

September 20, 2006

The Honorable George W. Bush  
President of the United States  
1600 Pennsylvania Avenue, NW  
Washington D.C. 20500

Dear Mr. President:

Pursuant to Section 2104 (e) of the Trade Act of 2002 and Section 135 (e) of the Trade Act of 1974, as amended, I am pleased to transmit the report of the Advisory Committee for Trade Policy and Negotiations (ACTPN) on the U.S. – Colombia Trade Promotion Agreement.

The ACTPN unanimously endorses the U.S. - Colombia Trade Promotion Agreement (TPA). We believe it fully meets the negotiating objectives laid out in the Trade Act of 2002, and believe it to be strongly in the economic interest of the United States. We also believe the U.S. – Colombia Trade Promotion Agreement is a comprehensive state-of-the-art agreement that not only will benefit the U.S. and Colombian economies and employment opportunities.

In addition to its economic benefits for all parties, the agreement will contribute to political stability in the Western Hemisphere and advance regional economic cooperation. The agreement should be enacted into law as soon as possible, so American farmers and ranchers, manufacturers, services providers, and consumers can begin to receive the benefits of this agreement at the earliest possible date.

While implementation of the U.S. - Columbia TPA is of the highest priority, the Committee is very concerned that any lapse in benefits that may occur between the expiration of the Andean Trade Promotion and Drug Eradication Act (ATPDEA) and the entry into force of the U.S.-Columbia TPA be addressed through a temporary extension of ATPDEA benefits

Sincerely,

A handwritten signature in black ink that reads "Bill Frenzel". The signature is written in a cursive, slightly slanted style.

Bill Frenzel  
Chairman, ACTPN

**The U.S. – Colombia Trade Promotion Agreement**

**The Report of the  
Advisory Committee  
for Trade Policy and Negotiations  
(ACTPN)**

**September 20, 2006**

**The Advisory Committee  
for Trade Policy and Negotiations (ACTPN)**

**Report to the President, the Congress,  
and the United States Trade Representative on the**

**U.S. – Colombia Trade Promotion Agreement**

**I. Preface**

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports required under Section 135 (e)(I) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement. Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations must include an advisory opinion as to whether, and to what extent, the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in the Trade Act of 2002.

Pursuant to these requirements, the Advisory Committee for Trade Policy and Negotiations hereby submits its report.

**II. Executive Summary of Committee Report**

The ACTPN believes the U.S. – Colombia Trade Promotion Agreement (“the agreement”) fully meets the negotiating principles and objectives laid out in the Trade Act of 2002, and is strongly in the interest of the United States. It will level the playing field for America’s farmers and ranchers, manufacturers, and service establishments. It will provide increased market access for American goods and services. It will lock in Colombia’s existing preferential access to the U.S. market for Colombian goods and services, and does so in a manner not disruptive to the U.S. economy. Appropriate transition and adjustment times have been built into the agreement.

The Colombia agreement was originally seen as part of a U.S. – Andean agreement that would include Peru and Ecuador as well as Colombia. However, the Peru agreement was concluded more rapidly than the Colombian agreement and the ACTPN urges Congress to act at the earliest opportunity on the Peru agreement as it is ready for such consideration. Moreover, the ACTPN also urges the quickest possible Congressional action to put the Colombia agreement into effect.

The Colombia agreement meets or exceeds the negotiating achievements of other recent agreements, including the Peru agreement and the Central-America-Dominican Republic agreement. Very importantly, the agreement provides binding arbitration for investor-state disputes that covers existing as well as prospective investments. The ACTPN particularly commends this achievement, and urges that it become a standard part of all future U.S. trade agreements.

The ACTPN believes the agreement will contribute strongly to the expansion of trade and economic relations between Colombia and United States. The agreement provides for new consultation mechanisms to expand possibilities for improving trade cooperation and heading off disputes. The agreement is an excellent model to promote development and we endorse the extensive opportunities for cooperative activities including the creation of a permanent trade capacity-building committee. Additionally, the agreement makes significant advances in protecting intellectual property, ensuring fair and effective protection for investors, providing improved business facilitation, greatly improving access for service providers, and containing state-of-the-art treatment for new forms of doing business, including e-commerce.

### **III. Description of the Committee**

The Advisory Committee for Trade Policy and Negotiations (ACTPN) is the U.S. government's senior trade advisory panel. It was established to provide the U.S. Trade Representative with policy advice on: (1) matters concerning objectives and bargaining positions of proposed trade agreements; (2) the implementation of trade agreements once they are in force; and (3) other matters arising in connection with the trade policy of the United States. The ACTPN provides an overview of trade policy and issues. Advice on matters affecting individual sectors or policy areas is expected to be provided by several Policy Advisory Committees and by the Industry Trade Advisory Committees (ITACs).

In keeping with its broad charter, the membership of the ACTPN is representative of key economic sectors affected by trade. Members are drawn from business, industry, labor, agriculture, small business, service industries, retailers, and consumer interests. The membership of the ACTPN is appended to this report.

### **IV. Advisory Committee Opinion on Agreement**

The ACTPN (or "the committee) fully endorses the U.S. – Colombia Trade Promotion Agreement ("the agreement") as negotiated by the President's U.S. Trade Representative. Though the negotiations started out seeking an Andean agreement with three participants (Colombia, Ecuador, and Peru), negotiations concluded first with Peru and then later with Colombia. We believe the benefits of the agreement both to Colombia and the United States are considerable and should not be delayed. Two-way bilateral trade already amounts to over \$14 billion annually.

We believe the Colombia agreement will substantially improve market access in that country for American farm products, industrial and other non-agricultural goods, and services. We also believe it will expand two-way trade opportunities and will benefit employment and living standards for both parties. We further believe the agreement will help make the benefits of democracy and greater economic openness more visible to South American countries. Agreements such as that with Colombia contribute to the political stability and economic integration of the region and provide an incentive for further trade liberalization in the Western Hemisphere.

The committee also believes that the economic interests of the United States are advanced on the import side of the agreement. Consumers will benefit from continued preferential access to Colombia's exports, and the staging of U.S. liberalization has taken account of the need of sensitive sectors to adjust to the reduction and eventual elimination of the few remaining barriers to Colombian goods and services.

The ACTPN's more detailed views on salient parts of the agreement follow. We urge the Administration and the Congress to act expeditiously so that the agreement may come into effect as soon as possible.

**Manufactured Goods --** The ACTPN believes that the provisions on trade in manufactured goods achieve the Trade Act's market access goals. We particularly applaud the fact that 80 percent of U.S. exports of consumer and industrial goods will become totally duty-free as soon as the agreement goes into effect. The remainder will be duty-free within ten years.

The ACTPN sees this schedule as being highly beneficial to U.S. exporters while meeting the transition needs of Colombian producers. The ACTPN is especially pleased that as a result of the agreement, Colombia will become a full member of the World Trade Organization (WTO) Information Technology Agreement (ITA), which provides for duty-free treatment of information technology products. This benefits many of our largest exports. Semiconductors, for example, is the single largest U.S. export category, in itself accounting for nearly one in every ten dollars of U.S. industrial exports. The ACTPN is also pleased that Colombia has agreed to allow the trade of remanufactured goods such as machinery and computers under the agreement.

In a manner similar to the CAFTA agreement, the Colombia agreement levels the playing field for U.S. producers. Colombia has already had virtually complete market access through the Andean Trade Preference agreement (ATPA), while U.S. exporters to Colombia have been paying significant duties. Fully 90 percent of all imports to the United States from Colombia already enter duty-free, and the average U.S. duty on the remaining 10 percent of imports from Colombia is just 2.2 percent. Colombia's average applied duty on overall imports of manufactured goods, on the other hand is 11.3 percent, and the elimination of these duties will confer a significant advantage to U.S. exporters.

The agreement will also remove a competitive disadvantage to U.S. exporters by eliminating the tariff advantage of countries already having free trade agreements with Colombia. Time and added resources, however, will be needed for U.S. exporters to “catch up” with exporters from countries that have had a free trade agreement (FTA) in place with Colombia. This underscores the importance of quick action to implement the Colombia agreement and other pending FTAs.

The agreement is a balanced one, with significant benefits for Colombia as well. Though Colombia has had nearly complete market access to the U.S. market, the Andean preferences have always been subject to Congressional re-authorization with no guarantees. The U.S. – Colombia agreement makes Colombia’s favorable access to the U.S. market permanent and also provides other advantages to Colombia. Not the least of these is the fact that the agreement will improve market functioning in Colombia and will advance the business climate and the prospects for faster economic growth.

**Agriculture** -- The committee endorses the provisions covered in this agreement for agriculture. It offers an excellent benchmark for future free trade negotiations in the agricultural sector. More than two-thirds of U.S. agricultural exports to Colombia will be duty free upon implementation of the agreement, and tariffs on most remaining U.S. farm exports will be phased out within 15 years. A few, however, will not be eliminated for 18 and 19 years. The ACTPN notes that the agreement is comprehensive in its coverage, providing commercially-meaningful access for U.S. agricultural priorities while taking due account both of U.S. and Colombian agricultural sensitivities.

The agreement specifically addresses sanitary and phytosanitary (SPS) cooperation, and Colombia's commitment to recognize the U.S. meat inspection system as "equivalent" is one of the most important benefits to the U.S. agricultural sector. This commitment will prevent the serious problems with implementation that have occurred with other recent FTAs and will help to avoid similar problems in future agreements.

**Services** -- The ACTPN commends the fact that Colombia agreed to a “negative list” approach in the services component of the agreement, meaning that access is provided for all services markets unless a specific exception is stated in the agreement. These exceptions are quite limited in the agreement. The committee is pleased that the agreement’s services commitments cover both the cross-border supply of services and the right to invest and establish a local service presence, strengthened by a set of detailed disciplines on regulatory transparency – which is fundamental to meaningful services market access. The breadth of coverage of service sectors is impressive, and will not only provide wide access for U.S. services companies, but also will extend the range of services available to Colombian consumers -- likely at lower cost.

**E-commerce** -- The e-commerce and digital products provisions meet the ACTPN's objectives and provide state-of-the-art recognition of the increased importance of this issue. The e-commerce provisions and the liberal treatment of services in this agreement continue the high standard that has been set for these provisions in other recent U.S. trade agreements. The committee draws particular attention to the fact that the agreement establishes guarantees of non-discrimination and a binding prohibition on customs duties on products delivered electronically, and creates a favorable environment for the development of increased e-commerce.

**Investment** -- The committee believes the agreement fully meets the investment requirements laid out in the Trade Act of 2002, and applauds the comprehensive nature of the investment provisions. These provisions should ensure that U.S. investors have the right to establish investments in Colombia, and provide U.S. investors with the protections that Colombian investors currently enjoy in the U.S. legal system.

The committee stresses the importance of covering both existing and prospective investments, and has urged consistently that such investment provisions be part of all future agreements. The ACTPN is very pleased that the Colombia agreement enables binding third party arbitration for investor-state disputes not only for investments concluded after the agreement goes into effect, but also for many types of investments that pre-date the agreement. The agreement provides for rights that are consistent with U.S. law and also contains fully transparent dispute settlement procedures that are open to the public and allow interested parties to provide their input.

**Intellectual Property Rights (IPR)** -- The ACTPN endorses the IPR provisions in the Colombia agreement. The protection of patents, trademarks, geographic indicators, internet domain names and copyrighted works continues the high standard for free trade agreements. The agreement will improve intellectual property protection in Colombia not just for U.S. firms, but for Colombian citizens as well. This will contribute to Colombia's attractiveness as a place to do business. The agreement contains a large number of provisions that improve the protection of patents, trade secrets, copyrights, and trademarks. The ACTPN notes the agreement contains provisions regarding internet domain names to prevent "cyber-squatting," requires the development of an on-line trademark registration system, and addresses other protections for on-line use of copyrights.

Noting the ACTPN's strong interest in firm steps to reduce copyright piracy and trademark counterfeiting, the committee particularly commends the strong IPR enforcement mechanisms and penalties provisions, particularly the criminalization of end-user piracy and counterfeiting and Colombia's guarantees of authority to seize and destroy not only counterfeit goods but also the equipment used to produce them. Free trade zones have become a particular problem in the trans-shipment of counterfeit goods, and the ACTPN applauds the agreement's provisions aimed at goods-in-transit.

**Customs Procedures and Rules of Origin** -- The ACTPN endorses the customs chapter of the agreement. The specificity of obligations with regard to customs procedures coupled with the commitments to information sharing to combat illegal transshipment of goods and facilitate express shipment maintain a high standard. Steps to ensure transparency and efficiency are also included. Provisions also provide that the release of goods should be accomplished quickly –within 48 hours to the extent possible. These provisions greatly improve customs administration in Colombia – an important objective for U.S. business. Transparency and ease of doing business will be greatly improved by provisions for advanced customs rulings and for providing customs laws and regulations on the internet.

As with past agreements, there is not a consensus in the ACTPN with respect to the rules of origin for textile and apparel products under the Colombia agreement. All ACTPN members agree that it is important to have clear and consistent rules of origin in our trade agreements. There are various views regarding specific aspects of those rules as they apply to textiles and apparel. No ACTPN member, however, felt that their concerns about the rules of origin provisions warranted dissenting from the ACTPN's endorsement of the Colombia agreement, and all support the agreement. It is evident, though, that ACTPN members want the fullest consideration of the rationale for rules of origin as future agreements are considered.

**Government Procurement** -- The ACTPN believes that the government procurement provisions of the agreement meet the objectives of the Trade Act and will provide new access for U.S. firms. Most Colombian government entities are covered, especially the ones that are more important from the perspective of U.S. exports and U.S. company interest. The committee takes particular note that the agreement provides for the criminalization of bribery in government procurement, an important provision that can eliminate unfair competition to U.S. companies and also provide for better and more efficient procurement on the part of Colombian government entities.

**Labor Provisions** -- The ACTPN believes the Colombia agreement fully meets the labor objectives of the Trade Act of 2002. The text of the agreement provides an effective and balanced means of implementing the negotiating objectives for labor. The labor provisions follow the TPA-mandated approach that was adopted in other agreements and enhance the procedural guarantees to transparency and due process. They meet the Trade Act's requirements while still providing strong assurances that the provisions cannot be used as a means of disguised protectionism.

Under the agreement, both parties reaffirm their commitments under the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work. They guarantee in an enforceable manner, that they will not fail to enforce their labor laws in a way that could affect trade. The ACTPN endorses the cooperative approach contained in the agreement, particularly the agreed mechanism to promote respect for International Labor Organization principles.

**Environmental Provisions** -- The ACTPN endorses the environmental provisions of the agreement and believes they provide effective ways of contributing to environmental improvement. The agreement meets the requirements of the Trade Act of 2002 by requiring in an enforceable manner that neither country shall fail to enforce its environmental laws in a way that could affect trade.

The ACTPN applauds the provisions providing for transparency and input from interested parties. Both parties will develop public processes to ensure that views of civil society are considered in environmental questions, and that input from international organizations can be considered in evaluating progress. An environmental cooperation agreement that provides for capacity building is another significant factor. This agreement establishes an Environmental Cooperation Commission aimed at strengthening the ability to implement and enforce environmental laws, providing for public participation in the environmental decision-making process, and promoting clean production technologies, among other things.

**Dispute Settlement** -- The ACTPN believes that the dispute resolution provisions in the agreement fully meet the requirements of the Trade Act of 2002, and that they provide equivalent enforcement for all parts of the agreement – including the new labor and environmental provisions. The committee endorses the dispute settlement provisions and considers them to maintain the high standard in other U.S. agreements. The agreement also sets high standards of openness and transparency for panel procedures, including opportunities for interested parties to provide views, open hearings, and public release of submissions by parties.

The ACTPN believes that effective dispute settlement provisions are essential to ensure that trade agreements are actually implemented and enforced. These provisions must provide for timely and effective resolution of disputes and application of enforcement mechanisms that are suitable to provide an adequate incentive for compliance when needed. As is the case in other recent agreements, the parties agree to place emphasis on obtaining compliance through consultation and the use of trade-enhancing remedies.

The ACTPN wants to stress that trade retaliatory measures should be taken as a last resort, for they have the capability of interfering with trade and causing considerable economic disruption. While the committee hopes that there will be no disputes requiring settlement under the agreement's provisions, the ACTPN's preference is that whenever a remedy is necessary it be a financial penalty if at all possible rather than a trade-reducing tariff measure.

## Advisory Committee for Trade Policy and Negotiations (ACTPN)

September 2006

<b>Name</b>	<b>Organization</b>
Peter Baranay	ABRO Industries, Inc.
Craig Barrett	Intel Corporation
Jose Behar	Univision Music Group
James Berges	Emerson Electric Company
JoAnn Brouillette	Demeter
Michael Campbell	Arch Chemicals, Inc.
Thomas Donohue	United States Chamber of Commerce
Calvin Dooley	Food Products Association
Jennifer Dunn	DLA Piper
Edward C. Emma	Jockey International, Inc.
John Engler	National Association Manufacturers
William Frenzel	The Brookings Institution
Allen Gant	Glen Raven, Inc.
Nicholas Giordano	National Pork Producers Council
Terry Growcock	The Manitowoc Company, Inc.
Stephanie Harkness	Pacific Plastics and Engineering
H. Fisk Johnson	SC Johnson & Son, Inc.
Scott Klug	Trails Media Group/Foley Lardner, LLP
Charles E. Kruse	Missouri Farm Bureau
Larry A. Liebenow	Quaker Fabric
James W. Morrison	Small Business Exporters Association
Tracy Mullin	National Retail Federation
Michael Oestreicher	Thompson Hine LLC
Edward J. Perkins	University of Oklahoma
Kevin B. Rollins	Dell Computer Corporation
Lea Soupata	United Parcel Service
Maria Taxman	Chesterfield Trading
Jose Villamil	The Washington Economics Group, Inc.
Joseph Ward	International Union of Operating Engineers, Local 150
Wythe W. Willey	National Cattlemen's Beef Association
Wendell Willkie	Mead Westvaco Corporation