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The Proposed U.S.-Colombia Free Trade Agreement

Abstract

[Excerpt] The proposed U.S.-Colombia Trade Promotion Agreement, also called the U.S.-Colombia Free Trade Agreement (CFTA), was signed by the United States and Colombia on November 22, 2006. The agreement must be approved by Congress before it can enter into force. Upon congressional approval, it would immediately 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, and most remaining tariffs would be eliminated within 10 years of implementation. The agreement also contains other provisions in services, investment, intellectual property rights protection, labor, and the environment. About 90% of U.S. imports from Colombia enter the United States duty-free under trade preference programs or through normal trade relations, while U.S. exports to Colombia face duties of up to 20%.

It is possible that the 112th may consider implementing legislation for the proposed CFTA. Negotiations for the agreement were conducted under the trade promotion authority (TPA), also called fast-track trade authority, that Congress granted the President under the Bipartisan Trade Promotion Act of 2002 (P.L. 107-210). The authority allowed the President to enter into trade agreements that would receive expedited congressional consideration (no amendments and limited debate). Implementing legislation for the CFTA (H.R. 5724/S. 2830) was introduced in the 110th Congress on April 8, 2008, under TPA. The House leadership, however, took the position that the President had submitted the implementing legislation without adequately fulfilling the TPA requirement for consultation with Congress. On April 10, 2008, the House voted 224-195 to make the provisions establishing expedited procedures, inapplicable to the CFTA implementing legislation (H.Res. 1092).

In his January 2011 State of the Union address, President Barack Obama mentioned the importance of opening foreign markets for U.S. goods and services, and strengthening U.S. trade relations with Colombia. In 2010, the Administration initiated a new National Export Initiative (NEI), which includes a component that calls for opening new markets for U.S. exports by resolving outstanding issues on the pending CFTA. The Obama Administration also has made a case for pursuing free trade agreements as part of the National Security Strategy of the United States, though the CFTA is not specifically mentioned in the report.

The congressional debate surrounding the agreement has mostly centered on the violence issues in Colombia. Some members of Congress oppose the agreement because of concerns about violence against union members and other terrorist activity in Colombia. However, numerous members of Congress support the CFTA and take issue with these charges, stating that Colombia has made progress in recent years to curb the violence in the country. They also contend that the agreement would open the Colombian market for U.S. exporters. Other policymakers argue that Colombia is a crucial ally of the United States in Latin America and that if the trade agreement is not passed, it may lead to further violence in the region. For Colombia, a free trade agreement with the United States is part of its overall economic development strategy.

The United States is Colombia's leading trade partner. Colombia accounts for a very small percentage of U.S. trade (0.8% in 2009), ranking 22nd among U.S. export markets and 27th as a source of U.S. imports. Economic studies on the impact of a U.S.-Colombia free trade agreement (FTA) have found that, upon full implementation of an agreement, the impact on the United States would be positive but very small due to the small size of the Colombian economy when compared to that of the United States (about 1.6%).

Keywords

Colombia, U.S.-Colombia Free Trade Agreement, CFTA, trade, commerce, legislation, Congress

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The Proposed U.S.-Colombia Free Trade Agreement

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Summary

The proposed U.S.-Colombia Trade Promotion Agreement, also called the U.S.-Colombia Free Trade Agreement (CFTA), was signed by the United States and Colombia on November 22, 2006. The agreement must be approved by Congress before it can enter into force. Upon congressional approval, it would immediately 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, and most remaining tariffs would be eliminated within 10 years of implementation. The agreement also contains other provisions in services, investment, intellectual property rights protection, labor, and the environment. About 90% of U.S. imports from Colombia enter the United States duty-free under trade preference programs or through normal trade relations, while U.S. exports to Colombia face duties of up to 20%.

It is possible that the 112th may consider implementing legislation for the proposed CFTA. Negotiations for the agreement were conducted under the trade promotion authority (TPA), also called fast-track trade authority, that Congress granted the President under the Bipartisan Trade Promotion Act of 2002 (P.L. 107-210). The authority allowed the President to enter into trade agreements that would receive expedited congressional consideration (no amendments and limited debate). Implementing legislation for the CFTA (H.R. 5724/S. 2830) was introduced in the 110th Congress on April 8, 2008, under TPA. The House leadership, however, took the position that the President had submitted the implementing legislation without adequately fulfilling the TPA requirement for consultation with Congress. On April 10, 2008, the House voted 224-195 to make the provisions establishing expedited procedures, inapplicable to the CFTA implementing legislation (H.Res. 1092).

In his January 2011 State of the Union address, President Barack Obama mentioned the importance of opening foreign markets for U.S. goods and services, and strengthening U.S. trade relations with Colombia. In 2010, the Administration initiated a new National Export Initiative (NEI), which includes a component that calls for opening new markets for U.S. exports by resolving outstanding issues on the pending CFTA. The Obama Administration also has made a case for pursuing free trade agreements as part of the National Security Strategy of the United States, though the CFTA is not specifically mentioned in the report.

The congressional debate surrounding the agreement has mostly centered on the violence issues in Colombia. Some members of Congress oppose the agreement because of concerns about violence against union members and other terrorist activity in Colombia. However, numerous members of Congress support the CFTA and take issue with these charges, stating that Colombia has made progress in recent years to curb the violence in the country. They also contend that the agreement would open the Colombian market for U.S. exporters. Other policymakers argue that Colombia is a crucial ally of the United States in Latin America and that if the trade agreement is not passed, it may lead to further violence in the region. For Colombia, a free trade agreement with the United States is part of its overall economic development strategy.

The United States is Colombia's leading trade partner. Colombia accounts for a very small percentage of U.S. trade (0.8% in 2009), ranking 22nd among U.S. export markets and 27th as a source of U.S. imports. Economic studies on the impact of a U.S.-Colombia free trade agreement (FTA) have found that, upon full implementation of an agreement, the impact on the United States would be positive but very small due to the small size of the Colombian economy when compared to that of the United States (about 1.6%).

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Introduction

The proposed U.S.-Colombia Trade Promotion Agreement, also called the U.S.-Colombia Free Trade Agreement (CFTA), 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. The CFTA negotiations grew out of a regional effort in 2004 to produce a U.S.-Andean free trade agreement (FTA) between the United States and the Andean countries of Colombia, Peru, and Ecuador. After numerous rounds of talks, negotiators failed to reach an agreement, and Colombia continued negotiations with the United States for a bilateral FTA. On February 27, 2006, the United States and Colombia concluded the U.S.-Colombia FTA, and finalized the text of the agreement on July 8, 2006. On August 24, 2006, President Bush notified Congress of his intention to sign the U.S.-Colombia FTA. The two countries signed the agreement on November 22, 2006.

On April 8, 2008, President George W. Bush submitted implementing legislation for the United States-Colombia Trade Promotion Agreement Implementation Act (H.R. 5724/S. 2830) in the 110th Congress. The bills were introduced under the Trade Promotion Authority (TPA) provisions of the Trade Act of 2002 (P.L. 107-210). This act made expedited legislative procedures established in § 151 of the Trade Act of 1974 (P.L. 93-618) available for congressional consideration of legislation to implement free trade agreements negotiated under TPA. The House leadership took the position that President Bush had submitted the legislation to implement the CFTA without adequately fulfilling the TPA requirements for consultation with Congress, and on April 10, 2008, the House, by a vote of 224-195, adopted H.Res. 1092, making certain provisions of the expedited procedure inapplicable to the CFTA implementing legislation.

The 112th Congress may consider implementing legislation for the proposed U.S.-Colombia FTA. In his January 2011 State of the Union address, President Barack Obama stated his intent to “strengthen” U.S. trade relations with Colombia. In 2010, the Administration initiated a new National Export Initiative (NEI) to boost U.S. exports and create jobs. One component of the NEI calls for opening new markets for U.S. exports by resolving outstanding issues with three pending FTAs at the appropriate time.¹

Trade Promotion Authority

Under the statutory procedures, known as “trade promotion authority” or “TPA” and sometimes called “fast track” procedures, Congress has a maximum of 90 days to consider the implementing legislation, the measure is privileged for consideration, the length of consideration is limited, and amendments are precluded.² The House must act first on the bill, because the legislation would affect revenue, and under the act it must do so within 60 days; the Senate cannot act until the bill passes the House. The Senate could, nevertheless, take up and pass its own implementing bill,

¹ The White House, Office of the Press Secretary, “President Obama Details Administration Efforts to Support Two Million New Jobs by Promoting New Exports,” March 11, 2010.

² For more information on Trade Promotion Authority, see CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by J. F. Hornbeck and William H. Cooper.

then hold it at the desk pending the arrival of the House companion. In that case, however, the expedited procedures of the statute (limiting debate, precluding amendment, etc.) would not be applicable for the Senate's consideration of its measure (except by unanimous consent).

The adoption of H.Res. 1092 in the 110th Congress removed the obligation for the House to vote on the CFTA within 60 days of session, although the House leadership retained the ability to schedule a vote at any time under the general rules of the House. If it chose to do so, consideration most likely would have occurred pursuant to a special rule reported by the Committee on Rules and adopted by the House, which would presumably establish terms for consideration similar to those directed by the TPA. H.Res. 1092 did not change the TPA provisions that the CFTA was not amendable once it came up (although in principle, this restriction could be altered by the terms of a special rule for considering the implementing bill). Nor did it alter the applicability of TPA rules in the Senate.

The adoption of H.Res. 1092 suspended the TPA provision requiring that the committees of jurisdiction automatically be discharged from the U.S.-Colombia FTA implementing bill if they had not reported it by 45 days of session after its introduction. It also removed the TPA provision that making a motion to proceed to consideration of the bill is highly privileged and not debatable, thereby restoring the normal control exercised by the leadership over the floor schedule if the committees of consideration were to report the implementing bill.

Because the 110th Congress did not consider implementing legislation for the CFTA, implementing legislation is not necessarily eligible for "fast track" consideration in the 112th Congress. Under TPA, a trade agreement and its implementing legislation can be submitted to Congress pursuant to the act only once, and it is the President's initial submission of the agreement that triggers the 90-day process under expedited procedures. For this reason, it is generally understood that the eligibility of the CFTA for expedited consideration under the statute would not carry over or be renewed in a subsequent Congress, although this procedural point has not been "officially tested," because the Speaker has made no formal ruling on the matter from the chair.³ The CFTA implementing legislation, however, could still be re-introduced in the 111th Congress under the general rules of both houses, and could be considered in the House under a TPA-like procedure pursuant to a special rule reported by the Committee on Rules and approved by the House.

Rationale for the Agreement

Since the 1990s, the countries of Latin America and the Caribbean have been a focus of U.S. trade policy as demonstrated by the passage of the North American Free Trade Agreement (NAFTA), the U.S.-Chile Free Trade Agreement, the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), and the U.S.-Peru Trade Promotion Agreement. The Bush Administration made bilateral and regional trade agreements key elements of U.S. trade policy. U.S. trade policy in the Western Hemisphere over the past few years has been focused on completing trade negotiations with Colombia, Peru, and Panama and on gaining passage of these

³ *Inside U.S. Trade*, "House Approves Fast-Track Rules Change for U.S.-Colombia FTA," April 11, 2008.

free trade agreements by the U.S. Congress. The U.S.-Peru FTA was approved by Congress and signed into law in December 2007 (P.L. 110-138).⁴

A free trade agreement with Colombia would increase market access for U.S. goods and services in the Colombian market, currently not the case under the Andean Trade Preference Act (ATPA). ATPA is a unilateral trade preference program in which the United States extends preferential duty treatment to select Colombian goods entering the United States. It is part of a broader U.S. initiative with Latin America to address the illegal drug issue (see section on ATPA later in this report). About 90% of U.S. imports from Colombia enter the United States duty-free under ATPA, under other U.S. trade preferences, or through normal trade relations.

The major expectation among proponents of the pending free trade agreement with Colombia, as with other trade agreements, is that it would provide economic benefits for both the United States and Colombia as the level of trade increases between the two countries. Another expectation is that it would improve investor confidence and increase foreign direct investment in Colombia, which would bring more economic stability to the country. For Colombia, a free trade agreement with the United States is part of the country's overall development strategy and efforts to promote economic growth and stability.

Review of the Proposed U.S.-Colombia Free Trade Agreement

Key CFTA Provisions⁵

The comprehensive free trade agreement would eliminate tariffs and other barriers to goods and services. The agreement was reached after numerous rounds of negotiations over a period of nearly two years. Some issues that took longer to resolve were related to agriculture. Colombia had been seeking lenient agriculture provisions in the agreement, arguing that the effects of liberalization on rural regions could have adverse effects on smaller farmers and drive them to coca production. The United States agreed to give more sensitive sectors longer phase-out periods to allow Colombia more time to adjust to trade liberalization. Sectors receiving the longest phase-out periods included poultry and rice.⁶

This section summarizes several key provisions in the original agreement text as provided by the United States Trade Representative (USTR), unless otherwise noted.⁷

⁴ For more information, see CRS Report RL34108, *U.S.-Peru Economic Relations and the U.S.-Peru Trade Promotion Agreement*, by M. Angeles Villarreal.

⁵ The text of the U.S.-Colombia Free Trade Agreement (CFTA) is available online at the Office of the United States Trade Representative (USTR) website: <http://www.ustr.gov>.

⁶ Bureau of National Affairs, *International Trade Reporter*, "Colombia and U.S. Reach FTA after Resolving Agriculture Issues," March 2, 2006.

⁷ USTR, *Trade Facts*, "Free Trade with Colombia: Summary of the United States-Colombia Trade Promotion Agreement," June 2007.

Market Access

The agreement would provide for the elimination of tariffs on bilateral trade in eligible goods. Colombia's average tariff on U.S. goods is 12.5% while the average U.S. tariff on Colombian goods is 3%. 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.⁸ Upon implementation, the agreement would eliminate 80% of duties on 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 and most remaining tariffs would be eliminated within 10 years after implementation.

Tariff Elimination and Phase-Outs

The pending CFTA would eliminate most tariffs immediately upon implementation of the agreement and phase out the remaining tariffs over periods of up to 19 years. Tariff elimination for major sectors would include the following:

- Upon implementation of an agreement, more than 99% of U.S. and almost 76% of Colombian industrial and textile tariff lines would be free of duty. Virtually all industrial and textile tariff lines would be duty-free 10 years after implementation.⁹
- All tariffs in textiles and apparel that meet the agreement's rules-of-origin provisions would be eliminated immediately (see section on Textiles and Apparel below).¹⁰
- Tariffs on agricultural products would be phased out over a period of time, ranging from three to 19 years (see section on Agricultural Provisions below). Colombia would eliminate quotas¹¹ and over-quota tariffs in 12 years for corn and other feed grains, 15 years for dairy products, 18 years for chicken leg quarters, and 19 years for rice.¹²

Agricultural Provisions

Under ATPA, almost all of Colombia's agricultural exports enter the U.S. market free of duty. The pending CFTA would make these trade preferences permanent. Colombia currently applies some tariff protection on all agricultural products. The pending CFTA would provide duty-free access on 77% of all agricultural tariff lines, accounting for 52% of current U.S. exports to Colombia, upon implementation. Colombia would eliminate most other tariffs on agricultural products

⁸ See USTR, *2008 National Trade Estimate Report on Foreign Trade Barriers*, March 2008.

⁹ United States International Trade Commission (USITC), *U.S.-Colombia Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects*, USITC Publication 3896, December 2006, pp. 2-1 and 2-2.

¹⁰ Ibid.

¹¹ Tariff rate quotas are limits on the quantity of imports that can enter a country duty-free before tariff-rates are applied.

¹² United States Department of Agriculture (USDA), Foreign Agricultural Service, *Fact Sheet: U.S.-Colombia Trade Promotion Agreement Overall Agriculture Fact Sheet*, August 2008.

within 15 years.¹³ U.S. farm exports to Colombia that would receive immediate duty-free treatment include high-quality beef, cotton, wheat, soybeans, soybean meal, apples, pears, peaches, cherries, and many processed food products including frozen french fries and cookies. U.S. farm products that would receive improved market access include pork, beef, corn, poultry, rice, fruits and vegetables, processed products, and dairy products. The agreement would also provide duty-free tariff rate quotas on standard beef, chicken leg quarters, dairy products, corn, sorghum, animal feeds, rice, and soybean oil.¹⁴

Colombia has a “price-band” import duty system on certain agricultural products. Under the price band system, variable duties are imposed on top of ad valorem tariffs to keep domestic prices within a predetermined range. This system results in higher duties for certain U.S. exports to Colombia, including corn, wheat, rice, soybeans, pork, poultry, cheeses, and powdered milk. A CFTA would remove Colombia’s price band system upon implementation of the agreement. However, if the rates under the price band system result in a lower rate than that given under the FTA, the United States will be allowed to sell the product to Colombia at the lower rates.¹⁵

Information Technology

Under a CFTA, Colombia would join the World Trade Organization’s Information Technology Agreement (ITA), and remove its tariff and non-tariff barriers to information technology products. Colombia would allow trade in remanufactured goods under the agreement, which would increase export and investment opportunities for U.S. businesses involved in remanufactured products such as machinery, computers, cellular telephones, and other devices.

Textiles and Apparel

In textiles and apparel, products that meet the agreement’s rules of origin requirements would receive duty-free and quota-free treatment immediately. The United States and Colombia have cooperation commitments under the agreement that would allow for verification of claims of origin or preferential treatment, and denial of preferential treatment or entry if the claims cannot be verified. The rules of origin requirements are generally based on the yarn-forward standard to encourage production and economic integration. A “de minimis” provision would allow limited amounts of specified third-country content to go into U.S. and Colombian apparel to provide producers in both countries flexibility. A special textile safeguard would provide for temporary tariff relief if imports prove to be damaging to domestic producers.

Government Procurement

In government procurement contracts, the two countries agreed to grant non-discriminatory rights to bid on government contracts. These provisions would cover the purchases of Colombia’s ministries and departments, as well as its legislature and courts. U.S. companies would also be

¹³ Ibid.

¹⁴ USTR, *Trade Facts: Free Trade with Colombia, Summary of the United States-Colombia Trade Promotion Agreement*, June 2007.

¹⁵ USITC Publication 3896, December 2006, p. 3-4.

assured access to the purchases of a number of Colombia's government enterprises, including its oil company.

Services

In services trade, the two countries agreed to market access in most services sectors, with very few exceptions. Colombia agreed to exceed commitments made in the WTO and to remove significant services and investment barriers, such as requirements that U.S. firms hire nationals rather than U.S. citizens to provide professional services. Colombia also agreed to eliminate requirements to establish a branch in order to provide a service and unfair penalties imposed on U.S. companies for terminating their relationships with local commercial agents. U.S. financial service suppliers would have full rights to establish subsidiaries or branches for banks and insurance companies. Portfolio managers would be able to provide portfolio management services to both mutual funds and pension funds in the partner country, including to funds that manage privatized social security accounts.

Investment

Investment provisions would establish a stable legal framework for foreign investors from the partner country. All forms of investment would be protected, including enterprises, debt, concessions and similar contracts, and intellectual property. U.S. investors would be treated as Colombian investors with very few exceptions. U.S. investors in Colombia would have substantive and procedural protections that foreign investors have under the U.S. legal system, including due process protections and the right to receive fair market value for property in the event of an expropriation. Protections for U.S. investments would be backed by a transparent, binding international arbitration mechanism. In the preamble of the agreement, the United States and Colombia agreed that foreign investors would not be accorded greater substantive rights with respect to investment protections than domestic investors under domestic law.¹⁶

IPR Protection

The agreement would provide intellectual property rights (IPR) protections for U.S. and Colombian companies. In all categories of IPR, U.S. companies would be treated no less favorably than Colombian companies. In trademark protection the agreement would require the two countries to have a system for resolving disputes about trademarks used in internet domain names; to develop an on-line system for the registration and maintenance of trademarks and have a searchable database; and have transparent procedures for trademark registration.

In protection of copyrighted works, the agreement has a number of provisions for protection of copyrighted works in a digital economy, including provisions that copyright owners would maintain rights over temporary copies of their works on computers. Other agreement provisions include rights for copyright owners for making their work available on-line; extended terms of protection for copyrighted works; requirements for governments to use only legitimate computer

¹⁶ USTR, *Trade Facts: Free Trade with Colombia, Summary of the United States-Colombia Trade Promotion Agreement*, June 2007.

software; rules on encrypted satellite signals to prevent piracy of satellite television programming; and rules for the liability of Internet Service Providers for copyright infringement.

In protection of patents and trade secrets, U.S. companies are concerned that the Colombian government currently does not provide patent protection for new uses of previously known or patented products. The pending CFTA would limit the grounds on which a country could revoke a patent, thus protecting against arbitrary revocation. In protection of test data and trade secrets, the agreement would protect products against unfair commercial use for a period of five years for pharmaceuticals and 10 years for agricultural chemicals. In addition, the agreement would require the establishment of procedures to prevent marketing of pharmaceutical products that infringe patents, and provide protection for newly developed plant varieties. The parties expressed their understanding that the intellectual property chapter would not prevent either party from taking measures to protect public health by promoting access to medicines for all.

The United States is concerned with music and motion picture property piracy in Colombia. The CFTA IPR provisions would include penalties for piracy and counterfeiting and criminalize end-user piracy. It would require the parties to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. The agreement would mandate both statutory and actual damages for copyright infringement and trademark piracy. This would ensure that monetary damages could be awarded even if a monetary value to the violation was difficult to assess.

Customs Procedures and Rules of Origin

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.

Labor Provisions

The labor and worker rights obligations are included in the core text of the agreement. The United States and Colombia reaffirmed their obligations as members of the International Labor Organization (ILO). The two countries agreed to adopt, maintain and enforce laws that incorporate core internationally recognized labor rights, as stated in the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*, including a prohibition on the worst forms of child labor. The parties also agreed to enforce labor laws with acceptable conditions of work, hours of work, and occupational safety and health. All obligations of the CFTA chapter on labor would be subject to the same dispute settlement procedures and enforcement mechanisms as other chapters of the agreement.

The agreement includes procedural guarantees to ensure that workers and employers would have fair, equitable, and transparent access to labor tribunals or courts. It has a cooperative mechanism to promote respect for the principles embodied in the 1998 ILO Declaration, and compliance with ILO Convention 182 on the Worst Forms of Child Labor. The United States and Colombia agreed to cooperative activities on laws and practices related to ILO labor standards; the ILO convention on the worst forms of child labor; methods to improve labor administration and enforcement of

labor laws; social dialogue and alternative dispute resolution; occupational safety and health compliance; and mechanisms and best practices on protecting the rights of migrant workers.

Environmental Provisions

The environmental obligations are included in the core text of the agreement. The agreement would require the United States and Colombia to effectively enforce their own domestic environmental laws and to adopt, maintain, and implement laws and all other measures to fulfill obligations under covered multilateral environmental agreements (MEAs). Both countries committed to pursue high levels of environmental protection and to not derogate from environmental laws in a manner that would weaken or reduce protections. The agreement includes procedural guarantees that would ensure fair, equitable, and transparent proceedings for the administration and enforcement of environmental laws. In addition, the agreement includes provisions to help promote voluntary, market-based mechanisms to protect the environment and to ensure that views of civil society are appropriately considered through a public submissions process. All obligations in the environmental chapter of the agreement would be subject to the same dispute settlement procedures and enforcement mechanisms as obligations in other chapters of the agreement.

Dispute Settlement

The core obligations of the agreement, including labor and environmental provisions, are subject to dispute settlement provisions. The agreement's provisions on dispute panel proceedings include language to help promote openness and transparency through open public hearings; public release of legal submissions by parties; and opportunities for interested third parties to submit views. The provisions would require the parties to make every attempt, through cooperation and consultations, to arrive at a mutually satisfactory resolution of a dispute. If the parties are unable to settle the dispute through consultations, the complaining party would have the right to request an independent arbitral panel to help resolve the dispute. Possible outcomes could include monetary penalties or a suspension of trade benefits.

Strengthening of Labor and Environmental Provisions

In early 2007, a number of members of Congress indicated that some of the provisions in pending U.S. FTAs would have to be strengthened to gain their approval, particularly relating to core labor standards. After several months of negotiation, Congress and the Bush 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 CFTA on labor, the environment, and other matters to reflect the bipartisan agreement of May 10.

The amendments to the FTA were based on the agreement reached between the Bush Administration and Congress on May 10, 2007, and are similar to the amendments that were made to the U.S.-Peru free trade agreement, which was approved by Congress in December 2008. At the time they were announced, the Bush 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. Some of the 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 FTA's dispute settlement mechanism. The Colombian government has approved the amendments. On October 30, 2007, the Colombian Senate "overwhelmingly" approved the labor and environmental amendments to the CFTA, marking the end of the approval process for the agreement in Colombia.¹⁷

Amendments on Basic Labor Standards

After the bipartisan agreement, the Administration reached an agreement with Colombia to amend the CFTA to require the parties 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. The amendments to the agreement strengthened the earlier labor provisions which only required the signatories to *strive* to ensure that their domestic laws would provide for labor standards consistent with internationally recognized labor principles.

The amendments that resulted from the bipartisan trade framework were intended to enhance the protection and promotion of worker rights by including enforceable ILO core labor standards in the agreement. 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*. Another change to the agreement relates to labor law enforcement. Any decision made by a signatory on the distribution of enforcement resources would not be a reason for not complying with the labor provisions. Under the amended provisions, parties would not be allowed to derogate from labor obligations in a manner affecting trade or investment. 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

In the original text of the agreement, the parties would have been required to "effectively enforce" their own domestic environmental laws; this was the only environmental provision that would have been enforceable through the agreement's dispute settlement procedures. Other environmental provisions in the original text, that were not enforceable, included provisions on environmental cooperation, procedural guarantees for enforcement of environmental laws, and provisions for a public submissions process. Under the amended version of the proposed FTA, the United States and Colombia agreed 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). The amended agreement states that *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.

¹⁷ Bureau of National Affairs, Inc., *International Trade Reporter*, "Colombian Senate Overwhelmingly Approves Labor-Related Amendments to FTA with U.S.," November 1, 2007.

Other Provisions

Other amendments to the proposed FTA include provisions on intellectual property, government procurement, and port security. On intellectual property rights (IPR) protection, some members of Congress were concerned that the original commitments would have prevented the poor from having access to medicines to treat AIDS or other infectious diseases. The amended agreement was a way of trying to find a balance between the need for IPR protection for pharmaceutical companies to foster innovation and the desire for promoting access to generic medicines to all segments of the population. The amended text of the agreement maintains the five years of data exclusivity for test data related to pharmaceuticals. However, 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. This could 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 core labor laws in the country where the good is produced or the service is performed. Government agencies also would be allowed to include environmental protection requirements in their procurements. Concerning port security, a new provision would ensure that if a foreign-owned company were to provide services at a U.S. port that would raise national security concerns, the CFTA would not be an impediment for U.S. authorities in taking actions to address those concerns.¹⁸

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, the fifth-largest economy in Latin America, is quite small when compared to that of the United States. Colombia's gross domestic product (GDP) in 2009 was \$235 billion, about 1.6% of U.S. GDP of \$14.3 trillion in 2009 (see **Table 1**). Colombia's exports accounted for 17% of GDP in 2009, while imports accounted for 19%.

The United States is the Colombia's dominant trading partner for both Colombia's imports and exports. Subsequently, any change in U.S. demand for Colombian products could have a noticeable effect on Colombia's economy. In 2009, the United States accounted for 28.7% of Colombia's imports and 39.2% of Colombia's exports. China is the second-leading supplier of Colombia's imports, after the United States, accounting for 11.3% of total imports, followed by Mexico, which accounted for 7.0% of Colombia's imports in 2009. Venezuela is Colombia's second largest export market with a 12.3% export share, followed by the Netherlands with a 4.1% export share. Colombia is part of the Andean Community (CAN), a customs union consisting of Bolivia, Colombia, Ecuador, and Peru. Colombia also has free trade agreements with Chile and Mexico. Colombia and Canada concluded a comprehensive free trade agreement in 2009. The agreement was approved by both countries in 2010 and is awaiting implementation.

¹⁸ Office of the United States Trade Representative, *Trade Facts*, "Bipartisan Trade Deal," Bipartisan Agreement on Trade Policy, May 2007, pp. 4-5.

Table 1. Key Economic Indicators for Colombia and the United States

	Colombia		United States	
	1999	2009 ^a	1999	2009 ^a
Population (millions)	40	46	279	307
Nominal GDP (\$US billions) ^b	97	235	9,354	14,258
GDP, PPP ^c Basis (\$US billions)	212	403	9,354	14,258
Per Capita GDP (\$US)	2,449	5,080	33,520	46,480
Per Capita GDP in \$PPP ^c	5,333	8,690	33,520	46,480
Total Merchandise Exports (US\$ billions)	12	33	696	1,057
Exports as % of GDP ^d	15%	17%	11%	11%
Total Merchandise Imports (US\$ billions)	11	33	1,025	1,558
Imports as % of GDP ^d	17%	19%	13%	14%

Source: Compiled by CRS based on data from the Economist Intelligence Unit (EIU) on-line database.

- a. Some figures for 2009 are estimates.
- b. Nominal GDP is calculated by EIU based on figures from World Bank and World Development Indicators.
- c. PPP refers to purchasing power parity, which attempts to factor in price differences across countries when estimating the size of a foreign economy in U.S. dollars.
- d. Exports and Imports as % of GDP are derived by the EIU and include trade in both goods and services.

U.S.-Colombia Merchandise Trade

The United States is Colombia's leading trade partner. In 2009, 39% of Colombia's exports went to the United States, compared to 37% in 2008 and 34% in 2007. Twenty-nine percent of Colombia's imports were supplied by the United States in 2009, the same as in 2008 but slightly higher than the 2007 figure of 27%. Venezuela is Colombia's second-most significant trade partner, accounting for 12% of Colombia's exports and 3% of Colombia's imports. Other major trade partners for Colombia are China, Mexico, and Brazil.

Colombia accounts for a very small percentage of U.S. trade (0.8% in 2009). Colombia ranks 22nd among U.S. export markets and 27th in the world as a source of U.S. imports. U.S. exports to Colombia totaled \$8.8 billion in 2009, while U.S. imports totaled \$11.2 billion. As shown in **Table 2**, the dominant U.S. import item from Colombia is crude oil (43% of U.S. imports from Colombia in 2009), followed by coal (10% of total), and gold (9% of total). The leading U.S. export items are petroleum oils, other than crude, (14% of U.S. exports to Colombia in 2009), machinery parts (4% of total), and corn (3% of total).

Table 2. U.S. Trade with Colombia, 2009

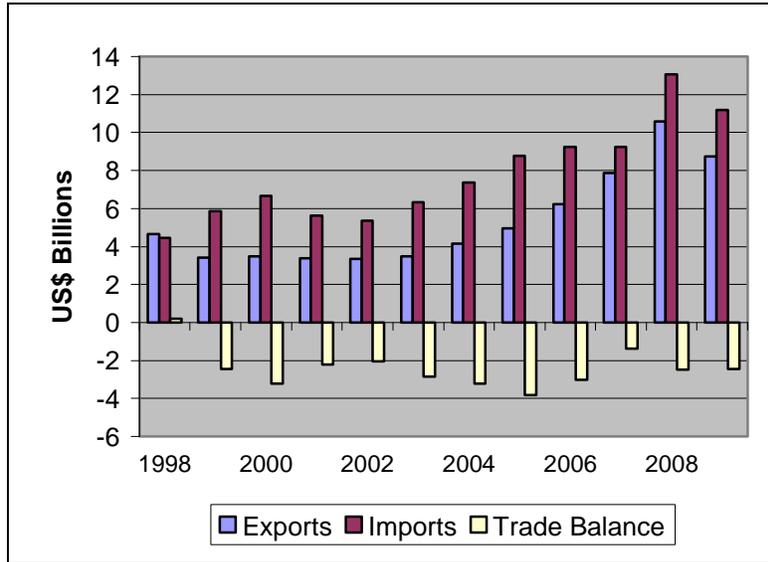
Leading Items (HTS 4 Digit Level)	U.S. Exports		U.S. Imports		
	\$ Millions	Share ^a	\$ Millions	Share ^a	
Petroleum oils and oils from bituminous minerals (other than crude) and products	1,187.6	14%	Crude petroleum oils and oils from bituminous minerals	4,812.6	43%
Machinery parts for trucks, bulldozers, snowplows, etc.	364.0	4%	Coal and coal products	1,079.0	10%
Corn (maize)	219.4	3%	Gold	1,026.8	9%
Self-propelled bulldozers and related products	204.8	2%	Coffee and coffee products	716.1	6%
Aircraft, spacecraft, and parts	199.6	2%	Cut flowers and buds	506.7	5%
All Other	6,576.7	75%	All Other	3,068.2	27%
Total Exports	8,752.1	—	Total Imports	11,209.4	—

Source: Compiled by CRS using USITC Interactive Tariff and Trade DataWeb at <http://dataweb.usitc.gov>: HTS 4-digit level.

a. Totals may not add up due to rounding.

After increasing from \$6.3 billion in 2003 to \$13.1 billion in 2008, U.S. imports from Colombia decreased to \$11.2 billion in 2009. U.S. exports to Colombia also decreased in 2009 to \$8.8 billion. Exports to Colombia had increased from \$3.5 billion in 2003 to \$10.6 billion in 2008 (see **Figure 1**). In the five-year period prior to 2003, both U.S. imports from and exports to Colombia had gone through some fluctuations, without significant changes.

Figure I. U.S. Merchandise Trade with Colombia



Source: Compiled by CRS using USITC Interactive Tariff and Trade DataWeb at <http://dataweb.usitc.gov>.

Andean Trade Preference Act

The United States currently extends duty-free treatment to imports from Colombia under the Andean Trade Preference Act (ATPA), a regional trade preference program.¹⁹ ATPA was enacted on December 4, 1991 (Title II of P.L. 102-182), and was renewed and modified under the Andean Trade Promotion and Drug Eradication Act (ATPDEA; Title XXXI of P.L. 107-210) on August 6, 2002. Additional products receiving preferential duty treatment under ATPDEA include certain items in the following categories: petroleum and petroleum products, textiles and apparel products, footwear, tuna in flexible containers, and others. Since the enactment of ATPDEA, Congress has extended ATPA preferences several times for Colombia and other Andean countries for short periods of time. The most recent extension of ATPA (P.L. 111-344) extended preferences for Colombia and Ecuador until February 12, 2011.

ATPA, as amended by ATPDEA, is part of a broader U.S. initiative with Andean countries to address the drug trade problem with Latin America. It authorized the President to grant duty-free treatment or reduced tariffs to certain products from Bolivia, Colombia, Ecuador, or Peru that met domestic content and other requirements. The act (as a complement to crop eradication, interdiction, military training, and other counter-narcotics efforts) is intended to promote economic growth in the Andean region and to encourage a shift away from dependence on illegal drugs by supporting legitimate economic activities. Increased access to the U.S. market is expected to help create jobs and expand legitimate opportunities for workers in the Andean

¹⁹ For more information see CRS Report RS22548, *ATPA Renewal: Background and Issues*, by M. Angeles Villarreal.

countries in alternative export sectors. Bolivia's designation as a beneficiary country ended in December 2008 because it failed to meet the eligibility criteria, and Peru is no longer a beneficiary country because it has entered into a free trade agreement with the United States.

Table 3. U.S. Imports from Colombia
(\$ Millions)

	2003	2004	2005	2006	2007	2008	2009
Total Imports	6,346.2	7,360.6	8,770.3	9,239.8	9,251.2	13,058.8	11,209.4
All Duty-Free	4,109.2	6,557.8	7,892.5	8,531.5	8,447.1	12,044.1	9,962.9
% of Total	65%	89%	90%	92%	91%	92%	89%
ATPA ^a	2,908.7	3,888.9	4,653.2	4,791.2	4,527.7	7,339.2	5,589.5
% of Total	46%	53%	53%	52%	49%	56%	50%

Source: Compiled by CRS using USITC data.

a. Includes imports under ATPA and ATPDEA.

Almost 90% of U.S. imports from Colombia receive duty-free treatment through preference programs or normal trade relations (see **Table 3**). In 2009, 50% of total U.S. imports from Colombia received preferential duty treatment under ATPA. Of those, the leading imports were crude oil, cut flowers and buds, petroleum oil products (other than crude), and men's woven apparel. The trade preference program contributed to a rapid increase in ATPA imports from Colombia. Between 2003 and 2008, total imports from Colombia increased by 106%, while ATPA imports from Colombia increased by 153%. The rapid increase in import value was partially due to an increase in the volume of imports caused by the trade preferences act, but rising prices of mineral and energy-related imports were also a major factor. Imports in 2009 declined, however, as a result of the global financial crisis, with total imports from Colombia decreasing from \$13.1 billion to \$11.2 billion (14%) and ATPA imports decreasing from \$7.3 billion to \$5.6 billion (24%) between 2008 and 2009. Crude oil and petroleum oil products accounted for 77% of ATPA imports from Colombia in 2009 (see **Table 4**).

Table 4. U.S. Imports from Colombia under ATPA
(\$ Millions)

Import Item ^a	2003	2004	2005	2006	2007	2008	2009
Crude Oil	1,692.9	2,299.7	2,897.1	3,183.7	3,152.6	5,813.9	4,318.2
Cut Flowers and Buds	343.1	414.4	417.5	448.1	506.3	498.6	505.9
Oil and Products (other than crude)	321.2	405.5	454.6	202.5	141.2	375.3	249.0
Men's Apparel	89.9	147.9	211.9	182.0	139.6	128.6	67.4
Total ATPA ^b	2,908.7	3,888.9	4,653.2	4,791.2	4,527.7	7,339.2	5,589.5

Source: Compiled by CRS using USITC data.

a. HTS 4-digit level.

b. Includes imports under ATPA and ATPDEA.

U.S.-Colombia Bilateral Foreign Direct Investment

U.S. foreign direct investment in Colombia on a historical-cost basis totaled \$6.7 billion in 2009 (see **Table 5**). The largest amount was in mining, which accounted for 46.9%, or \$3.2 billion, of total U.S. FDI in Colombia in 2009. The second-largest amount, \$1.7 billion (25.0% of total), was in manufacturing, followed by \$485 million in wholesale trade.

Table 5. U.S. Direct Investment Position in Colombia
(Historical-Cost Basis: 2009)

Industry	Amount (U.S.\$ Millions)	% of Total
Mining	3,153	46.9%
Manufacturing	1,683	25.0%
Finance and Insurance ^a	485	7.2%
Total	6,728	

Source: Bureau of Economic Analysis, International Economic Accounts.

a. Except depository institutions.

The proposed U.S.-Colombia FTA is expected to improve investor confidence in Colombia and would likely increase the amount of U.S. FDI in the country. Investors from other countries would also be expected to increase investment in Colombia as the FDI environment improves. According to one study, FDI in Colombia would have increased by more than \$2 billion from 2007 through 2010 had the proposed CFTA been implemented in 2007.²⁰

Background on Colombia²¹

Colombia is a democratic nation with a bicameral legislature. In spite of its democratic tradition, Colombia has suffered from internal conflict for over 40 years. This conflict and drug violence present unique challenges to Colombia's institutions and threaten the human rights of Colombian citizens. In 2002, an independent candidate, Alvaro Uribe, won the 2002 presidential elections, largely because of his aggressive plan to reduce violence in Colombia. President Uribe, who served two terms in office, retained widespread support throughout his presidency. His popularity

²⁰ United States International Trade Commission (USITC), *U.S.-Colombia Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects*, Investigation No. TA-2104-023, USITC Publication 3896, December 2006, p. 7-3.

²¹ For more information on Colombia and issues for Congress, please see CRS Report RL32250, *Colombia: Issues for Congress*, by June S. Beittel.

derived from the progress his government made in improving the security situation in Colombia; pursuing foreign policy objectives; and opening up foreign trade markets. Colombia continues to face serious challenges despite the progress it has made in recent years.

Presidential Elections in 2010

In the presidential election of June 2010, Juan Manuel Santos of the Partido de Unidad Nacional (Partido de la U) was elected president of Colombia with 69% of the vote. President Santos previously served as defense minister (2006-2009) under former President Alvaro Uribe and in two prior governments as finance minister and minister of trade. Santos was sworn into office on August 7, 2010, under an optimistic mood in the country, but the new government has significant foreign policy and domestic challenges ahead. The country's main foreign policy challenges will be to improve relations with Venezuela and Ecuador. In addition, President Santos is planning to move forward with a series of reforms involving oil and mining royalties, healthcare, the justice system, and land.²² On September 9, 2010, President Santos unveiled a new ambitious trade strategy aimed at increasing the value of Colombian exports by improving competitiveness, increasing market access to new markets, and providing more government support. The new strategy reflects President Santos' support of the pending U.S.-Colombia FTA and his desire to complete FTA negotiations with a number of countries.²³

Violence in Colombia

Colombia has a long tradition of civilian, democratic rule, yet has been plagued by violence throughout its history. The three major armed groups today are the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC). Although the AUC disbanded in 2006, it remains a designated foreign terrorist organization. The Colombian government has made significant achievements against terrorist leadership targets in Colombia. A 2009 report by the State Department states that Colombia has maintained and strengthened its "Democratic Security" strategy, which combines military, intelligence, police operations, and efforts to demobilize combatants. It also provides public services in rural areas previously dominated by armed groups. Kidnappings in Colombia by criminal groups significantly decreased in 2008.²⁴ The threat of extradition to the United States has been a strong weapon against drug traffickers and terrorists. In 2008, Colombia extradited a record 208 defendants to the United States for prosecution, most of which were Colombian nationals.²⁵

Violence in Colombia has its roots in a lack of state control over much of Colombian territory, and a long history of poverty and inequality. The shift of cocaine production from Peru and Bolivia to Colombia in the 1980s increased drug violence, and provided a source of revenue for

²² EIU, "Optimism for New Government but Challenges Remain," August 12, 2010.

²³ Global Insight, "Colombian President Unveils Trade Strategy," September 9, 2010.

²⁴ United States Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2008*, April 2009, pp. 11 and 155.

²⁵ *Ibid.*, p. 164.

both guerrillas and paramilitaries. Conflicts between the Conservative and Liberal parties have existed for more than 100 years and have killed hundreds of thousands of Colombians. While a power-sharing agreement between the Liberal and Conservative parties ended a civil war in 1957, it did not address the root causes of the violence. Numerous leftist guerrilla groups inspired by the Cuban Revolution formed in the 1960s as a response to state neglect and poverty. Rightwing paramilitaries were formed in the 1980s to defend landowners, many of them drug traffickers, against guerrillas. Most of the rightist paramilitary groups were coordinated by the AUC, which disbanded in 2006 after more than 30,000 of its members demobilized. The AUC has been accused of gross human rights abuses and collusion with the Colombian Armed Forces in their fight against the FARC and ELN. The AUC also participated in narcotics trafficking.

Human Rights Issues

The debate on U.S. policy toward Colombia and on the proposed free trade agreement with Colombia has brought attention to allegations of human rights abuses by the FARC and ELN, paramilitary groups, and the Colombian Armed Forces. The State Department's February 2010 human rights report states that the Prosecutor General's Office in Colombia has been assigned 1,302 cases concerning extrajudicial killings by the armed forces allegedly taking place between 1985 and 2009.²⁶ Progress in addressing the backlog of cases concerning extrajudicial killings has proceeded slowly.

Congress has annually required that the Secretary of State certify to Congress that the Colombian military and police forces are severing their links to the paramilitaries, investigating complaints of abuses, and prosecuting those who have had credible charges made against them. In the September 2010 report, the State Department determined and certified to Congress that the Colombian government and armed forces are meeting statutory criteria related to human rights. The report states that though there continues to be a need for improvement, the Colombian government has taken positive steps to improve respect for human rights in the country. According to the report, the Colombian government's firm resolve on not tolerating extrajudicial killings has led to a rapid reversal in this trend. The report also acknowledges the significant steps that the Santos Administration has taken to demonstrate it is taking human rights seriously and its actions on the establishment of a roundtable on labor, meetings with NGOs and civil society groups, increasing engagement with these groups, and outreach to Colombia's courts to repair relations with the judicial system.²⁷

Relations between the Uribe Administration and human rights organizations were often tense because of the groups' doubts about President Uribe's commitment to human rights. There was some speculation that President Uribe would not renew the United Nations High Commissioner for Human Rights (UNHCHR) mandate in 2006. However, President Uribe extended the UNHCHR's mandate until October 30, 2010. The UNHCHR has criticized the paramilitary demobilization process and the government, along with paramilitaries and leftist guerrillas, for human rights violations.

²⁶ U.S. Department of State, *2009 Country Reports on Human Rights Practices: Colombia*, March 11, 2010.

²⁷ U.S. State Department, Office of the Spokesman, *Determination and Certification of the Colombian Government and Armed Forces with Respect to Human Rights Related Conditions*, September 15, 2010.

The March 2010 UNHCHR report credited the Colombian government with making significant progress in the situation regarding human rights and international humanitarian law in Colombia. The UNHCHR acknowledged the significant progress the government has made in the drastic reduction in the number of complaints of extra-judicial executions and prosecutions of government officials for alleged links with paramilitary organizations. The report recognized the government's openness to international scrutiny with regard to human rights issues in Colombia. The report also acknowledged the spirit of cooperation between the Colombian government and UNHCHR-Colombia, and the commitment of the government to address human rights challenges.²⁸ As in previous reports, UNHCHR expressed concerns about the activities and abuses committed by paramilitary forces that have rearmed, and by the FARC. The report described the continued vulnerability of groups like women, children, Afro-Colombians, the indigenous, journalists, union leaders, and human rights workers.²⁹

U.S. Policy Toward Colombia

The focus of U.S. foreign policy toward Colombia has been to curb narcotics production and trafficking. The United States also seeks to promote democracy and economic development in order to strengthen regional security. Colombia's spacious, rugged and sparsely populated territory provides ample isolated terrain for drug cultivation and processing, and contributes to the government's difficulties in exerting control throughout the nation. The country is known for a long tradition of democracy but has had to contend with continuing violence from leftist guerrilla insurgencies dating from the 1960s and persistent drug trafficking activity. Plan Colombia, a multi-year effort to address Colombia's key challenges, has been the centerpiece of U.S. policy toward Colombia since 2000.

The United States has made a significant commitment of funds and material support to help Colombia and the Andean region fight drug trafficking since the development of Plan Colombia in 1999. In support of the plan, Congress passed legislation providing \$1.3 billion in assistance for FY2000 (P.L. 106-246) and has provided more than \$7 billion to support Plan Colombia from FY2000 through FY2010 in both State Department and Defense Department accounts. Since 2002, Congress has granted the State Department expanded authority to use counternarcotics funds for a unified campaign to fight both drug trafficking and terrorist organizations in Colombia. In 2004, Congress raised the statutory cap on U.S. personnel allowed to be deployed to Colombia in support of Plan Colombia. The three main illegally armed groups in Colombia participate in drug production and trafficking and have been designated foreign terrorist organizations by the State Department.

In 2008, there was significant debate in Congress about the proper balance between so-called "hard-side" security assistance (i.e., equipment and training to the Colombian military and police) and "soft-side" traditional development and rule of law programs. Some members supported the emphasis on security-related assistance to Colombia, while others expressed a desire to see more emphasis on economic and social aid in the annual foreign assistance appropriations legislation.

²⁸ United Nations General Assembly-Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia," March 4, 2010.

²⁹ *Ibid.*

Since 2008, Congress has reduced and rebalanced assistance between development assistance and security and counterdrug assistance.³⁰

The Proposed CFTA: Issues for Congress

Economic Impact

If and when fully implemented, the U.S.-Colombia FTA would likely have a small, but positive, net economic effect on the United States. Colombia's economy is small compared to the U.S. economy (1.6%) and the value of U.S. trade with Colombia is a very small percentage of overall U.S. trade. Most of the economy-wide trade effects of trade liberalization from the FTA would arise from Colombia's removal of tariff barriers and other trade restrictions.

Approximately 90% of U.S. imports from Colombia enter the United States duty-free, either unconditionally or under the ATPA or other U.S. provisions; hence, the marginal effects of the FTA on the U.S. economy likely would not be significant.

Study Findings

A study by the United States International Trade Commission (USITC) assessed the potential effects of a U.S.-Colombia FTA on the U.S. economy. The study found that, in general, the primary impact of an FTA with Colombia would be increased U.S. exports to Colombia as a result of enhanced U.S. access to the Colombian market.³¹ Major findings of the USITC study on the likely effects of a U.S.-Colombia FTA on the U.S. economy, should the agreement be fully implemented, include the following:³²

- U.S. exports to Colombia would increase by \$1.1 billion (13.7%) and U.S. imports from Colombia would increase by \$487 million (5.5%). U.S. GDP would increase by over \$2.5 billion (less than 0.05%).
- The largest estimated increases in U.S. exports to Colombia, by value, would be in chemical, rubber, and plastic products; machinery and equipment; and motor vehicles and parts. In terms of percentage increases, the largest increases in U.S. exports would be in rice and dairy products.
- The largest estimated increases in U.S. imports from Colombia, by value, would be in sugar and crops not elsewhere classified. The largest estimated increases in U.S. imports, by percent, would be in dairy products and sugar.

³⁰ For more information on Plan Colombia and U.S. foreign assistance, see CRS Report RL32250, *Colombia: Issues for Congress*, by June S. Beittel.

³¹ United States International Trade Commission (USITC), *U.S.-Colombia Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects*, Investigation No. TA-2104-023, USITC Publication 3896, December 2006. (Hereinafter USITC, December 2006).

³² USITC, December 2006, pp. 2-1 and 2-2.

- On an industry level, the FTA would result in minimal to no effect on output or employment for most sectors of the U.S. economy. The U.S. sugar sector would be the only sector with an estimated decline of more than 0.1% in output or employment. The largest increases in U.S. output and employment would be in the processed rice, cereal grains, and wheat sectors.

The USITC reviewed seven studies that it found on the probable economic effects of a U.S.-Colombia FTA.³³ The results of the studies reviewed by USITC varied. One study found that U.S. exports to Colombia would increase by 2.4% to 8.3%, while another study assessed that the expected increase would be 44%. Two studies found that the largest increases in U.S. exports would be in agriculture products, metal and wood, and food products. In assessing the impact on U.S. imports from Colombia, the results of the studies also varied. One study found that U.S. imports from Colombia would increase by 2.0% to 6.2%, while another found that U.S. imports would increase by 37%. The largest increases would be in apparel and leather goods, textile products, and metal and wood. The studies also assessed that an FTA would result in small overall welfare gains for both the United States and Colombia and a positive impact on the U.S. agricultural sector despite an increase in U.S. sugar imports.³⁴

The non-governmental Institute for International Economics (IIE) also has a study assessing the possible impact of a U.S.-Colombia FTA on both the U.S. and Colombian economies.³⁵ The study found that the proposed U.S.-Colombia FTA would be expected to result in an increase in total trade between the two countries. The total value of U.S. imports from Colombia would increase by an estimated 37% while the value of U.S. exports to Colombia would increase by an estimated 44%.³⁶ In terms of welfare gains, the study assessed that a U.S.-Colombia FTA would result in small welfare benefits for both partners, though the gains would be larger for Colombia. On a sectoral level, the study found that an agreement would have a minor sectoral effect on the U.S. economy, but the effect would be more significant for Colombia because it is the smaller partner. The study indicated that Colombia would face certain structural adjustment issues with a displacement of low-skilled workers in some sectors, but that these workers would all be able to find job possibilities in the expanding sectors.³⁷

One of the drawbacks to a bilateral free trade agreement is that it may result in trade diversion because it is not fully inclusive of all regional trading partners.³⁸ Trade diversion results when a

³³ In its review of the seven economic studies, the USITC noted that these studies analyzed a proposed, possible, or hypothetical U.S.-Colombia free trade agreement (FTA) and not the final text of the actual FTA that was the subject of its investigation. Therefore, the underlying assumptions made in the reviewed studies may be different than those of the USITC's analysis.

³⁴ USITC, December 2006, pp. 7-1 to 7-4.

³⁵ Jeffrey J. Schott, editor, Institute for International Economics (IIE), *Trade Relations Between Colombia and the United States*, August 2006. (Hereinafter IIE, August 2006).

³⁶ IIE August 2006, Chapter 4, "Potential Benefits of a U.S.-Colombia FTA," by Dean A. DeRosa and John P. Gilbert. This chapter uses empirical and applied methods of economic analysis to examine the potential quantitative impact of a U.S.-Colombia FTA and is one of the studies reviewed by the USITC in its assessment of a U.S.-Colombia FTA.

³⁷ *Ibid*, p. 112.

³⁸ When a trade agreement lowers trade barriers on a good, production may shift from domestic producers to lower cost foreign producers and result in substituting an imported good for the domestic good. This process is called trade creation. Trade creation provides economic benefits as consumers have a wider choice of goods and services available at lower costs. Trade creation also results in adjustment costs, however, usually in the form of domestic job losses as (continued...)

country enters into an FTA and then shifts the purchase of goods or services (imports) from a country that is not an FTA partner to a country that is an FTA partner even though it may be a higher cost producer. In the case of the United States and Colombia, for example, goods from the United States may replace Colombia's lower-priced imports from other countries in Latin America. If this were to happen, the United States would now be the producer of that item, not because it produces the good more efficiently, but because it is receiving preferential access to the Colombian market. The IIE study assessed that a CFTA probably would not cause trade diversion in the United States, but that it could cause some trade diversion in Colombia. The IIE study estimated that an FTA with the United States would result in a decrease in Colombia's imports from other countries of approximately 9%.³⁹

Agricultural Sector

The USITC study found that one of the impacts of a U.S.-Colombia FTA would be increased U.S. agriculture exports to Colombia as a result of enhanced U.S. access to the Colombian market.⁴⁰ In the agricultural sector, key findings of the study include the following:

- The removal of tariff and nontariff barriers would likely result in a higher level of U.S. exports of meat (beef and pork) to Colombia. U.S. imports of meat from Colombia would 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 trade barriers and certain government support measures under a CFTA would likely result in increased U.S. grain exports to Colombia. Rice would account for most of the increase, with yellow corn and wheat accounting for the remaining balance.
- U.S. exports to Colombia in soybeans, soybean products, and animal feeds would likely increase under a CFTA.⁴¹

According to the IIE study, the main gains to Colombia in agricultural trade would likely be more secure and preferential market access to the U.S. market. U.S. agricultural exports would gain a small but not insignificant preference in the Colombian market for temperate-zone agricultural produce. The study's authors state that the long time periods for phasing out tariffs for sensitive products and safeguard provisions that would replace Colombia's price band system would lessen the impact of increased imports from the United States. One section of the study describes the results of a global applied general equilibrium model on the pending FTA. In terms of the overall effects on Colombia's economy, the results of the study imply that, in the medium term, Colombia would lose a net amount of \$63 million, or about 0.06% of GDP. In the longer term,

(...continued)

production shifts to another country.

³⁹ IIE, August 2006, pp. 88-89.

⁴⁰ USITC Publication 3896, p. xv.

⁴¹ *Ibid.*, pp. xvi-xvii.

however, Colombia would gain \$550 million each year, or about a 0.5% permanent increase to GDP.⁴²

Labor Issues

The proposed CFTA includes the new trade-labor policy priorities that were established under the May 10, 2007, “New Trade Policy for America” that was negotiated and agreed upon by Congress and the Bush Administration. This agreement incorporated key Democratic priorities relating to labor and other issues on U.S. trade policy. Key concepts in the new trade-labor policy include fully enforceable provisions that (1) incorporate ILO core labor standards as stated in the 1998 ILO *Declaration on Fundamental Principles and Rights at Work* (henceforth referred to as the *ILO Declaration*);⁴³ and (2) prohibit partner countries from weakening laws relating to ILO core labor standards in order to attract trade or investment.

A number of U.S. labor groups oppose the idea of a free trade agreement with Colombia. They maintain that Colombia’s labor movement is under attack through violence, intimidation, and harassment, as well as legal channels. In a letter to Congress opposing the U.S.-Colombia FTA, a number of trade unions voiced their concern about the violence against Colombian trade unionists.⁴⁴ The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is opposed to the agreement and has issued statements saying that Colombian labor union members face daily legal challenges to their rights to organize and bargain collectively and that these challenges threaten the existence of the Colombian labor movement. While the AFL-CIO acknowledges that Colombia has made progress in protecting union members, it continues to have concerns regarding the government’s commitment to protect fundamental worker rights.⁴⁵

The official position of Colombian labor unions on the U.S.-Colombia FTA is in opposition to the agreement, but the feelings among labor unionists are mixed. In May 2007, 17 Colombian unionists representing the textiles, flower, mining, and other Colombian industries visited the U.S. Congress to speak out in favor of the agreement. Their main argument was that an FTA would provide jobs for Colombia. However, another group of Colombian unions, consisting mostly of government employees, have spoken out against the agreement, saying a CFTA would interfere with the Colombian government’s right to govern the country, and would have a negative effect on Colombia’s agriculture sector and the economy in general.⁴⁶

⁴² IIE, August, 2006.

⁴³ These are: “(a) the freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labor; (c) the effective abolition of child labor; and (d) the elimination of discrimination in respect of employment and occupation.” The *ILO Declaration* does not include in (c) the “worst forms of child labor,” but the new text of the CFTA adds them to this list “for purposes of this agreement.”

⁴⁴ *A Letter to Congress from U.S. Trade Unions Opposing More U.S. Aid to the Colombian Military and the U.S.-Colombia Free Trade Agreement*, June 11, 2007.

⁴⁵ *Colombia Reports*, “Colombia too far behind on labor and human rights: U.S. union,” March 21, 2010.

⁴⁶ Confederación General del Trabajo, letter to House Speaker Nancy Pelosi and House Ways and Means Committee Chairman Charles Rangel, January 30, 2006. Central Unitaria de Trabajadores de Colombia (CUT), *Rechazamos el TLC Por Ello, Desautorizamos toda Opinión Sindical que Contrarie la Postura Institucional*, April 12, 2007. CUT, *TLC: Todos Limosnearemos Comida*, April 2008.

In November 2007, a high-level delegation from the ILO visited Colombia to assess the progress being made there toward protecting workers' rights. It was the first ILO-initiated mission to Colombia since June 2006 when the Colombian government and representatives of Colombia's main employer and worker organizations signed the so-called Tripartite Agreement on Freedom of Association and Democracy, which is aimed at securing the fundamental rights of workers. Some observers viewed the ILO mission as a possible decision-making factor for some members of Congress who were concerned about the worker rights situation in Colombia.⁴⁷ Following the mission, the ILO Governing Body reviewed the Tripartite Agreement and "acknowledged that there had been progress in social dialogue and freedom of association in the country due to the Tripartite Agreement", but also added that the situation needed improvement.⁴⁸ In the ILO's 2010 *Report of the Committee of Experts on the Application of Conventions and Recommendations* (CEACR), it expressed satisfaction regarding the measures the Colombian government had taken in improving protection of freedom of association and collective bargaining.⁴⁹ The 2010 ILO report on the application of labor standards removed Colombia from the 25 countries it examined for failure to comply with international labor standards. However, the report noted that Colombia was taken off the list after a lengthy debate and that it had been taken off the list so as to break a gridlock in that particular year.⁵⁰

In response to U.S. concerns regarding worker rights in Colombia, the Embassy of Colombia in the United States has been reporting the progress that Colombia has made since 2001 in strengthening the rights, benefits, and security of unions in Colombia. According to progress reports issued by the embassy, government reforms in Colombia since 2002 have helped protect Colombian worker rights to form unions, bargain collectively, and strike. These include enhanced efforts to open dialogue with union members, including meetings with the President and Vice President of Colombia.⁵¹ The 2010 report issued by the embassy provides data indicating that homicides dropped by 45% between 2002 and 2009. It also states that a protection program aimed at vulnerable groups, including union members, and the creation of the special unit at the Prosecutor General's Office have led to an 86% reduction in the level of homicides of union members. The report acknowledges that any homicide is one too many, but also states that it is important to recognize that Colombia has made significant process in protecting labor and human rights.⁵²

⁴⁷ Bureau of National Affairs (BNA), *International Trade Reporter*, "Fate of U.S. Free Trade Pact with Colombia Could Hinge in Part on ILO Visit This Month," November 22, 2007.

⁴⁸ International Labour Organization (ILO), "ILO Governing Body concludes 301st session - Considers labour situation in Myanmar, Colombia and other countries, welcomes growing links with World Bank," Press Release, March 20, 2008.

⁴⁹ ILO, *2010 Report of the Committee of Experts on the Application of Conventions and Recommendations*, February 2010, at <http://www.ilo.org/ilolex/gbe/ceacr2010.htm>.

⁵⁰ ILO, *Conference Committee on the Application of Standards: Extracts from the Record of Proceedings (ILC 2010)*, at <http://www.ilo.org/global>.

⁵¹ Embassy of Colombia, Washington, D.C., *Colombia: A Progress Report: Strengthening the Rights, Benefits, and Security of Unions*, October 2007.

⁵² Embassy of Colombia, Washington, D.C., *Ensuring Justice and Protecting Labor and Human Rights in Colombia*, 2010.

Violence Issues

A number of members of Congress oppose the FTA with Colombia because of concerns about violence against union members and other terrorist activity in Colombia. In a press release issued in 2007, the House leadership issued a statement regarding the concerns regarding the “violence in Colombia, the impunity, the lack of investigations and prosecutions, and the role of the paramilitary.” The House members stated that there must be “concrete evidence of sustained results on the ground in Colombia” before they could support the FTA. In June 2007, several Democratic House members said that the high rate of violence against trade unionists in Colombia, made Colombia an “unfit free trade agreement partner for the United States.”⁵³

Republican and some Democratic supporters of the FTA take issue with these charges, stating that Colombia has made progress in recent years to curb the violence in the country. Certain members have stated that Colombia is a crucial ally of the United States in Latin America and that if the FTA with Colombia is not passed, it may lead to further problems in the region. In a report issued by USTR, a number of quotes by members of Congress in support of a trade agreement with Colombia were compiled. They were generally quoted as saying that the agreement had implications for the economic and security interests of the United States in Colombia and that Colombia had made significant progress in cutting down on the number of murders and other criminal activities.⁵⁴

The Bush Administration took the position that Colombia had made significant advances to combat violence and instability under the Uribe Administration. A March 2008 fact sheet issued by the Press Secretary of the White House stated that President Uribe “responded decisively to concerns over the situation in Colombia that have been raised by some members of Congress.”⁵⁵ The fact sheet stated that President Uribe had demobilized tens of thousands of members of paramilitary fighters; established an independent prosecutor’s unit; created a special program to protect labor activists; and revised the pending FTA to include more rigorous labor protections. The fact sheet also stated that under President Uribe’s leadership, Colombia had been a “strong and capable partner in fighting drugs, crime, and terror.”⁵⁶

President Uribe acknowledged that, while there continued to be killings in Colombia, the situation had improved under his administration and the Colombian government had been quite successful in reducing violence through the justice and peace process. Government reports indicate that over 50,000 guerrilla members have been demobilized as a result of the government’s recovery of control over territory and the implementation of a peace process with paramilitary groups. In addition, the reports state that confessions obtained from former paramilitaries and guerillas have provided important information in the investigation of past

⁵³ BNA, *International Trade Reporter*, “Five Democratic Lawmakers Blast Proposed Colombia FTA Due to Violence,” June 14, 2007.

⁵⁴ Office of the United States Trade Representative, *Broad Support for U.S.-Colombia Free Trade Agreement: What They’re Saying*, March 2008.

⁵⁵ The White House, Office of the Press Secretary, *Fact Sheet: U.S.-Colombia Free Trade Agreement Essential To Our National Security*, March 12, 2008.

⁵⁶ *Ibid.*

violence, including that against union members.⁵⁷ Data provided by the Colombian government indicate that assassinations of labor union activists and teachers decreased by 86% between 2001 and 2009, from 205 in 2001 to 28 in 2008. Total homicides in Colombia decreased from 26,540 in 2001 to 15,817 in 2009 (a 68% decrease). Homicides of labor union members account for a very small percentage of total homicides in Colombia: 0.2% of total homicides in 2009.⁵⁸

Regarding the impunity issue, the Uribe Administration made significant efforts to reform its judicial system and increase transparency. In 2004, constitutional reforms to the judicial system were approved and, in 2007, an “accusatory” system replaced the inquisitorial system.⁵⁹ According to the Colombian government, resources for both the judicial branch and the Office of the Prosecutor General have increased annually since 2002. In 2008, the government estimated a 75% increase in funding. The government reported that prosecutions had increased considerably between 2001 and 2009, from virtually none in 2001 to 84 convictions and 69 sentences in 2009.⁶⁰

There is a lack of evidence regarding whether or not labor activists were killed because of their union activity. Very few investigations have been completed—of the 470 union murders that occurred between 2002, when President Uribe first took office, and 2007, 97% remain unsolved. In January 2007, the Colombian Attorney General’s Office set up a new special labor unit of 13 prosecutors and 78 investigators to investigate 187 priority cases.⁶¹ According to the State Department’s human rights report covering 2009, the Colombian Prosecutor General’s office has obtained 234 convictions (209 for murders) of 334 perpetrators of violent crimes against trade unionists since 2000. However, a vast majority of the cases are either under investigation or in preliminary phases of the prosecutorial process.⁶²

Outlook

In his 2011 State of the Union address, President Barack Obama mentioned the importance of strengthening U.S. trade relations with Colombia, Panama and South Korea. The Obama Administration made a case for pursuing FTAs as part of the 2010 National Security Strategy of the United States, but did not specifically mention Colombia in the report.⁶³ Earlier in 2010, Michael Froman, Deputy National Security Adviser for International Economic Affairs and Deputy Assistant to the President had suggested that the administration would make a case for moving the pending FTA with Colombia as part of the national security agenda, at the appropriate time.⁶⁴ The Bush Administration made the argument that the U.S.-Colombia FTA was a national

⁵⁷ Embassy of Colombia, *Ensuring Justice and Protecting Labor and Human Rights in Colombia*, 2010.

⁵⁸ *Ibid.*

⁵⁹ Embassy of Colombia, *Ensuring Justice and Protecting Labor and Human Rights in Colombia*, 2010.

⁶⁰ *Ibid.*

⁶¹ Frank Bajak, “U.S. Unionists Alarmed by Colombia Woes,” *Miami Herald*, February 13, 2008; and “Trade, Death and Drugs,” *The Economist*, May 19, 2007.

⁶² U.S. Department of State, *2009 Country Reports on Human Rights Practices: Colombia*, March 11, 2010.

⁶³ The White House, *National Security Strategy*, May 2010.

⁶⁴ BNA, *International Trade Reporter*, “Obama Administration sees FTAs as Part of National Security,” March 18, 2010.

security issue. It stated that passage of an agreement “would bring increased economic opportunity to the people of Colombia through sustained economic growth, new employment opportunities, and increased investment.”⁶⁵ It also stated that an FTA would “reinforce democracy by fighting corruption, increasing transparency, and fostering accountability and the rule of law.”⁶⁶

The debate surrounding the pending U.S.-Colombia FTA has mostly centered on the violence issues in Colombia. Many proponents of the agreement see it as having important political implications for Colombia and U.S. interests in the region. They believe that an FTA with Colombia would go beyond the U.S.-Colombia economic relationship because it would be viewed by other Latin American nations as indicative of how the United States views its relationship with the region. Some members of Congress who have voiced support for the agreement believe that the United States needs to support its ally in the region and that if Congress does not pass the trade agreement, it could be used by Venezuela or Ecuador to turn Colombia against the United States.

The leaders of several countries in Latin America have voiced support for the pending free trade agreements with Colombia and Panama, stating that the passage of these agreements would bring economic benefits to these countries and improve the overall U.S. relationship with Latin America.⁶⁷ In contrast, the President of Venezuela has criticized FTAs with the United States and has launched his own idea for trade policy through a socially oriented trade block that would include mechanisms for poverty reduction.⁶⁸

In the United States, opponents of an agreement with Colombia argue that passing an FTA would be rewarding the government for its shortcomings in its struggle against drug trafficking, illegally armed groups, protecting worker rights, and the history of violence in the country. Some argue that the pending agreement would increase drug production and violence in the country and that it could increase Colombia’s ongoing civil conflict because it would result in rural displacement. They argue that trade liberalization would drive down the prices of agricultural products in Colombia and put many farmers out of business.⁶⁹ They maintain that small farmers would have no choice but to migrate to urban areas, work in the drug cultivation zones, or affiliate with illegally armed groups.⁷⁰ Some opponents of a CFTA believe that trade agreements have negative socioeconomic impacts. They argue that agreements such as NAFTA and CAFTA-DR, upon which the CFTA is based, are failed models and have jeopardized the environment, undermined worker rights, and caused job losses in the United States.

⁶⁵ The White House, Office of the Press Secretary, *Fact Sheet: U.S.-Colombia Free Trade Agreement Essential To Our National Security*,” March 12, 2008.

⁶⁶ *Ibid.*

⁶⁷ Letters from the Presidents of Costa Rica, El Salvador, Honduras, Nicaragua, and Mexico to the leadership of the House of Representatives, October 2007.

⁶⁸ See CRS Report RL32488, *Venezuela: Political Conditions and U.S. Policy*, by Mark P. Sullivan.

⁶⁹ Public Citizen and the Washington Office on Latin America, *Peru and Colombia FTAs Projected to Increase Drug Trafficking, Violence, and Instability in the Andes*, undated.

⁷⁰ *Ibid.*

Much of the U.S. business community supports a free trade agreement with Colombia. They view the pending agreement as a big opportunity for U.S. businesses and for exports of U.S. agricultural products. The National Pork Producers Council, for example, argues that a trade agreement would provide significant new export opportunities for U.S. pork producers and is leading a coalition of U.S. agricultural organizations in support of the trade agreement.⁷¹ The business community often states that an FTA with Colombia would “level the playing field” with Colombia by providing U.S. producers of goods and services the same access to the Colombian market that Colombian businesses currently have in the U.S. market. They also believe that a trade agreement would give U.S. businesses a competitive edge in Colombia over other foreign-owned businesses. A U.S. Chamber of Commerce representative said that an agreement would help Colombia fight narco-trafficking and violence “by developing sustainable economic alternatives to the drug trade.”⁷²

U.S. exporters have urged congressional leaders and the Obama Administration to resolve issues that are preventing the stalled free trade agreements with Colombia, Panama, and South Korea from being implemented. In a July 2010 letter to House and Senate congressional leaders, 42 agricultural and food organizations urged Congress to move forward with the FTAs, arguing that other countries throughout the world are negotiating and implementing free trade agreements and that U.S. exporters are losing market share as a result.⁷³ They argue that Colombia has been the largest market in South America for U.S. agricultural exports over the past five years and that the U.S.-Colombia FTA would result in U.S. agricultural export gains of more than \$815 million per year after full implementation. They are concerned that the FTA between Colombia and Canada that is expected to be implemented before the end of 2010 will cause U.S. agricultural exports to Colombia to fall. U.S. wheat producers estimate that the U.S. share of the Colombian wheat import market could fall from about 70% to 30% if Colombia’s FTA with Canada is implemented.⁷⁴

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⁷¹ National Pork Producers Council, *NPCC Applauds President for Sending Trade Deal to Congress*, April 7, 2008.

⁷² U.S. Chamber of Commerce, *U.S. Chamber Hails u.S.-Colombia Trade Deal*, February 27, 2006.

⁷³ Rosella Brevetti, “Agricultural Groups Call for Rapid Implementation of Stalled FTAs,” *International Trade Reporter*, July 15, 2010.

⁷⁴ *Ibid.*