
Communication	0.0	0.0	0.0	0.0
Financial services n.e.c.	0.0	0.0	0.0	0.0
Insurance	0.0	0.0	0.0	0.0
Business services n.e.c.	0.0	0.0	0.0	0.0
Recreational and other services	0.0	0.0	0.0	0.0
Public administration, defense, education, health	0.0	0.0	0.0	0.0

Source: Commission calculations and GTAP version 6.1.

Notes: The abbreviation "n.e.c." stands for "not elsewhere classified." Zero values for percent indicate values less than 0.05 percent in absolute value.

APPENDIX H

GENERAL EFFECTS OF TRADE

AGREEMENTS

General Effects of Trade Agreements

Studying the economic impact of an FTA entails investigating static effects such as trade creation and trade diversion, as well as terms of trade (i.e., the price of exports relative to the price of imports). In addition, issues related to scale effects and less tangible effects have to be considered. These issues are discussed below.

Static Effects: Trade Creation and Trade Diversion

Trade liberalization can in general be undertaken in two different manners. First, trade liberalization can be based on the MFN principle, where better market access is granted to all trading partners equally. The classical “gains from trade” argument asserts that such trade liberalization will offer consumers access to more goods at lower prices, and producers more sources for their inputs and more markets for their products (for which they may receive higher prices). Second, trade liberalization can be done in a *preferential* way, with better market access granted to one partner but not to others. It should be noted that better market access can result not only from bilateral tariff removal but also from other negotiated provisions in the areas of cross-border trade in services, telecommunications, electronic commerce, and government procurement, all of which are not readily quantifiable. An FTA such as the one between the United States and Colombia is an agreement in which preferential liberalization is undertaken reciprocally between participating countries.¹

To the extent that FTAs are designed to liberalize trade, they are likely to engender economic gains similar to those of an MFN liberalization. However, given their discriminatory nature, studying the economic impact of FTAs involves additional issues that are not present in an MFN liberalization. The traditional way to study an FTA is to categorize the FTA-induced trade expansion into trade creation or trade diversion.² Trade creation improves net welfare and occurs when partner-country production displaces higher-cost domestic production. Trade diversion reduces net welfare and occurs when partner-country production displaces lower-cost imports from the rest of the world.³ The combined effect of an FTA on intrabloc trade will then reflect trade creation as well as trade diversion. Whether the trade creation (welfare-enhancing) or the trade diversion (welfare-reducing) effects dominate depends on a variety of factors, including external trade barriers, cost differences, relative supply and demand responses, and other domestic policies. Thus, the overall welfare impact of an FTA can be empirically determined.

¹ It should be noted that, although negotiated bilaterally, some FTA provisions such as those related to customs administration, labor, or environment tend to be applied in a nondiscriminatory manner and are closer to the MFN principle.

² The seminal works on this issue are Viner, *The Customs Union Issue*; and Meade, *The Theory of Customs Union*.

³ Losses from trade diversion occur when lost tariff revenue associated with changes in the pattern of trade exceeds efficiency gains from the decline of the prices paid by consumers. These losses will be larger the higher the FTA's margin of preferences (i.e., the trade barriers facing nonmembers relative to intra-FTA barriers).

Static Effects: Terms of Trade

The impact of an FTA also can be studied from a “terms-of-trade” (i.e., the price of exports relative to the price of imports) viewpoint. If the participating countries are large enough to be able to affect world import and export prices by their actions, the establishment of an FTA is likely to affect the terms of trade of a given FTA member principally in three ways. First, by increasing the demand for its partner’s products, the country’s own preferential trade liberalization may increase the (pretariff) price of its imports from the partner country, leading to a deterioration in its terms of trade. Second, tariff reductions by the partner country can increase the demand (and the price) for the FTA member’s exports and improve its terms of trade. Third, the decreased demand for imports originating from nonmember countries tends to decrease their price and improve the FTA members’ terms of trade. Therefore, the impact on economic welfare will depend on whether the terms of trade have improved or deteriorated for a given partner country.

Nonquantifiable Effects

In addition to the generally more easily quantifiable effects discussed so far, regional integration can provide other potential benefits that are more difficult to evaluate because of data limitations. A World Bank publication discusses a variety of additional effects (or classes of effects) that may result from regional integration agreements.⁴ One such effect is enhanced security (either against nonmembers or between members).⁵ Another potential benefit is that by forming a unit and pooling their bargaining power, FTA members can negotiate more efficiently in international forums. Regional integration can also be useful in “locking in” domestic (trade or other policy) reforms by raising the cost of policy reversal. Another potential gain is the increased possibilities for cooperation in environmental or technological assistance projects. Effects stemming from these nontariff-related FTA aspects assessed in the Commission’s report pertaining to the U.S.-Colombia FTA are associated with market access provisions related to cross-border trade in services, telecommunications, and government procurement; trade facilitation provisions related to customs administration and technical barriers; and regulatory environment provisions related to investment, intellectual property rights, trade remedies, and labor and environment.⁶

⁴ The World Bank, *Trade Blocs*, 66.

⁵ For additional information, see Schiff and Winters, “Regional Integration as Diplomacy,” 271–96. As has been mentioned above, the data estimating potential impact of negotiated commitments of an FTA related to, for example, intellectual property rights and customs administration and services, are not readily available.

⁶ Qualitative assessments of the impact of the U.S.-Colombia TPA on these negotiated objectives are provided in chaps. 4–6 of this report.

APPENDIX I

U.S. SUGAR POLICY

U.S. Sugar Policy

The United States maintains a sugar policy consisting of domestic and import elements. The domestic element consists mainly of a price support loan program that maintains guaranteed floor prices for raw cane and refined beet sugar.⁷ If the domestic prices of raw and refined sugar fall below the loan rate, U.S. sugar processors may choose to pledge their sugar as collateral and obtain loans from USDA. In addition, USDA imposes marketing allotments, which place restrictions on the amount of sugar domestic producers can ship.⁸ These allotments, which USDA imposes to avoid forfeitures, generally are in effect as long as U.S. sugar imports are less than 1.532 million short tons in a given marketing year.⁹ If imports are forecast to exceed this amount, marketing allotments may be suspended.¹⁰ In addition, the USDA administers the loan program at no net cost to the federal government, to the maximum extent practicable.¹¹ USDA also may utilize a payment-in-kind program, whereby domestic sugar processors can bid for excess raw cane or refined beet sugar in USDA stocks in exchange for reduced production levels. The storage costs for excess production are borne by the industry.

The U.S. trade policy for sugar mainly is determined by U.S. market access commitments made under various FTAs, including NAFTA and CAFTA-DR, as well as the Uruguay Round Agreement on Agriculture (URAA). To keep the U.S. domestic price sufficiently above the loan rates,¹² the United States administers a system of TRQs on U.S. imports of sugar and SCPs from Mexico under NAFTA, from certain Central American and Caribbean countries under CAFTA-DR, and from WTO member countries in accordance with the URAA. The United States scheduled separate TRQs for raw sugar, refined sugar, SCPs, blended sugar syrups,¹³ and cocoa powder containing sugar¹⁴ under the URAA. Imports within the quota are dutiable at a low in-quota tariff rate,¹⁵ while imports above the quota are dutiable at a higher (generally prohibitive) over-quota tariff rate. Also, over-quota imports may be subject to additional special safeguard tariffs if certain price levels are triggered.¹⁶

⁷ The current nominal loan rate is fixed at 18.0 cents per pound for raw sugar and 22.9 cents per pound for refined sugar. However, the rates vary by location and may effectively be higher as a result of factors such as interest expense, transportation costs, and location discounts.

⁸ Production in excess of this amount must be held as stocks by the industry. Such stocks vary over time.

⁹ Raw value basis, excluding imports under a sugar re-export program. Marketing year is from October through September.

¹⁰ The marketing allotments are suspended (restrictions are lifted) if the overall allotment quantity must be reduced as well. The overall allotment quantity is the total amount of sugar that is permitted to be marketed by domestic producers. The suspension of marketing allotments is to allow domestic producers to compete with imports. However, USDA is still obligated to purchase domestically produced sugar at the loan rates in the event marketing allotments are suspended.

¹¹ Effectively, this means no forfeitures of sugar to USDA.

¹² U.S. sugar policy, mainly implemented by a system of import quotas and the domestic price support loan program described above, contributed to a domestic wholesale price for raw sugar of 21.42 cents per pound and refined sugar of 26.21 cents per pound in 2003. By comparison, the world wholesale price for raw cane sugar averaged 7.51 cents per pound and for refined sugar 9.74 cents per pound that year. USDA, ERS, *Sugar and Sweeteners Yearbook*, tables.

¹³ These TRQs are all provided for in the additional U.S. notes 5, 7, 8, and 9 to chap. 17 of the HTS and pertinent subheadings.

¹⁴ This TRQ is provided for in additional U.S. note 1 of chap. 18 of the HTS.

¹⁵ This rate is zero for the subject countries under preferential trade arrangements.

¹⁶ NAFTA and certain other FTAs exempt the relevant countries from these special safeguard duties. See HTS subheadings 9904.17, 9904.18, 9904.19, and 9904.21.

APPENDIX J
TARIFF RATE EQUIVALENTS IN
COLOMBIAN BANKING SERVICES

Tariff-Rate Equivalents in Colombian Banking Services

Introduction

The Commission estimated the price effects of trade barriers on net interest margins (NIMs), which are the spread between lending and deposit interest rates, by using a two-stage econometric method. In the first stage, firm-level data are used to estimate country-level pure spreads, which are net interest margins corrected for the effect of prudential regulations. Prudential regulations are intended to ensure the integrity and stability of the financial system, but increase NIMs due to the costs of compliance. In the second stage, data from 57 countries are used to estimate the effects of macroeconomic variables, including a trade policy index measuring nontariff trade impediments found in the General Agreement in Trade in Services (GATS). From these results, the Commission estimates multilateral “tariff rate equivalents” (TREs), which measure the percentage increase in NIMs due to trade impediments. The Commission then created a trade policy score from the Colombia TPA and, drawing on the findings of the second-stage regression, constructed a TRE consistent with that agreement. This analysis found an 88 percent TRE for Colombia under the GATS and a 42 percent TRE under the TPA, a drop of slightly more than one-half.

The TREs developed in this appendix, which are not directly comparable to an import duty, are not used here in the strictly conventional sense in that these restrictions are not applied at the border. In using the term, the Commission follows work performed by Deardorff and Stern, who use “tariff equivalent” to describe the price and quantity effects of services trade restrictions.¹ In other related literature, the terms “price impact,” “price effect,” and “tax equivalent” are often used.

Previous Literature

The method for constructing TREs in banking services was originally developed by Saunders and Schumacher² and further refined by Kalirajan et al.³ Saunders and Schumacher regressed net noninterest operating expenses and capital and liquidity measures on net interest margins using bank-level data in seven OECD countries. The intercept terms for each country estimated the country-level pure spread, which is the interest rate spread after controlling for firm-level and prudential measures. In the second stage, Saunders and Schumacher used these estimated pure spreads as the dependant variable, with market structure and interest rate volatility as the independent variables. Kalirajan et al. employed the same basic model using bank data from 27 countries. The key addition they made to the model was the introduction of a trade policy variable in the second stage, which allowed for the subsequent calculation of TREs. The trade policy measure employed was developed by McGuire and Schuele⁴ using countries’ GATS schedules and various other sources. Restrictions were scored on a scale from 0 to 1 based on their severity, and restrictions are also weighted on their relative importance.

¹ Deardorff and Stern, “Empirical Analysis of Barriers to International Services Transactions and the Consequences of Liberalization,” 550-5.

² Saunders and Schumacher, “The Determinants of Bank Interest Margins: An International Study,” 813-32.

³ Kalirajan et al., “The Price Impact of Restrictions on Banking Services,” 215-20.

⁴ McGuire and Schuele, “Restrictiveness of International Trade in Banking Services,” 201-13.

Conceptual Framework

Restrictions on banking have the effect of shifting up the foreign supply curve in the domestic banking market. The foreign supply curve is infinitely elastic in the case of a small country, such as Colombia.⁵ The domestic supply curve is unaffected because the concerned restrictions are discriminatory in that they are imposed on foreign, but not domestic, banks. This shift up in the foreign supply curve causes the price of intermediation services,⁶ as measured by NIMs, to increase. The total quantity of banking services supplied decreases, while the share provided by domestic banks increases and the share provided by foreign banks decreases. The econometric analysis below estimates the wedge between observed prices and prices which would exist in the absence of any discriminatory restrictions on foreign banks. Assuming the domestic banks are able to capture the rents generated from these restrictions, this wedge may be considered a TRE.

Methodology

Following the previous empirical work, the first stage used a log-log specification to determine the effect of three firm-level measures plus country dummy variables on net interest margins. Country level pure spreads were then calculated by adding the coefficients of the country dummy variables to the intercept term. In the second stage these pure spreads were used as the dependent variable with country-level independent variables including a trade policy measure. The Commission developed this trade policy measure by using a technique suggested by the OECD.⁷ The OECD identified restrictions and their relative impact on trade for each of the four modes of services trade.⁸ Commission staff assigned scores to market access and national treatment commitments on the seven activities defined as banking services in the GATS. The services included deposit taking and lending services as well as fee-based services.⁹

Where countries scheduled a given subsector as completely open a score of 0 was assigned, whereas the absence of a commitment was assigned a score of 1. It is recognized that countries actual practices may be more liberal than their GATS commitments indicate; therefore the GATS scores, and consequently the TREs developed from the GATS scores, should be considered an upper bound. A score of 0.25 was assigned if the measure was deemed to have little effect on trade by the OECD; a score of 0.5, if the measure has a restrictive effect; and a score of 0.75 if the measure was deemed to have a highly restrictive effect. Horizontal restrictions were assumed to have an equal effect across all subsectors unless otherwise noted, and therefore horizontal scores were assigned to each service scheduled by a given country. The total scores were aggregated across services, modes, and

⁵ Deardorff and Stern “Empirical Analysis of Barriers to International Services Transactions and the Consequences of Liberalization,” 550–55.

⁶ Kalirajan et al., “The Price Impact of Restrictions on Banking Services,” 215.

⁷ OECD, “Assessing Barriers to Trade in Services: Revised Consolidated List of Cross-Sectoral Barriers,” 5–9.

⁸ Cross-border supply (Mode 1) entails the provision of services from a provider in one country to a consumer in another; consumption abroad (Mode 2), the provision of a service in the country of the supplier to a consumer from another country; commercial presence (Mode 3), the provision of a service through an affiliate established in a foreign market; and the presence of natural persons (Mode 4), the provision of a service by a natural person in a foreign market.

⁹ Commitments were scored for 1) acceptances of deposits, 2) lending of all types, 3) financial leasing, 4) all payment and money transmission services, 5) guarantees and commitments, 6) provision and transfer of financial information, and 7) advisory, intermediation, and other auxiliary financial services.

market access and national treatment categories. This score was then divided by 56, the score which would be observed if all services in all modes for both market access and national treatment were unbound. The resulting GATS scores were between 0 and 1. Unlike the analysis performed by McGuire and Schuele, no attempt was made to weight various restrictions based on their relative importance.

From the coefficient of the GATS score estimated in the second-stage equation and the trade policy score for each individual country, the TREs were estimated using the equation:¹⁰

$$TRE = 100 * (e^{GATS \text{ coefficient} * GATS \text{ score}} - 1)$$

Due to the logarithmic form of the first stage equation, it is necessary to incorporate e , the base of the natural logarithm, to the equation calculating TRE. Conceptually, the TRE measures the percentage difference between the observed NIM and the NIM which would be observed in the absence of any trade restrictions.

For the purposes of this report, similar scoring methodology was used to score the text and nonconforming measures on banking contained in the Colombia TPA. In order to generate trade policy scores directly comparable to the GATS score developed for Colombia, it was necessary to account for the negative listing approach used in the Colombia TPA. In order to account for the negative listing approach, a score of 0 (completely open) was assigned to any banking service or mode which was not specifically mentioned in the Colombia TPA whereas a score of 1 (completely closed) was assigned to any banking service or mode not addressed in the GATS.¹¹ Commitments which referred to banking services in general were treated as horizontal commitments.

Data and Variables

Firm-level data for over 1,400 commercial banks from more than 60 countries were retrieved from Bankscope, a large international database that compiles financial information on public and private firms. These data were used in the estimation of the first stage using the equation:

$$NIM = \beta_1 + \beta_2 \ln(\text{non-interest operating expenses}) + \beta_3 \ln(\text{capital adequacy ratio}) + \beta_4 \ln(\text{liquidity ratio}) + \epsilon$$

The dependent variable for the first stage was the NIM, which is the interest rate spread between lending and deposit rates. Firms with NIMs in the top 5 percent for each country were excluded.¹² The independent variables were net noninterest operating expenses, the capital adequacy ratio, and the liquidity ratio. Net noninterest operating expenses were calculated by subtracting pretax profits from net interest income and dividing this by total assets. The capital adequacy ratio, which is defined as total share capital and reserves divided by total assets, is a prudential measure with minimum levels set by regulatory agencies to

¹⁰ For the derivation of this formula, see Kalirajan et al., 226–7.

¹¹ Because actual market conditions may be more open than GATS schedules may suggest, TREs assigned to GATS scores should be interpreted as upper bounds.

¹² A high percentage of these firms were in fact credit card companies, which are not directly comparable with traditional commercial banks.

ensure the solvency of banks.¹³ The liquidity ratio, which is defined as total loans divided by total deposits, measures a bank's ability to meet depositors' claims. An increase in any of these factors should raise the NIM.

The second stage, which accounts for country-level variation in pure spreads, was estimated using the following equation:

$$\text{pure spreads} = \beta_1 + \beta_2 \text{ market share} + \beta_3 \text{ interest variability} + \beta_4 \text{ GATS score} + \beta_5 \text{ credit rating} + \beta_6 \text{ tax rate} + \beta_7 \text{ GDP/capita} + \epsilon$$

The dependant variable was the country-level pure spread variable discussed above. Independent variables included market share, interest rate variability, the GATS score, credit rating, the tax rate, and GDP per capita. Market share is defined as the share of total banking assets controlled by the five largest banks in each country. Its expected relationship with NIMs is ambiguous. On the one hand, more assets in the hands of a few firms may imply these firms exercise market power, thereby increasing NIMs. On the other hand, the relationship may be negative if economies of scale exist, in which firms could reduce marginal costs by expansion, thereby lowering their NIMs through consolidation. Interest variability, which is the variance of the quarterly interest rate over the preceding three years, should also increase NIMs because banks must compensate for increased uncertainty. Countries which had interest rate volatility of more than two standard deviations above the mean were excluded. Cases of extreme interest rate volatility occurred in countries experiencing hyperinflation over the period. The GATS score variable is described above. Credit rating, which measures perceived credit worthiness, is a score assigned to a country by the trade publication Institutional Investor and reported in the Global Competitiveness Report.¹⁴ It should have a negative relationship with NIMs because a higher score indicates a less risky country. The tax rate is defined as the average taxes paid by banks divided by pretax profits, and is expected to have a positive sign. As corporate tax rates rise, banks have to adjust by increasing their NIMs. GDP per capita should have a negative effect on NIMs, because as personal incomes rise, the supply of banking services provided should increase, thereby reducing NIMs. In addition to Bankscope, data for these variables were obtained from the Global Competitiveness Report, the IMF, and the World Bank.

Results

In order to test for stability of the model across time, results for two different time periods were estimated. For the first stage (table J-1), all the prudential and firm-level measures were of the expected sign and statistically significant with similar coefficients reported in both years. The adjusted R²s for the first stage were 0.74 and 0.76 for 1999 and 2005, respectively, meaning approximately three-quarters of the variation in net interest margins between firms were accounted for by prudential regulations and noninterest operating expenses. For the second stage (table J-2), interest rate variability and tax rate coefficients were positive and statistically significant, consistent with previous studies. Market share was found to have a negative relationship with pure spreads, indicating the presence of economies of scale. This effect was only significant in 2005, however. A number of other

¹³ Although minimum capital adequacy ratios are typically set by regulatory agencies, the actual capital adequacy ratio maintained by individual banks varies.

¹⁴ World Economic Forum, *The Global Competitiveness Report, 2000: 296 2005: 498*.

Table J-1 Tariff-rate equivalents in Colombian banking services: Stage 1 results^a

Dependent variable: Ln(Net interest margin) Variable	1999 results		2005 results	
	Coefficients	T-statistics	Coefficients	T-statistics
Intercept	2.26	13.55 ^b	2.07	11.59 ^b
Ln (Noninterest operating expenses)	0.39	13.60 ^b	0.39	16.12 ^b
Ln (Capital adequacy ratio)	2.02	4.94 ^b	1.48	3.86 ^b
Ln (Liquidity ratio)	0.07	3.55 ^b	0.06	3.27 ^b
R-Squared	0.75		0.77	
Adjusted R-squared	0.74		0.76	
Number of observations	1,055		1,441	

Source: Compiled by the Commission.

^aEstimates corrected for heteroskedasticity. Results for country dummy variables not reported.

^bSignificant at the 1 percent level.

Table J-2 Tariff-rate equivalents in Colombian banking services: Stage 2 results^a

Dependent variable: pure spread Variable	1999 results ^b		2005 results ^b	
	Coefficients	T-statistics	Coefficients	T-statistics
Intercept	2.433	12.39 ^c	3.041	11.77 ^c
Market share	-0.075	-0.65	-0.231	-2.23 ^d
Interest variability	0.454 ^f	2.66 ^d	0.003	3.40 ^c
GATS score	0.803	3.20 ^c	0.665	3.19 ^c
Credit rating	-0.008 ^f	-0.08	-0.009	-2.85 ^c
Tax rate	0.141	3.15 ^c	0.425	1.72 ^e
GDP/Cap	-0.012 ^f	-2.57 ^d	-0.001 ^f	-0.24
R-squared	0.56		0.65	
Adjusted R-squared	0.49		0.61	
Number of observations	42		57	

Source: Compiled by the Commission.

^aResults corrected for heteroskedasticity.

^bCoefficients for 1999 and 2005 not directly comparable due to differing countries in sample.

Data not available for all countries in 1999.

^cSignificant at the 1 percent level.

^dSignificant at the 5 percent level.

^eSignificant at the 10 percent level.

^fResults multiplied by 1,000.

variables were also found to be significant in one year and not the other. The GATS scores were positive and statistically significant, signifying an increase in the GATS score will increase pure spreads. Critically, however, the GATS scores between the two years were

statistically close,¹⁵ and the estimated results of the model as a whole were quite similar.¹⁶ From these results, TREs were generated using the equation found in the methodology section. As noted above, these TREs represent how much higher a given country's average NIM is versus what the NIM would be if no trade restrictions existed. The TREs for Colombia were estimated, first using the GATS scores for 1999 and 2005 respectively, and by substituting the Colombia TPA score for the GATS score in the TRE equation. The estimated TRE for Colombia under the GATS was 88 percent for both 1999 and 2005, whereas the TRE estimated from the TPA was 42 percent, a decline of a little more than one-half. This decline in the TRE represents both the lowering of barriers to entry for U.S. firms and the lowering of the price of intermediation services¹⁷ (NIMs)¹⁸ facing Colombians. Lower barriers to entry, reflecting the elimination of economic need tests¹⁹ under the TPA, reduce the cost of investing in Colombia. Lower NIMs should promote more lending and economic growth in Colombia, both of which should benefit U.S. banks that choose to establish a presence in that country. Since the TPA is a bilateral as opposed to a multilateral agreement, the lower TRE calculated for the TPA reflects a lower entry barrier for U.S.-based firms, but not necessarily for firms from other foreign countries. Banks from other countries would still face the higher TRE when attempting to do business with Colombians, unless they receive the same treatment as U.S. banks by making investments in Colombia via U.S. affiliates.²⁰

¹⁵ To test this, the data for the 2 years were pooled and the same model was run with the inclusion of a year dummy variable and an interaction term between the year dummy variable and the GATS score. The coefficient on this interaction term was not statistically significant, indicating that the GATS score was relatively stable over time.

¹⁶ Pure spreads were estimated using 2005 data and the coefficients estimated from the second stage of the 1999 and 2005 models respectively. These pure spreads were found to have a correlation coefficient of 0.80, indicating that the predictive power of the model is relatively strong.

¹⁷ The effect of TREs on NIMs will vary based on the size of a country's banking sector relative to the total world banking market. For a small country such as Colombia, the expected price effect should be equal to the TRE. For a large country such as the United States, the expected price effect should be smaller than the TRE.

¹⁸ NIMs will vary across countries even for countries with identical TREs due to nontrade policy factors such as macroeconomic climate and country-level risk.

¹⁹ An economic needs test refers to a requirement imposed by a regulatory authority that compels firms to prove positive benefits that would accrue to the host country if they were authorized to establish. In general, such requirements give great latitude to deny the participation of foreign firms.

²⁰ If non-U.S. foreign banks are unable to enter the Colombian market via U.S. affiliates, the decline in NIMs may be smaller than the decline in the TRE.

**APPENDIX K
COMPARISON OF COLOMBIA'S
SECTORAL GATS COMMITMENTS
WITH COLOMBIAN NONCONFORMING
MEASURES**

Table K-1 U.S.-Colombia TPA: Comparison of Colombia's sectoral GATS commitments with Colombian nonconforming measures (NCMs)

Services sectors	Colombia's GATS commitments	U.S.-Colombia TPA
Professional services, excluding accountants and travel agents		In cases of U.S. professionals, market access and national treatment <i>may</i> be subject to reciprocal agreements and residency requirements.
Business services	Legal services: Market access and national treatment for Modes 3 and 4 are unbound.	No specific measures.
	Accounting services: Market access and national treatment for Modes 1 and 4 are unbound. Market access for Mode 3 subject to licensing and qualification requirements. National treatment for Mode 3 subject to registration, nationality, residency, and licensing and qualification requirements.	Accounting services: National treatment for Modes 3 <i>may</i> be subject to registration requirements and qualification requirements.
	No specific commitments.	Research and development services: National treatment for Mode 4 subject to local participation requirements.
	No specific commitments.	Mining: National treatment for Mode 3 subject to requirements on legal form of foreign company.
	No specific commitments.	Fisheries: National treatment for Modes 3 and 4 subject to nationality and licensing requirements, and requirements on legal form of foreign company.
	No specific commitments.	Customs activities: National treatment for Mode 3 or Mode 4 subject to residency and nationality requirements.
	No specific commitments.	Private armed security guards: Market access and national treatment for Mode 3 and Mode 4 subject to nationality requirements and requirements on legal form of foreign company.
Communication services	Telecommunication services: Colombia's GATS commitments in this sector exclude radio and television broadcasting services.	Telecommunication services: Market access and national treatment for Mode 3 <i>may</i> be subject to requirements on legal form of foreign company.

Table K-1 U.S.-Colombia TPA: Comparison of Colombia's sectoral GATS commitments with Colombian nonconforming measures (NCMs)—*Continued*

Services sectors	Colombia's GATS commitments	U.S.-Colombia TPA
	Telephony services: Local: Market access for Mode 3 subject to limitations on participation of foreign capital; for Mode 4, subject to licensing and qualification requirements. National and international long-distance: Market access for Mode 3 subject to limitations on participation of foreign capital and nationality requirements (government provider must be utilized); for Mode 4, authorization requirements.	Telecommunication services: Market access and national treatment for Mode 3 <i>may</i> be subject to the granting of a concession or licensing requirements, and nationality requirements.
	No specific commitments.	Telecommunication services/radio broadcasting services: Market access and national treatment for Mode 3 or Mode 4 <i>may</i> be subject to nationality requirements, requirements on legal form of foreign company, and/or economic needs test.
	No specific commitments.	Audiovisual services/community television: Market access and national treatment for Mode 3 and Mode 4 subject to nationality and residency requirements, requirements on legal form of foreign company, and limitations on participation of foreign capital. National treatment <i>may</i> be subject to local content requirements.
	No specific commitments	Postal services: Market access for Mode 3 subject to requirements on legal form of company.
All financial services	All financial services: Market access for Mode 3 subject to authorization and licensing requirements, and requirements on legal form of foreign company.	All financial services, including banking and other financial services and insurance services: Market access for Mode 3 <i>may</i> be subject to requirements on legal form of foreign company. National treatment for Mode 3 <i>may</i> be subject to nationality requirements.
Financial services: banking and other financial services only (excludes insurance)	Core banking services, including acceptance of deposits, credit granting, financial leasing, trading in and otherwise participation in publicly-offered securities, money brokering, and advisory and other auxiliary banking services: Market access and national treatment for Modes 1 and 2 are unbound.	Market access for Mode 3 subject to requirements on legal form of foreign company. National treatment—Colombia may grant advantages or exclusive rights to certain financial entities. Market access—limitations on the number of primary dealers in the debt securities of the Republic of Colombia.

Table K-1 U.S.-Colombia TPA: Comparison of Colombia's sectoral GATS commitments with Colombian nonconforming measures (NCMs)—*Continued*

Services sectors	Colombia's GATS commitments	U.S.-Colombia TPA
Financial services - insurance only	Insurance and insurance-related services, including insurance brokering and auxiliary services such as consultancy and actuarial services: Market access and national treatment for Modes 1 and 2 are unbound.	Insurance and insurance-related services, specifically insurance brokering: Market access for Mode 3 subject to nationality or residency requirements.
	Sale of direct insurance, other than life: Market access and national treatment for Modes 1 and 2 are unbound. Market access for Mode 1 includes locational restrictions.	No specific measures.
Health-related and social services	No specific commitments.	Social services: National treatment for Modes 1 and 3 <i>may</i> be subject to the implementation of new, unspecified measures.
Transport services	No specific commitments.	Transport services: National treatment for Mode 3 and Mode 4 subject to nationality, licensing, and authorization requirements.
	No specific commitments.	Maritime transport services: National treatment for Mode 3 and Mode 4 subject to residency and nationality requirements.
	No specific commitments.	Port services: Market access and national treatment for Mode 3 and Mode 4 subject to authorization requirements and requirements on legal form of foreign company.
	No specific commitments.	Speciality air services: National treatment for Mode 3 and Mode 4 subject to registration, nationality, and residency requirements.
Tourism and travel	No specific commitments.	Travel and Tourism Agents: National treatment for Mode 3 and Mode 4 subject to residency requirements.
Electric energy services	No specific commitments.	Market access for Mode 3 subject to requirements on legal form of foreign company.
Processing, disposition, and disposal of toxic waste services	No specific commitments.	National treatment subject to limitations on participation of foreign capital.

Source: Compiled by the U.S. International Trade Commission.

Note.—Mode 1—cross-border supply; Mode 2—consumption abroad; Mode 3—commercial presence; Mode 4—presence of natural persons.

