



Investment, Infrastructure and the U.S.-Colombia and U.S.-Panama TPAs

The U.S.-Colombia and U.S.-Panama TPAs Open Up New Opportunities: U.S. investors will have new opportunities to compete for business and sales in Colombia and Panama as a result of both countries' commitments in the Trade Promotion Agreements (TPAs) to open up investment in numerous areas, including distribution, telecommunications, financial services and information technology. Given that U.S. foreign investment overseas is a major driver of U.S. exports, these new opportunities will directly bolster U.S. operations here in the United States, which in turn supports and grows American jobs.

Both TPAs Require New Protections Against Unfair and Discriminatory Actions: Both TPAs incorporate many of the basic protections that Americans and foreign investors already enjoy in the United States, from protections found in the Due Process, Equal Protection and Takings Clauses of the U.S. Constitution to the Administrative Procedure Act's protection against "arbitrary and capricious" regulatory action and a host of other federal and state laws.

- Colombian & Panamanian investors already have these protections under U.S. law, their incorporation into the TPAs *does not* create a special set of new substantive rights beyond what Colombian & Panamanian investors already have under U.S. law. Nor do these provisions create any new threat to the U.S.' ability to regulate or protect the environment or the public interest.

In short, these provisions will help the U.S. export its legal protections overseas to help protect U.S. investors seeking new opportunities in Colombia & Panama.

Both TPAs Ensure Strong Enforcement: All agree that enforcing U.S. agreements is critical. Investor-state dispute settlement is vital to any effective U.S. enforcement strategy because it provides U.S. investors access to a neutral and transparent dispute settlement mechanism that ensures that both Colombia and Panama live up to their obligations.

- Fears that this mechanism will lead to an onslaught of Colombian & Panamanian cases against the U.S. government are unfounded. The U.S. has had such provisions in place in other agreements for over 30 years and the only cases filed against the U.S. have been by Canada under NAFTA – 15 cases in 15 years – and the U.S. has won every one. This litigation is just a drop in the bucket compared to the hundreds of cases that are filed by U.S. and foreign individuals and investors every year on similar issues in U.S. Federal court.
- Notably similar provisions appear in more than 2,600 other agreements, most benefiting foreign competitors in Europe, Asia and Latin America, while American investors are left behind.

Both TPAs Make U.S. Bidders More Competitive In Infrastructure Projects: In addition to the Panama Canal expansion effort, Colombia & Panama are considering numerous new billion dollar infrastructure projects including development of a cross-Colombia rail system to rival the Panama Canal, new electricity generating plants, upgrading mining facilities and ports, and development of new roads, airports, and subway systems.

The TPAs will help make U.S. bidders on current and potential infrastructure projects more competitive by lowering the costs of U.S. exports which would be used if U.S. companies win and will also help by establishing non-discriminatory bidding rules on major government procurements.