



CRS Report for Congress

U.S.-Colombia Trade Promotion Agreement

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Summary

On November 22, 2006, Deputy U.S. Trade Representative John Veroneau and Colombian Minister of Trade, Industry, and Tourism, Jorge Humberto Botero, signed the Colombia Trade Promotion Agreement (CTPA), a bilateral free trade agreement between the United States and Colombia. President Bush notified Congress on August 24, 2006, of his intention to enter into the CTPA. The CTPA is a comprehensive trade agreement which, if ratified, would eliminate tariffs and other barriers in goods and services trade between the United States and Colombia. The 110th Congress may consider implementing legislation for the agreement under the 2002 Trade Promotion Authority (TPA) procedures. Under TPA, the President would submit formally to Congress the draft agreement and implementing legislation after entering into the agreement, but with no time limit to do so. This report will be updated as events warrant.

Introduction

On February 27, 2006, the United States and Colombia concluded the Colombia Trade Promotion Agreement (CTPA), and finalized the text of the agreement on July 8, 2006. The agreement was signed on November 22, 2006 by Deputy U.S. Trade Representative John Veroneau and Colombian Minister of Trade, Industry, and Tourism Jorge Humberto Botero. The proposed CPTA is a bilateral free trade agreement between the United States and Colombia which, if ratified, would eliminate tariffs and other barriers in goods and services between the two countries. On August 24, 2006, President Bush notified the Congress of his intention to sign the CTPA.

Implementing legislation for a CTPA may be considered by the U.S. Congress under Title XXI (Bipartisan Trade Promotion Authority Act of 2002) of the Trade Act of 2002 (P.L. 107-210), which requires an expedited process with limited debate and an up or down vote.¹ Implementing legislation has not been introduced in the 110th Congress. In Colombia, the Colombian Congress approved the agreement on June 14, 2007. The next

¹ Bilateral agreements with Panama, Peru, Colombia, and South Korea were signed in time to be considered under the 2002 TPA.

step in the government approval process is review of the agreement by Colombia's Constitutional Court. The Court must rule in favor of the CTPA for it to be ratified, a process which could take several months.

In early 2007, a number of Members of Congress indicated that some of the agreement's provisions would have to be strengthened to gain their approval, particularly relating to core labor standards. After several months of negotiation, Congress and the Administration reached an agreement on May 10, 2007 on a new bipartisan trade framework that calls for the inclusion of core labor and environmental standards in the text of pending and future trade agreements. On June 28, 2007, the United States reached an agreement with Colombia on legally binding amendments to the CTPA on labor, the environment, and other matters to reflect the bipartisan agreement of May 10.

The CTPA negotiations began in May 2004, when the United States, Colombia, Peru, and Ecuador participated in the first round of negotiations for a U.S.-Andean free trade agreement (FTA). After thirteen rounds of talks, however, negotiators failed to reach an agreement. Peru continued negotiations with the United States on a bilateral basis and concluded a bilateral agreement in December 2005.² Colombia and the United States continued their negotiations for a bilateral agreement in January 2006. Negotiations with Ecuador were not completed.

U.S.-Colombia Economic Relations

With a population of 46 million people, Colombia is the third most populous country in Latin America, after Brazil and Mexico. Colombia's economy is relatively small compared to the U.S. economy. Colombia's gross domestic product (GDP) in 2006 was \$132 billion, approximately one percent of U.S. GDP (\$13.2 trillion in 2006). Its economy has grown over the past three years. GDP growth was 6.3% in 2006, but it is expected to decrease slightly to 4.9% in 2007 and 4.2% in 2008.³

The United States is Colombia's leading trading partner. In 2006, 40% of Colombia's exports went to the United States, and 26% of Colombia's imports were supplied by the United States. The second most significant trading partner for Colombia is Venezuela, accounting for 6% of Colombia's imports and 11% of Colombia's exports. Other significant trading partners for Colombia are Mexico, Ecuador, Germany, and Brazil.

U.S. imports from Colombia have increased notably since 1996, from \$4.27 billion in 1996 to \$9.24 billion in 2006, a 116% increase (see **Table 1**). The U.S. trade deficit with Colombia was \$2.53 billion in 2006. Colombia accounts for 0.6% of total U.S. trade. Colombia ranks 29th among U.S. export markets by country and 33rd among suppliers of U.S. imports. The dominant U.S. import item from Colombia is crude oil (37% of U.S. imports from Colombia in 2006), followed by coal (13% of total), and coffee (6% of total). The leading U.S. export items are corn (6% of U.S. exports to Colombia in 2006),

² See CRS Report RL32770, *Andean-U.S. Free-Trade Agreement Negotiations*, by M. Angeles Villarreal; and CRS Report RS22391, *U.S.-Peru Trade Promotion Agreement*, by M. Angeles Villarreal.

³ Based on estimates and forecasts by *The Economist Intelligence Unit*, March 2007.

certain machinery parts (4% of total), and automatic data processing machines (4% of total).

Table 1. U.S. Merchandise Trade with Colombia, 1996-2005
(\$ Billions)

	1996	1998	2000	2002	2004	2006
U.S. Exports	4.77	4.82	3.69	3.59	4.50	6.71
U.S. Imports	4.27	4.65	6.97	5.61	7.29	9.24
U.S. Trade Balance	0.50	0.16	-3.28	-2.02	-2.79	-2.53

Source: USITC Interactive Tariff and Trade DataWeb at [<http://dataweb.usitc.gov>].

The United States currently extends duty-free treatment to imports from Colombia under the Andean Trade Preferences Act (ATPA), a regional trade preference program that expires on February 29, 2008.⁴ In 2006, 52% of all U.S. imports from Colombia received preferential duty treatment under the ATPA. Of those, the leading imports were certain subcategories of crude oil and cut flowers.

U.S. foreign direct investment (FDI) in Colombia on a historical-cost basis totaled \$4.90 billion in 2006. The largest amount of U.S. FDI in Colombia in 2006 was in mining, which accounted for about 35%, or \$1.73 billion, of total U.S. FDI in Colombia. The second largest amount, \$1.53 billion (31% of total), was in mining, followed by \$574 million (12%) in wholesale trade.⁵

The United States Trade Representative (USTR) notes that Colombia applies tariffs in the 0-5% range on capital goods, industrial goods, and raw materials; 10% on manufactured goods with some exceptions; and 15% to 20% on consumer and “sensitive” goods.⁶ It also applies variable levies (“price bands”) to certain agricultural products to assure that import prices do not fall below a minimum price. There are problems with lax customs enforcement and legal cases pending against suspected counterfeiters, as well as counterfeit pharmaceutical products. There are some concerns that the Colombian government does not provide patent protection for new uses of previously known or patented products. Colombia maintains certain barriers to services trade, but the USTR notes that some liberalization has occurred in telecommunications, auditing, and energy, and to a lesser extent in accounting, tourism, legal services, insurance, distribution services, advertising, and data processing. Although total foreign ownership is allowed in most sectors, Colombia places some restrictions on foreign investment, such as registry with the Central Bank’s foreign exchange office.

⁴ For more information on the Andean Trade Preferences Act, see CRS Report RS22548, *ATPA Renewal: Background and Issues*, by M. Angeles Villarreal.

⁵ Based on data from the U.S. Bureau of Economic Analysis, see [<http://www.bea.gov>].

⁶ See United States Trade Representative (USTR), *2006 National Trade Estimate Report on Foreign Trade Barriers*, pp. 163-174.

Key CTPA Provisions

The comprehensive free trade agreement would eliminate tariffs and other barriers to goods and services. This section summarizes several key provisions in the original agreement text as provided by the United States Trade Representative (USTR), and the legally binding amendments agreed upon by the United States and Colombia in June 2007.⁷ The amendments reflect the bipartisan trade framework that was agreed upon by Congress and the Bush Administration on May 10, 2007.

Market Access. Upon implementation, the agreement would eliminate duties on 80% of U.S. exports of consumer and industrial products to Colombia. An additional 7% of U.S. exports would receive duty-free treatment within five years of implementation. Remaining tariffs would be eliminated ten years after implementation. Colombia will join the World Trade Organization's (WTO) Information Technology Agreement (ITA), which would remove Colombia's trade barriers to information technology products.

In agriculture, the agreement would grant duty-free treatment immediately to certain farm products from both countries, including high quality beef, cotton, wheat, soybean meal, and certain key fruits and vegetables. Some other products would receive improved market access; these include pork, beef, corn, poultry, rice, fruits and vegetables, processed products, and dairy products. The sugar provisions of the agreement would triple the U.S. quota on sugar imports from Colombia the first year. Colombia's additional amount of exports gradually would increase to 60,000 metric tons 15 years after the agreement is in effect.⁸ Sugar was among the most sensitive issues in the negotiations for the United States and was settled in the final part of the talks.⁹

In textiles and apparel, products that meet the agreement's rules of origin requirements would receive duty-free treatment immediately. A special textile safeguard would provide for temporary tariff relief if imports prove to be damaging to domestic producers. The agreement includes comprehensive rules of origin provisions that would ensure that only U.S. and Colombian goods could benefit from the agreement.

The agreement also includes customs procedures provisions, including requirements for transparency and efficiency, procedural certainty and fairness, information sharing, and special procedures for the release of express delivery shipments. In government procurement contracts, U.S. companies would be granted non-discriminatory rights to bid on contracts from a broad range of Colombian government ministries, agencies, public enterprises, and regional governments. The agreement includes provisions that require the use of fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures.

⁷ Office of the United States Trade Representative, "Free Trade with Colombia: Summary of the Agreement," June 2007.

⁸ American Sugar Alliance (ASA) Press Release, "U.S. Sugar Producers Comment on Colombia Trade Agreement," February 27, 2006.

⁹ World Trade Online, *Inside U.S. Trade*, "Completed Colombia FTA Would Triple Sugar Access in First Year," March 3, 2006.

Services. In services trade, Colombia would grant market access to U.S. firms in most services sectors, with very few exceptions. Colombia agreed to exceed its commitments made in the WTO, and to dismantle services and investment barriers, including measures such as requiring U.S. firms to purchase local goods or to hire nationals rather than U.S. professionals. Colombia also agreed to eliminate its requirements on U.S. companies to establish a branch in order to provide a service and penalties for terminating their relationships with local commercial agents.

Investment. The agreement includes investment provisions intended to establish a stable legal framework for U.S. investors operating in Colombia. The agreement would protect all forms of U.S. investment in Colombia, including enterprises, debt, concessions and similar contracts, and intellectual property. The agreement grants investors the right to establish, acquire and operate investments in Colombia on an equal footing with local investors and investors of other countries. Investor-state arbitration would be available for claims by investors of breaches of investment agreements.

IPR Protection. The agreement would provide intellectual property rights (IPR) protections for U.S. companies. The agreement's IPR protection provisions include protection for U.S. trademarks, copyrighted works in a digital economy, and patents and trade secrets. The agreement also provides for penalties on piracy and counterfeiting.

Labor and Environmental Provisions. The labor and environmental obligations of the agreement are included in the core text. Parties would be required to adopt, maintain, and enforce specific labor and environmental laws (see section on amendments below). These obligations would be fully enforceable through the agreement's dispute settlement procedures. The agreement includes procedural guarantees that would ensure that workers and employers would have fair, equitable, and transparent access to labor tribunals.

Amendments to CTPA Reflecting Bipartisan Trade Framework. Amendments to the proposed CTPA are based on the agreement reached between the Bush Administration and Congress on May 10, 2007. The Administration stated that, because the new commitments would have to be "legally binding," they could not have been incorporated into the agreement as side letters. Key amendments include obligations related to five basic ILO labor rights, multilateral environmental agreements (MEAs), and pharmaceutical intellectual property rights (IPR). These provisions would be fully enforceable through the agreement's dispute settlement mechanism.

Provisions on Basic Labor Standards. The United States and Colombia would be required to "adopt, maintain and enforce in their own laws and in practice" the five basic internationally recognized labor standards, as stated in the 1998 ILO Declaration. These include 1) freedom of association; 2) the effective recognition of the right to collective bargaining; 3) the elimination of all forms of forced or compulsory labor; 4) the effective abolition of child labor and a prohibition on the worst forms of child labor; and 5) the elimination of discrimination in respect of employment and occupation. These obligations would refer only to the 1998 ILO *Declaration on the Fundamental Principles and Rights at Work*. The amendments also include language regarding labor law enforcement. Labor obligations would be subject to the same dispute settlement, same enforcement mechanisms, and same criteria for selection of enforcement mechanisms as all other obligations in the agreement.

Provisions on Environment. Amendments to the proposed CTPA would commit both parties to effectively enforce their own domestic environmental laws, and to adopt, maintain, and implement laws and all other measures to fulfill obligations under the seven covered multilateral environmental agreements (MEAs). All obligations in the environment chapter would be subject to the same dispute settlement procedures and enforcement mechanisms as all other obligations in the agreement.

Other Provisions. Additional amendments to the proposed CTPA include provisions on generic medicines and government procurement, among others. In generic medicines, the trading partners would provide five years of data exclusivity for test data related to pharmaceuticals. If Colombia relies on U.S. Federal Drug Administration (FDA) approval of a given drug, and meets certain conditions for expeditious approval of that drug in Colombia, the data exclusivity period would expire at the same time that the exclusivity expired in the United States. These provisions would reportedly allow generic medicines to enter more quickly into the market in Colombia. In government procurement, the amended provisions would allow U.S. state and federal governments to condition government contracts on the adherence to the give basis ILO labor standards.¹⁰

Issues for Congress

Under the Bipartisan Trade Promotion Authority Act, there is no deadline for the President to submit the draft implementing legislation to Congress. In the absence of a CTPA, and if trade preferences are not renewed, many Colombian products entering the U.S. market will be subject to higher duties. In the United States, much of the business community supports a CTPA stating that such an agreement would provide opportunities for U.S. businesses and benefit certain economic sectors in Colombia. On the other hand, a number of other groups, such as the AFL-CIO and Public Citizen, generally oppose the idea of a free trade agreement. These opponents generally argue that trade agreements cost the U.S. economy jobs, erode protection for the environment and workers' rights, and impose extraneous commitments on countries. Some Members of Congress have expressed doubts about approving a trade agreement with Colombia because of labor conditions in Colombia.¹¹ Labor rights concerns include harassment and targeting of labor organizers, including death. In Colombia, proponents of the agreement include the textile and flower industries. These industries export a significant portion of their production to the United States and could experience major losses if the CTPA is not ratified and the ATPA is not renewed. Opponents in Colombia are concerned that the agreement will result in the displacement of farmers who cannot compete with subsidized U.S. agriculture.

¹⁰ *International Trade Daily*, "Democratic, GOP Lawmakers Reach Agreement With Administration on FTAs," by Rosella Brevetti, May 11, 2007.

¹¹ "Colombian Minister Holds Off Judgment on Additional Labor Demands," *Inside U.S. Trade*, March 9, 2007 and Juan Forero, "Unionists' Murders Cloud Prospects for Colombia Trade Pact," *Washington Post*, April 10, 2007.