



Ministerio de Comercio,  
Industria y Turismo  
República de Colombia

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Courtesy Translation

April 15, 2012

Ambassador Ron Kirk  
United States Trade Representative  
Washington, DC United States of America

Dear Ambassador Kirk:

In the course of discussions relating to implementation of the United States-Colombia Trade Promotion Agreement (TPA), Colombia and the United States have reached the following understanding and agreed on a Work Plan for Completing Process of Ratification (Workplan) related to implementation of certain obligations in the intellectual property rights chapter of the TPA. Article 16.1 of the TPA requires that Colombia ratify or accede to a number of international agreements related to intellectual property rights by the date of entry into force of the TPA. With respect to three such agreements, the Government of Colombia has taken the necessary legislative steps required for ratification. However, pursuant to Article 241 of Colombia's Constitution, before Colombia can complete ratification of these agreements, the Colombian Constitutional Court must rule on their constitutionality. In addition, with respect to the *International Convention for the Protection of New Varieties of Plants* (1991) (Convention), the Government of Colombia may need to take further steps in consultation with the Convention's Council to complete its ratification process.

Colombia will inform the Office of the U.S. Trade Representative every 60 calendar days, starting from the date of entry into force of the TPA, regarding Colombia's efforts to complete the ratification process for each of the three such agreements.

Taking into account the steps remaining to be completed to ratify these three agreements, if Colombia has not ratified these agreements by the dates set out in the attached Work Plan for each agreement, the United States may, as it deems appropriate, withhold and/or suspend the application of benefits to Colombia under the Agreement to such extent as the United States deems appropriate. Once Colombia ratifies these agreements, the United States shall promptly provide any



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benefit it has withheld or suspended. This shall be considered a mutually satisfactory resolution pursuant to article 21.1 of the TPA with respect to the issue of ratification of the three agreements.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an agreement between our two Governments, to enter into effect on the date that the TPA enters into force.

Sincerely,

Sergio Díaz – Granados Guida  
Minister of Trade, Industry and Tourism



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### Work Plan for Completing Process of Ratification

1. *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1977) (Budapest Treaty), as amended in 1980

The Government of Colombia submitted the Budapest Treaty for Constitutional Court review on February 7, 2012. If the Constitutional Court issues a positive determination on the constitutionality of the agreement and the law approving it, the Government of Colombia will complete its ratification process and deposit its instrument of accession with the World Intellectual Property Organization by no later than January 31, 2013.

2. *Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* (1974) (Brussels Convention)

On April 13, 2012, the President of the Republic of Colombia signed into law the bill approving the Brussels Convention. No later than 6 days after signature, the Government of Colombia will transmit the law and the convention to the Constitutional Court for review. If the Constitutional Court issues a positive determination on the constitutionality of the agreement and the law approving it, the Government of Colombia will complete its ratification process and deposit its instrument of accession with the Secretary-General of the United Nations by no later than April 15, 2013.

3. *International Convention for the Protection of New Varieties of Plants* (1991) (UPOV Convention)

On April 13, 2012, the President of the Republic of Colombia signed into law the bill approving Colombia's accession to the UPOV Convention. No later than 6 days after signature, the Government of Colombia will transmit the law and the UPOV Convention to the Constitutional Court for review. If the Constitutional Court issues a positive determination on the constitutionality of the agreement and the law approving it, the Government of Colombia will complete its ratification process and deposit its instrument of accession with the Secretary-General of UPOV by no later than April 15, 2013.

Without prejudice to the provisions of this understanding and this Work Plan, if the Constitutional Court fails to issue a positive determination for any of the agreements mentioned in the understanding, Colombia will take steps immediately to remedy any deficiency that is identified and will continue informing the United States regarding its progress as set out in this understanding.



EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

April 15, 2012

The Honorable Sergio Díaz-Granados Guida  
Minister of Trade, Industry and Tourism

Dear Minister Díaz-Granados:

I am pleased to acknowledge your letter of today's date, which reads as follows:

“In the course of discussions relating to implementation of the United States-Colombia Trade Promotion Agreement (TPA), Colombia and the United States have reached the following understanding and agreed on a Work Plan for Completing Process of Ratification (Workplan) related to implementation of certain obligations in the intellectual property rights chapter of the TPA. Article 16.1 of the TPA requires that Colombia ratify or accede to a number of international agreements related to intellectual property rights by the date of entry into force of the TPA. With respect to three such agreements, the Government of Colombia has taken the necessary legislative steps required for ratification. However, pursuant to Article 241 of Colombia's Constitution, before Colombia can complete ratification of these agreements, the Colombian Constitutional Court must rule on their constitutionality. In addition, with respect to the *International Convention for the Protection of New Varieties of Plants* (1991) (Convention), the Government of Colombia may need to take further steps in consultation with the Convention's Council to complete its ratification process.

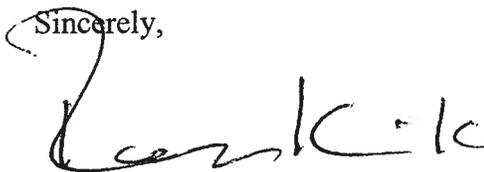
Colombia will inform the Office of the U.S. Trade Representative every 60 calendar days, starting from the date of entry into force of the TPA, regarding Colombia's efforts to complete the ratification process for each of the three such agreements.

Taking into account the steps remaining to be completed to ratify these three agreements, if Colombia has not ratified these agreements by the dates set out in the attached Work Plan for each agreement, the United States may, as it deems appropriate, withhold and/or suspend the application of benefits to Colombia under the Agreement to such extent as the United States deems appropriate. Once Colombia ratifies these agreements, the United States shall promptly provide any benefit it has withheld or suspended. This shall be considered a mutually satisfactory resolution pursuant to article 21.1 of the TPA with respect to the issue of ratification of the three agreements.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an agreement between our two Governments, to enter into effect on the date that the TPA enters into force”.

I have the honor to confirm that my Government shares this understanding and that your letter and this reply shall constitute an agreement between our two Governments to enter into force on the day the TPA enters into force.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Kirk". The signature is written in a cursive style with a large initial "R" and "K".

Ambassador Ron Kirk

## **Work Plan for Completing Process of Ratification**

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15 de abril de 2012

Embajador Ron Kirk  
Representante Comercial de los Estados Unidos  
Washington DC, Estados Unidos de América

Estimado Embajador Kirk:

En el curso de las discusiones relacionadas con la implementación del Acuerdo de Promoción Comercial entre Colombia y los Estados Unidos de América (el Acuerdo), Colombia y los Estados Unidos han llegado al siguiente entendimiento y acordado un Plan de Trabajo para Completar el Proceso de Ratificación (Plan de Trabajo) relacionado con la implementación de ciertas obligaciones del capítulo de derechos de propiedad intelectual del Acuerdo. El Artículo 16.1 del Acuerdo requiere que Colombia ratifique o adhiera a un número de acuerdos internacionales relacionados con los derechos de propiedad intelectual para el día de la entrada en vigor del Acuerdo. Con respecto a tres de tales acuerdos, el Gobierno de Colombia ha tomado los pasos legislativos necesarios que se requieren para la ratificación. Sin embargo, de conformidad con el artículo 241 de la Constitución de Colombia, antes de que Colombia pueda culminar la ratificación de esos acuerdos, la Corte Constitucional colombiana debe decidir sobre su constitucionalidad. Adicionalmente, con respecto al *Convenio Internacional para la Protección de Nuevas Variedades de Plantas* (1991) (el Convenio), el Gobierno de Colombia podrá tener la necesidad de dar pasos adicionales en consulta con el Consejo del Convenio para culminar su proceso de ratificación.

Colombia le informará a la Oficina del Representante Comercial de los Estados Unidos cada 60 días calendario, a partir de la fecha de entrada en vigor del Acuerdo, sobre los esfuerzos realizados por Colombia para culminar el proceso de ratificación para cada uno de dichos tres acuerdos.

Teniendo en consideración los pasos que restan para culminar la ratificación de estos tres acuerdos, si Colombia no ha ratificado estos acuerdos para las fechas que aparecen en el Plan de Trabajo para cada acuerdo, los Estados Unidos pueden, como lo consideren apropiado, retener y/o suspender la aplicación de beneficios a Colombia



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bajo el Acuerdo en la medida en que los Estados Unidos lo consideren apropiado. Una vez Colombia ratifique estos acuerdos, los Estados Unidos deberán otorgar oportunamente cualquier beneficio retenido o suspendido. Se considerará que esta es una solución mutuamente satisfactoria en los términos del Artículo 21.1. del Acuerdo con respecto al tema de ratificación de los tres acuerdos.

Tengo el honor de proponer que esta carta y su carta de respuesta confirmando que su Gobierno comparte este entendimiento constituirá un acuerdo entre nuestros dos Gobiernos, que entrará en vigor el día en que el Acuerdo entre en vigor.

Atentamente,

Sergio Díaz – Granados Guida  
Ministro de Comercio, Industria y Turismo



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### **Plan de Trabajo para Completar el Proceso de Ratificación**

1. *Tratado de Budapest sobre el Reconocimiento Internacional del Depósito de Microorganismos para los Propósitos de Procedimientos de Patentes (1977)* (Tratado de Budapest), modificado en 1980.

El Gobierno de Colombia envió el Tratado de Budapest para revisión de la Corte Constitucional el 7 de febrero de 2012. Si la Corte Constitucional emite una decisión afirmativa sobre la constitucionalidad del tratado y de su ley aprobatoria, el Gobierno de Colombia completará su proceso de ratificación y depositará el instrumento de adhesión a la Organización Mundial de la Propiedad Intelectual a más tardar el 31 de enero de 2013.

2. *Convenio Relativo a la Distribución de Señales Portadoras de Programas Transmitidos por Satélite (1974)* (Convenio de Bruselas)

El 13 de abril de 2012 el Presidente de la República de Colombia sancionó la ley aprobatoria del Convenio de Bruselas. A más tardar 6 días después de la sanción, el Gobierno de Colombia enviará la ley y el convenio a la Corte Constitucional para revisión. Si la Corte Constitucional emite una decisión afirmativa sobre la constitucionalidad del tratado y de su ley aprobatoria, el Gobierno de Colombia completará su proceso de ratificación y depositará el instrumento de adhesión con el Secretario General de las Naciones Unidas a más tardar el 15 de abril de 2013.

3. *Convenio Internacional para la Protección de Nuevas Variedades de Plantas (1991)* (Convenio UPOV)

El 13 de abril de 2012 el Presidente de la República de Colombia sancionó la ley aprobatoria de la adhesión de Colombia al Convenio UPOV. A más tardar 6 días después de la sanción, el Gobierno de Colombia enviará la ley y el Convenio UPOV a la Corte Constitucional para revisión. Si la Corte Constitucional emite una decisión afirmativa sobre la constitucionalidad del tratado y de su ley aprobatoria, el Gobierno de Colombia completará su proceso de ratificación y depositará el instrumento de adhesión con el Secretario General de la UPOV a más tardar el 15 de abril de 2013.

Sin perjuicio de la solución mutuamente satisfactoria descrita en este entendimiento y Plan de Trabajo, si la Corte Constitucional no emite una decisión afirmando la constitucionalidad de cualquiera de los acuerdos referidos en el presente entendimiento, Colombia tomará pasos inmediatamente para subsanar cualquier deficiencia que se haya identificado y continuará informando a los Estados Unidos en la forma prevista en este entendimiento.



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