COLOMBIA

TRADE SUMMARY

In 2000, the U.S. trade deficit with Colombia was $3.3 billion, an increase of $536 million from the U.S. trade deficit of $2.7 billion in 1999. U.S. merchandise exports to Colombia were about $3.7 billion, an increase of $157 million (4.4 percent) from the level of U.S. exports to Colombia in 1999. Colombia was the United States' 30th largest export market in 2000. U.S. imports from Colombia were about $7.0 billion in 2000, an increase of $693 million (11 percent) from the level of imports in 1999.

The stock of U.S. foreign direct investment (FDI) in Colombia in 1999 was an estimated $4 billion, an increase of 8 percent over the 1998 level. U.S. FDI was concentrated principally in the manufacturing, petroleum and finance sectors.

IMPORT POLICIES

Tariffs

Colombia's trade policies have been significantly modified with the opening of the economy during the last decade. Reforms were focused on reducing customs duties and eliminating most non-tariff barriers to imports. Import duties are quoted ad-valorem on the cost, insurance and freight (CIF) value of shipments. Most duties have been consolidated into four tariff levels as follows: a) zero and 5 percent for raw materials, intermediate and capital goods not produced in Colombia; b) 10 and 15 percent for goods in the above categories but with domestic production registered in Colombia; c) 20 percent for finished consumer goods; and d) some exemptions to these general rules such as import duties for automobiles, which remain at the level of 35 percent, and agricultural products which fall under a variable "price-band" import duty system. It is estimated that the basic weighted average of Colombian tariffs fluctuates between 11 and 13.5 percent.

The large number of integration agreements Colombia has signed with neighboring countries has created a complex system of tariffs that are applied according to the different treaties. Colombia has a comprehensive free trade agreement with Mexico and Venezuela known as the G-3 Agreement. Under this agreement most tariffs are to be reduced to zero by the year 2007 (special treatment, however, was given to agricultural, agro-industrial, and automotive sectors). Colombia also has a partial free trade agreement with Chile, which gradually eliminated all bilateral tariff and non-tariff barriers. As of January 1999, 96 percent of bilateral trade in goods had been liberalized and negotiations towards including trade in services in the agreement had begun. In August 1999, negotiations for a free trade agreement with the countries of MERCOSUR resulted in the signing of a Trade Preferences Agreement between Brazil and the Andean Community. In June 2000, a similar agreement was signed between the Andean Community and Argentina.

Over ten different duties may be applied to a given product depending on whether it comes from the Andean Community countries, from Mexico under the G-3 agreement or under the Latin American Integration Agreement (LAIA), from any other LAIA country, or from the Caribbean Community (CARICOM) countries.

In 1992, Colombia increased its tariff on acrylic fiber from 5 percent to 15 percent when it implemented the Andean Community common external tariff (CET). This tariff increase has significantly impacted the U.S. industry's competitive position in Colombia. Meanwhile, Peruvian suppliers enjoy duty-free access to the Colombian market while Mexican suppliers benefit from significantly reduced tariffs under the G-3 pact. Colombia has no domestic production of acrylic fiber.

Non-tariff Measures

In April 2000 the WTO Committee on Customs Valuation formally granted Colombia a reservation to maintain minimum values for certain products for specified periods.

Colombia has been implementing the WTO Customs Valuation Agreement since April 2000.

At that time, the WTO Committee on Customs Valuation formally granted Columbia a reservation to maintain minimum values for a limited number of products for specified periods extending no later than April 2003. A detailed list of these products and the periods of extension is available on the WTO website. The U.S. attaches great importance to full implementation of the WTO Agreement on Customs Valuation, and will continue to monitor closely the progress of Colombia.

Since April 1995, Colombia has applied a variable import duty system to agricultural products commonly known as the Andean price-band system, which is based on domestic and international prices. The elimination or reduction of these variable duties, which may be WTO inconsistent, is the most important market access issue for the U.S. agricultural sector. Thirteen basic agricultural commodities including wheat, sorghum, corn, rice, barley, milk, and chicken parts, and an additional 150 commodities considered substitute or related products are subject to tariffs calculated under the price-band system. If the applicable reference price is within the floor and ceiling price band, the import duty is calculated using the applied tariff rate and the reference price. When the reference price falls below the floor price, a variable duty or surcharge is applied which is based on the difference between the floor and the reference prices. This surcharge is levied in addition to the applied duty. Conversely, when the reference price exceeds the ceiling price a reduction is made to the applied duty based on the difference between the reference and ceiling prices. The Andean Community price-band system lacks transparency and can be manipulated to provide arbitrary levels of import protection, often resulting in artificially high, prohibitive tariff rates. Tariff rates for agricultural products subject to the price-band system vary between 35 and 105 percent. The Ministry of Foreign Trade issued Decree 2650 on December 24, 1999, establishing a maximum tariff rate of 40 percent for imports of soybeans and soybean products which before Decree 2650 were subject to an average tariff rate of 60 percent. This decision benefitted U.S. soybean and soybean product exports to Colombia in the year 2000.

Most imports are covered by a 16 percent value-added tax (the value-added tax of 16 percent was reduced to 15 percent in November 1999 and increased back to 16 percent in January 2000) assessed on the CIF value of the shipment plus import duties. Some exemptions apply, as in the case of imported vehicles, which are covered by a variable sales tax that varies between 16 and 45 percent depending on the type of vehicle, the size of the engine, its intended use, and its price. Decree 1344 of July 22, 1999 extended a value-added tax that varies between one and 10 percent based on the average production costs on imports of some pharmaceutical, agrochemical, and seafood products. Also, Law 633 of December 29, 2000 extended a value-added tax of five percent for certain commodities and other goods previously exempt from that tax, in effect from January 1, 2001. Law 633 establishes a gradual increase of the value-added tax to those products to 10 percent in 2002 and 15 percent in 2003.

The majority of used goods—cars, manufactured auto parts, tires and clothing—are prohibited from import, and those that are allowed, such as machinery, are subject to licensing. Though the government abolished most other import licensing requirements in 1991, it has continued to use prior import licensing to restrict importation of certain agricultural products such as chicken parts and other preserved chicken and turkey products. In addition, since the promulgation of Decree 2439 in November 1994, Ministry of Agriculture approval has been required for import licenses for products which, if imported, would compete with domestic products. Some of these products, which include important U.S. exports to Colombia, are wheat, malt barley, poultry, corn, rice, sorghum, cotton, wheat flour, and oilseeds and their products (i.e., soybean meal and soybean oil). Colombia has implemented absorption agreements which require an

importer to purchase a government-specified quantity of domestically produced goods as a precondition for the granting of import licenses. If the import licensing requirement for the products indicated above were eliminated, U.S. annual exports could increase an estimated $12 million.

Colombia adopted a harmonized automotive policy with Venezuela and Ecuador, which went into effect in January 1994. Automotive parts and accessories, and motor vehicles imported from any of the three signatory countries have a zero import duty, while those imported from third countries are covered with CET rates varying between 3 and 35 percent depending on the type of vehicle and automotive part. The policy includes regional content requirements.

Colombia also assesses a discriminatory VAT of 35 percent on whiskey aged for less than 12 years, which is more characteristic of U.S. whiskey, versus a rate of 20 percent for whiskey aged for 12 or more years, most of which comes from Europe. This tax regime on distilled spirits appears to violate Colombia's WTO obligation to provide Most Favored Nation (MFN) treatment equally to all WTO members. The U.S. Government has protested this distinction.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Colombian Ministry of Foreign Trade requires specific technical standards for a variety of products. The particular specifications are established by the Colombian Institute of Technical Standards (ICONTEC), a private non-profit organization, which provides quality certification and technical support services, and serves as an Underwriters' Laboratories (UL) inspection center. ICONTEC is a member of the International Standards Organization (ISO) and the International Electrotechnical Commission (IEC). Certificates of conformity must be obtained from the Superintendency of Industry and Commerce before importing products that are subject to technical standards. According to U.S. industry, Colombian requirements for phytosanitary registrations to bring new products into the market are excessive and often take as long as six to eight months to fulfill.

GOVERNMENT PROCUREMENT

The Government Procurement and Contracting Law, Law 80/93, sought to establish simpler procedures based on the principles of transparency and objective selection. It provides equal treatment to foreign companies on a reciprocal basis and eliminates the 20 percent surcharge previously added to foreign bids. In implementing Law 80, the Colombian Government instituted a cumbersome and perhaps unnecessary requirement that companies without local headquarters in Colombia must certify that government procurement laws in the home country meet reciprocity requirements. The law eliminated unnecessary requirements and bureaucratic procedures that increased prices of public services and limited their availability. It also settled procedures for the selection of suppliers, mainly through public tenders and, in exceptional cases, through direct contracts. However, companies without a headquarters in Colombia who bid on government contracts must have local counsel to represent them in the tendering process.

Law 80 does not apply to contracts for the exploration and exploitation of renewable or non-renewable natural resources, their commercialization, and those activities performed by state companies involved in these sectors. Contracts for the exploration and exploitation of renewable and non-renewable natural resources, and all those contracts related to telecommunications, radio and courier services, are governed by special legislation.

EXPORT SUBSIDIES

As a result of the policies of "apertura" (the opening of markets to foreign investment) and commitments made by Colombia to abide by the provisions of the GATT Subsidies Code, Colombia agreed to phase-out any export subsidies inconsistent with that code. This process will continue under the WTO Agreement on Subsidies and Countervailing Measures. For instance, Colombia has notified the WTO that its "special machinery import-export system" and "free zones" do, in fact, constitute export subsidies. Also, Colombia's tax rebate certificate program (CERT) contains a subsidy component which the Government of Colombia has stated it will replace with an equitable drawback system, although it has not yet done so. The other export subsidy, known as the "Plan Vallejo," allows for duty exemptions on the import of capital goods and raw materials used to manufacture goods that are subsequently exported. Other than the above, Colombia's subsidy practices are generally compatible with WTO standards.

On January 1, 2000, the Colombian Government announced that it would eliminate the subsidy component of the CERT as per WTO regulations. However, the Colombian Government's efforts to increase exports led to the formulation of a new customs code which would provide for tariff exemptions on raw materials used by exporting enterprises. These incentives, which are very similar to the CERT, were reinforced with "legal and tax stability agreements" providing for fixed tax and legal conditions over five and ten year periods to companies that develop special, and in some cases subsidized, export programs.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Colombia does not yet provide adequate and effective intellectual property protection. As a result, Colombia has been on the "Watch List" under the Special 301 provision of the 1974 Trade Act, as amended, every year since 1991. Colombia is a member of the World Intellectual Property Organization (WIPO) and has negotiated to join the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty and the Union for the Protection of New Plant Varieties. Colombia has ratified the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Colombia has ratified, but not yet fully implemented, the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Colombia has created a Special Investigative Unit within the Prosecutor General's Office dedicated to intellectual property rights issues. However, a major intellectual property rights issue has been the Colombian Government's failure to license legitimate pay television operators and to pursue pirate operators. Colombia's Television Broadcast Law increased legal protection for all copyrighted programming by regulating satellite dishes, but enforcement has only recently begun through a licensing process designed to make illegal operators responsible for paying copyright fees. The licensing process, if effective, should reduce the widespread piracy by legitimizing non-royalty paying service providers. As of December 2000, the Colombian National Television Commission (CNTV) had completed licensing for 117 cable television operators on 56 municipalities all over the country. All beneficiaries became fully legally compliant under the conditions set by the 10-year concession agreements. CNTV also made some efforts to pursue pirate operators by initiating investigations of 282 suspected pirate operators, eight of which have so far incurred sanctions. However, during the second half of 2000, CNTV's plans to address signal theft have not been very effective. Another concern is that the newly licensed cable operators were given a special "legalization period" to stop taking TV signals unlawfully.

Patents and Trademarks

The patent regime in Colombia currently provides for a 20-year term of protection for patents and reversal of the burden of proof in

cases of alleged process patent infringement. The provisions of the decisions covering protection of trade secrets and new plant varieties are generally consistent with world-class standards for protecting intellectual property rights.

In September 2000, the Andean Community trade ministers approved Decision 486, which entered into force on December 1, 2000, and replaced Decision 344 as the Andean Community's Common Industrial Property Regime. Decision 486 is a notable improvement over Decision 344 in bringing the region's IPR regime closer to conformance with WTO standards. Nonetheless, U.S. companies are concerned that Decision 486 is not sufficiently explicit regarding the confidentiality of data included with marketing approval applications, thereby opening the way to the possible erosion of protections for such information. Also, Decision 486 contains ambiguities regarding the patentability of “second use” innovations.

Law 599 of 2000 and Decree 2591 of December 13, 2000, partially regulate Andean Community Decision 486 in Colombia and establish penalties for violations to Decision 486 regarding patents, trademarks and industrial secrets. Additionally, Resolution 210 of January 15, 2001, provides for more efficient procedures for the protection of industrial property and better information mechanisms for users.

Colombian trademark protection requires registration and use of a trademark in Colombia. In a 1998 decree, Colombia announced that registration of a trademark must be accompanied with its use in order to prevent parallel imports. Trademark registrations have a ten-year duration and may be renewed for successive ten-year periods. Priority rights are granted to the first application for a trademark in another Andean Community country or in any country which grants reciprocal rights. Colombia is a member of the Inter-American Convention for Trademark and Commercial Protection.

Enforcement of trademark legislation in Colombia is showing some progress, but contraband and counterfeiting are widespread. U.S. pharmaceutical firms continue to press for a range of legislative and administrative reforms. The Superintendency of Industry and Commerce acts as the local patent and trademark office in Colombia. This agency suffers greatly from inadequate financing and a backlog of trademark and patent applications exceeding 20,000, although new applications are now generally reviewed within nine months.

Copyrights

Andean Community Decision 351 on the protection of copyrights has been in effect in Colombia since January 1, 1994. Colombia also has a modern copyright law; Law 44 of 1993. The law extends protection for computer software to 50 years, but does not classify it as a literary work. Law 44 and Colombia’s civil code include some provisions for IPR enforcement and have been used to combat infringement and protect rights. Colombia belongs to the Berne and Universal Copyright Conventions, the Buenos Aires and Washington Conventions, the Rome Convention, and the Geneva Convention for Phonograms. It is not a member of the Brussels Convention on Satellite Signals.

Colombia’s 1993 Copyright Law significantly increased penalties for copyright infringement, specifically empowering the Prosecutor General’s office to combat piracy. Colombia ratified the Andean anti-piracy convention on February 25, 1999. The Colombian Government also issued a presidential directive mandating that all government entities purchase only legally copyrighted software and other works protected by international copyright law. However, enforcement of copyright laws is still insufficient and U.S. industry estimates that the majority of the videocassette, sound recording and business software products are pirated.

SERVICES BARRIERS

Colombia maintains barriers in a number of service areas. The provision of legal services is limited to law firms licensed under Colombian law. Foreign law firms can operate in Colombia only by forming a joint venture with a Colombian law firm and operating under the licenses of the Colombian lawyers in the firm. Colombia permits 100 percent foreign ownership of insurance firm subsidiaries. It does not, however, allow foreign insurance companies to establish local branch offices. Insurance companies must maintain a commercial presence in order to sell policies other than those for international travel or reinsurance. Colombia denies market access to foreign maritime insurers.

A commercial presence is required to provide information-processing services. All tourism service providers must be registered with the Ministry of Economic Development and must be licensed by the Government's National Tourism Corporation. Health service providers must be registered with the various supervisory entities (the Ministry of Health, the National Council of Social Security and Health, and the Superintendency of Health) which impose strict parameters pertaining to cost accounting structures and the quality of the service provided. Foreign educational institutions must have resident status in Colombia in order to receive operational authority from the Ministry of Education.

Cargo reserve requirements in transport have been eliminated. However, the Ministry of Foreign Trade reserves the right to impose restrictions on foreign vessels of nations which impose reserve requirements on Colombian vessels. Colombia also restricts the movement of personnel in several professional areas, such as architecture, engineering, law and construction. For firms with more than ten employees, no more than ten percent of the general workforce and 20 percent of specialists can be foreign nationals.

Foreign construction firms must establish a local presence There is also a discriminatory surcharge of 20 percent placed on bids awarded to foreign firms for government construction projects. In addition, a firm must open a branch office to be "legal"; legal firms pay a 42 percent tax on profits while those firms without branch offices pay a 42 percent tax on net revenues. Acquiring a license for a branch office is tedious and is only good for one project.

In October 2000, the National Planning Department issued a new Foreign Investment Regime—Decree 2080 of October 18, 2000—which unifies and replaces foreign investment regulations previously dispersed into various decrees. Decree 2080 eliminates percentage limits previously placed on foreign equity participation as well as limits on foreign participation in audiovisual and radio services.

Financial Services

Colombian legislation permits 100 percent foreign ownership in financial services, although the use of foreign personnel in the financial services sector remains limited to administrators, legal representatives, and technicians. In March 1997, the Bank of the Republic created a reserve requirement on all foreign loans over six months, designed to reduce the amount of foreign private debt. Thirty percent of all proceeds from foreign loans were required to be left on deposit with the Central Bank in a non-interest bearing account for 18 months. In September 1998, the Central Bank reduced its deposit requirement imposed on foreign borrowing from 25 to 10 percent (the term of the deposit was also reduced from twelve to six months). In January 1999, the Central Bank completely removed the deposit requirement for import-related borrowing while maintaining a ten percent deposit requirement on export-related foreign borrowing operations. In April 2000, the Central Bank completely removed the deposit requirement on all foreign borrowing operations.

Basic Telecommunications Services

In the WTO negotiations on basic telecommunications services, Colombia made fairly restrictive commitments for foreign investment in facilities-based telecommunications services for public use, although it adopted the WTO reference paper. Colombia's commitments grant a monopoly for long distance and international service to the telecommunications incumbent, Telecom. Any additional entrants are subject to an economic needs test. While Colombia has allowed new competitors into long distance and international services, high license fees are a significant barrier. In addition, a recent Colombian Supreme Court Decision reinstated Telecom's monopoly in the long distance and international markets. Furthermore, Colombia's failure to authorize service in the wholesale market for telecommunications services may not be consistent with its WTO commitments.

INVESTMENT BARRIERS

Colombian foreign investment statutes provide for national treatment for foreign investment. One hundred percent foreign ownership is permitted in most sectors of the Colombian economy. Exceptions include activities related to national security and the disposal of hazardous waste. Investment screening has been largely eliminated, and the mechanisms that still exist are generally routine and non-discriminatory. As a measure against money laundering, foreign direct investment (FDI) in real estate was prohibited until February 8, 1999, when prohibitions on foreign investment in real estate companies were abolished by Decree 241.

All foreign investment must be registered with the Central Bank's foreign exchange office within three months in order to insure the right to repatriate profits and remittances. All foreign investors, like domestic investors, must obtain a license from the Superintendent of Companies and register with the local chamber of commerce.

Under the Andean Community Common Automotive Policy, Colombia, Venezuela and Ecuador impose local content requirements in order to qualify for reduced duties on imports. The local content requirement for passenger vehicles was 32 percent in 1997. It was raised to 33 percent for 1998, and was then lowered to 24 percent for 2000. Under the WTO Agreement on Trade Related Investment Measures (TRIMS Agreement), the three countries were obligated to eliminate local content requirements by the year 2000. However, in December 1999 the Andean Automotive Policy Council determined that it would not eliminate the local content requirement as it had initially indicated, but instead decided to increase it gradually to 34 percent by the year 2009. This automotive policy may be inconsistent with Colombia's WTO obligations under the TRIMS Agreement.

In addition, Colombia has submitted a request to the WTO for a seven-year extension to its transition period for an agricultural absorption agreement program. The United States is working with other WTO Members to effect a case-by-case review of all TRIMS extension requests, with an effort to ensure that the individual needs of those countries that have made requests can be addressed. This process does not limit a Member's rights under the WTO Agreement.

All foreign investment in petroleum exploration and development in Colombia must be carried out under an association contract between the foreign investor and Ecopetrol, the state oil company. The terms of the standard association contract were modified in 1994, 1995, 1997, 1998, and again in 1999. In view of Colombia's need for new oil reserve discoveries, the Pastrana Administration embarked on the implementation of a new hydrocarbon policy designed to attract foreign investment. The new policy was aimed at achieving the long-term goal of producing 1.5 million barrels per day by the year 2010. The new terms of Ecopetrol's association contracts with private companies

provide much faster cost recovery and a significant increase to a typical project's expected rate of return. For instance, the association contract provides for an initial three-year exploration period, which can be extended for an additional three years. If gas is discovered in the process, an additional four-year period can be provided in order to find a market and develop infrastructure.

ELECTRONIC COMMERCE

Electronic commerce in Colombia is primarily regulated by Law 527 of August 28, 1999. The law grants organizational, inspection, vigilance and sanctioning responsibilities to the Superintendency of Industry and Commerce. The Superintendency regulates certifying agencies which are the only entities authorized by law to provide for registration, data transmission and reception services, and to issue certificates related to electronic agreements. Law 527/99 provides the same contractual and legal validity to electronic data transfer as that of hard copies. For a digital signature to be valid, it must be verifiable, must be under the unique control of the person using it, and must be linked to the information or message being transferred. Certifying agencies (local or foreign) must be authorized by the Superintendency of Industry and Commerce to operate in Colombia. Decree 1747 of September 11, 2000, regulates Law 527 in regards to certificates and digital signatures, and establishes minimum capital and other requirements for certifying agencies to be approved by the Superintendency of Industry and Commerce. Decree 1747 and Resolution 26930 of October 26, 2000, established all legal requirements necessary for certifying agencies to begin operations in Colombia.

In May 2000, the Colombian Government signed a joint statement on e-commerce with the U.S. Government. In the statement both parties recognized the importance of electronic commerce and agreed to cooperate in the construction of a barrier-free scenario and the implementation of a transparent and non-discriminatory legal framework for the development of such activity.

OTHER BARRIERS

In 1998, Colombia liberalized prices for most pharmaceutical products previously subject to price controls. However, pharmaceuticals with "active principal" ingredients that have three or fewer local suppliers are still subject to price controls.

Television Local Content Quotas

As part of the demonopolization of Colombia's government-owned television network, Colombia passed the Television Broadcast Law, Law 182/95, effective January 1995, which increased protection for all copyrighted programming by regulating satellite dishes and permitting private television broadcasters to compete with the government-owned broadcaster. The law increased restrictions on foreign content in broadcasting, and imposed a complicated, burdensome system of sub-quotas for different hours of the day. The law requires broadcasters to transmit 70 percent locally-produced programming during prime time and a range of zero to 40 percent during other times on national television, and 50 percent locally-produced programming on regional channels and local stations. Retransmissions of local productions are calculated to fulfill only part of the national content requirement. Foreign talent may be used in locally produced programming, but limits are set by the quasi-independent National Television Commission (CNTV). Decree 2080 of October 18, 2000 revoked the limits to foreign direct investment in the Colombian Motion Picture Industry previously imposed by the Colombian television broadcast laws (Law 182/95 and Law 375/96). As a result, foreign investment in local television production companies is now unlimited.