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The U.S.-Colombia Free Trade Agreement: Background and Issues

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Summary

The U.S.-Colombia Trade Promotion Agreement entered into force on May 15, 2012. It is a comprehensive free trade agreement (FTA) between the United States and Colombia, which will eventually eliminate tariffs and other barriers in bilateral trade in goods and services. The 112th Congress approved implementing legislation for the agreement on October 12, 2011, five years after the United States and Colombia signed the agreement. The House passed H.R. 3078 by a vote of 262-167 and the Senate passed the implementing legislation by a vote of 66-33 on the same day. The Colombian Congress approved the agreement in June 2007 and again in October 2007, after it was modified to include new provisions agreed to in the May 10, 2007, bipartisan understanding between congressional leadership and President George W. Bush.

The United States is Colombia's leading trade partner in both imports and exports. Colombia accounts for a very small percentage of U.S. trade (less than 1% in 2021), ranking 21st among U.S. export markets and 32nd among foreign exporters to the United States in 2021. The economic effects of the U.S.-Colombia FTA are difficult to measure because of the large number of economic variables that affect trade as well as investor confidence. Some economic studies estimated that, upon full implementation, the impact on the United States would likely be positive but very small due to the small size of the Colombian economy.

The congressional debate surrounding the U.S.-Colombia FTA mostly centered on violence, labor, and human rights issues in Colombia. Numerous Members of Congress opposed passage of the agreement because of concerns about alleged targeted violence against union members in Colombia, inadequate efforts to bring perpetrators to justice, and weak protection of worker rights. However, other Members of Congress supported the FTA and took issue with these charges, stating that Colombia had made great progress over the previous 10 years to curb violence and enhance security. They also argued that U.S. exporters were losing market share of the Colombian market and that the agreement would further open the Colombian market for U.S. goods and services.

To address the concerns related to labor rights and violence in Colombia, the United States and Colombia agreed upon an "Action Plan Related to Labor Rights" that included specific and concrete steps to be taken by the Colombian government with specific timelines. It included numerous commitments to protect union members, end impunity, and improve worker rights. The Colombian government submitted documents to the United States in time to meet various target dates listed in the Action Plan.

The U.S. business community generally supported the FTA with Colombia at the time of its passage. It supported the agreement because of the general economic viewpoint that FTAs help increase U.S. exports. At the time of the debate, U.S. exporters urged policymakers to move forward with the agreement, arguing that the United States was losing market share of the Colombian market, especially in agriculture, as Colombia entered into FTAs with other countries. Colombia's FTA with Canada, which was implemented on August 15, 2011, was of particular concern for U.S. agricultural producers. Critics of the agreement expressed concerns about violence against union members and the lack of protection of worker rights in Colombia, especially in labor cooperatives. Labor unions in general were highly opposed to the agreement. They argued that Colombia's labor movement was under attack through violence, intimidation, and harassment, as well as legal challenges.

Contents

Introduction	1
Rationale for the Agreement.....	1
Colombian Tariffs on Goods from the United States	2
Review of the U.S.-Colombia Free Trade Agreement.....	3
Key Provisions	3
Market Access.....	3
Tariff Elimination and Phase-Outs.....	4
Agricultural Provisions	4
Information Technology.....	4
Textiles and Apparel	5
Government Procurement	5
Services.....	5
Investment.....	5
IPR Protection.....	6
Customs Procedures and Rules of Origin	6
Labor Provisions	6
Environmental Provisions.....	7
Dispute Settlement.....	7
Bipartisan Trade Framework of May 10, 2007	7
Basic Labor Provisions	8
Other Provisions	8
U.S.-Colombia Free Trade Commission	9
U.S.-Colombia Trade Relations.....	9
U.S.-Colombia Merchandise Trade.....	10
U.S. Colombia Services Trade	12
U.S. Foreign Direct Investment in Colombia.....	14
FTA Economic Impact.....	14
2006 USITC Study Estimates on Economic Impact	14
Estimated Economic Impact on Agriculture	16
Issues Related to Violence and Labor.....	16
Colombia Action Plan related to Labor Rights.....	17
Details of the Action Plan	18
Creation of a Labor Ministry	18
Criminal Code Reform.....	19
Cooperatives	19
Temporary Service Agencies	20
Collective Pacts.....	20
Essential Services.....	20
ILO Office.....	20
Protection Programs.....	20
Criminal Justice Reform	21
Responses to the Action Plan in Colombia	22
Policy Issues.....	24
Market Access for U.S. Exporters.....	24
Colombian Farmer Concerns	24

Bilateral Cooperation on Labor..... 25
Complaint Filed with the Office of Trade and Labor Affairs (OTLA) 25

Figures

Figure 1. U.S. Merchandise Trade with Colombia: 1996-2021..... 11
Figure 2. U.S. Services Trade with Colombia: 2013-2020..... 13
Figure 3. U.S. Foreign Direct Investment in Colombia..... 13

Tables

Table 1. Colombian Tariff Rates on U.S. Products before the U.S.-Colombia FTA Entered
into Force..... 3
Table 2. Key Economic Indicators for Colombia and the United States 10
Table 3. U.S. Merchandise Trade with Colombia in 2021 11
Table 4. U.S. Services Trade with Colombia in 2020..... 12

Contacts

Author Information..... 27

Introduction

The U.S.-Colombia Trade Promotion Agreement (CTPA or U.S.-Colombia Free Trade Agreement) entered into force on May 15, 2012. It is a comprehensive free trade agreement (FTA) between the United States and Colombia that eventually will eliminate tariffs and other barriers in bilateral trade in goods and services. During the 112th Congress, President Obama submitted draft legislation on October 3, 2011 that was then introduced by request in both houses of Congress (H.R. 3078/S. 1641) to implement the U.S.-Colombia FTA. On October 12, 2011, the House passed H.R. 3078 (262-167) and sent it to the Senate. The Senate passed the legislation (66-33) on the same day. The President signed the legislation into law on October 21, 2011 (P.L. 112-42). The FTA entered into force after several months of work by both governments to review each other's laws and regulations related to implementation of the agreement, in addition to Colombia's efforts to fulfill its set of commitments under the Action Plan Related to Labor Rights.¹

The U.S.-Colombia FTA negotiations grew out of a regional effort in 2004 to produce a U.S.-Andean free trade agreement between the United States and the Andean countries of Colombia, Peru, and Ecuador. After negotiators failed to reach an agreement, 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. On August 24, 2006, President Bush notified Congress of his intention to sign the U.S.-Colombia FTA. Some Members of Congress, however, indicated that certain provisions would have to change in order to gain their approval, particularly regarding core labor standards. On May 10, 2007, bipartisan congressional leadership and the Bush Administration reached an understanding on a new bipartisan trade framework calling for the inclusion of internationally recognized labor rights and environmental provisions. On June 28, 2007, the United States and Colombia reached agreement on legally binding amendments on labor, the environment, and other matters to reflect the bipartisan understanding of May 10. The Colombian Congress approved the agreement in June 2007 and again in October 2007, after the agreement was modified to include new labor and environmental provisions.

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. After 2004, U.S. trade policy in the Western Hemisphere focused on completing trade negotiations with Colombia, Peru, and Panama and on gaining passage of these 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). The U.S.-Panama FTA was approved by Congress shortly after the U.S.-Colombia FTA on October 12, 2011, and signed into law on October 21, 2011 (P.L. 112-43). It went into effect on October 31, 2012.

The major expectation among proponents of the free trade agreement with Colombia, as with other trade agreements, is that it provides economic benefits for both the United States and

¹ The *Colombian Action Plan Related to Labor Rights* is a set of commitments related to worker rights protection by the Colombian government that the United States and Colombia agreed upon prior to approval of the U.S.-Colombia free trade agreement by the U.S. Congress. See *Colombian Action Plan Related to Labor Rights*, April 7, 2011, at <https://ustr.gov/sites/default/files/uploads/agreements/morocco/pdfs/Colombian%20Action%20Plan%20Related%20to%20Labor%20Rights.pdf>.

Colombia as trade expands between the two countries. Another expectation among proponents is that it helps improve investor confidence and increase foreign direct investment in Colombia, which may bring more economic stability. For Colombia, a free trade agreement with the United States has been part of the country's overall development strategy and efforts to promote economic growth and stability.

Key Dates for CTPA

- February 27, 2006: The United States and Colombia conclude bilateral negotiations on the CTPA (also known as the U.S.-Colombia FTA).
 - August 24, 2006: President George W. Bush notified the 112th Congress of his intention to sign the CTPA.
 - November 22, 2006: The United States and Colombia sign the agreement.
 - May 10, 2007: Bipartisan congressional leadership and the Bush Administration reach an understanding on a new bipartisan trade framework that calls for the inclusion of internationally recognized labor rights and environmental provisions in the text of pending and future free trade agreements.
 - June 14, 2007: The Colombian Congress approved the CTPA.
 - June 28, 2007: The United States and Colombia reached an agreement on legally binding amendments to the CPTA on labor, the environment, and other matters to reflect the bipartisan understanding of May 10.
 - October 30, 2007: The Colombian Congress approved the amended CTPA.
 - October 3, 2011: Congress introduced CTPA implementing legislation in both houses (H.R. 3078/S. 1641). On the same day, the House of Representatives passed H.R. 3078 (262-167) and sent it to the Senate. The Senate passed the implementing legislation (66-33) on the same day.
 - May 15, 2012: CTPA entered into force.
-

Colombian Tariffs on Goods from the United States

Before the U.S.-Colombia FTA entered into force, the U.S. average tariff on Colombian goods was 3%, while Colombia's average tariff on U.S. goods was 12.5%. Prior to the agreement, about 90% of U.S. imports from Colombia came into the country duty-free under trade preference programs or through normal trade relations. Most of Colombia's duties on U.S. exports were consolidated into three tariff levels: 0% to 5% on capital goods, industrial goods, and raw materials not produced in Colombia; 10% on manufactured goods, with some exceptions; and 15% to 20% on consumer and "sensitive" goods. Exceptions included automobiles, which were subject to a 35% duty; beef and rice, which were subject to an 80% duty; and milk and cream, which were subject to a 98% duty through August 11, 2010.²

Table 1 provides a summary of Colombian tariffs on goods coming from the United States before the free trade agreement entered into force. Other agricultural products fell under the Andean Price Band System (APBS), a system in which Colombia applied a variable levy on imports by increasing tariffs when world prices fall, and lowering tariffs when world prices rise.³ The APBS included 14 U.S. product groups and covered more than 150 tariff lines. The system resulted in high duties, sometimes exceeding 100%, on certain U.S. exports to Colombia, including corn, wheat, rice, soybeans, pork, poultry parts, cheeses, and powdered milk. However, upon entry into

² Office of the United States Trade Representative (USTR), *2010 National Trade Estimate Report on Foreign Trade Barriers*, March 2010; and USTR *2015 National Trade Estimate Report on Foreign Trade Barriers*, March 2015.

³ The Andean Price Band system is applied by the four countries belonging to the Andean Community, a regional trade integration agreement formed by Bolivia, Colombia, Ecuador, and Peru. The four countries entered into the Andean Community as a form of trade integration through the removal of trade barriers and the application of common external tariffs, and a goal to eventually form a common market.

force of the U.S.-Colombia FTA, Colombia stopped imposing variable tariffs on U.S. agricultural exports.⁴

Table 1. Colombian Tariff Rates on U.S. Products before the U.S.-Colombia FTA Entered into Force

Tariff Base Rate (%)	Number of Tariff Lines	% of Total Tariff Lines
0	173	2.5
> 0 to 5	2,083	30.2
> 5 to 10	1,225	17.7
> 10 to 20	3,282	47.5
> 20 to 35	97	1.4
> 35	46	0.7
Total	6,906	100.0

Source: U.S.-Colombia Trade Promotion Agreement, Colombia Tariff Schedule, reported by 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. Colombia Trade Promotion Agreement, Colombia Tariff Schedule.

Notes: Does not include tariff lines with base rate value of blanks. Total of 6,906 tariff lines includes 5,986 industrial and textile tariff lines and 920 agricultural tariff lines.

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

The comprehensive free trade 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 include poultry and rice.

Key Provisions⁵

This section summarizes several key provisions in the original agreement text as provided by the United States Trade Representative (USTR), unless otherwise noted.⁶

Market Access

Upon entry into force, the agreement eliminated 80% of duties on U.S. exports of consumer and industrial products to Colombia. An additional 7% of U.S. exports received duty-free treatment after the five-year mark (2017), and most remaining tariffs are to be eliminated within 10 years after entry into force.

⁴ USTR, *2017 National Trade Estimate Report on Foreign Trade Barriers*, March 2017, available at <https://ustr.gov>.

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

⁶ USTR, "United States-Colombia Trade Promotion Agreement," February 12, 2015.

Tariff Elimination and Phase-Outs

Upon entry into force, the U.S.-Colombia FTA eliminated most tariffs immediately and is to phase out the remaining tariffs over periods of up to 19 years. Tariff elimination for major sectors includes the following:

- More than 99% of U.S. and almost 76% of Colombian industrial and textile tariff lines became free of duty upon the agreement's entry into force. Virtually all industrial and textile tariff lines are to be duty free after 10 years (2022).⁷
- All tariffs in textiles and apparel that meet the agreement's rules-of-origin provisions were scheduled to be eliminated immediately (see section on "Textiles and Apparel" below).⁸
- Tariffs on agricultural products are to be phased out over a period of time, ranging from 3 to 19 years (see section on "Agricultural Provisions" below). Colombia is to eliminate quotas⁹ 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 after the agreement's entry into force.¹⁰

Agricultural Provisions

Prior to the FTA entering into force, Colombia applied some tariff protection on all agricultural products. The trade agreement provided immediate duty-free access on 77% of all agricultural tariff lines. Colombia will eliminate most other tariffs on agricultural products within 15 years, by 2027.¹¹ U.S. farm exports to Colombia that received 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 have received improved market access include pork, beef, corn, poultry, rice, fruits and vegetables, processed products, and dairy products. The agreement also provides duty-free tariff rate quotas on standard beef, chicken leg quarters, dairy products, corn, sorghum, animal feeds, rice, and soybean oil.¹²

The FTA removed Colombia's price band system on U.S. products upon the agreement's entry into force. 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.¹³

Information Technology

Under the agreement, Colombia agreed to join the World Trade Organization's Information Technology Agreement (ITA), and remove its tariff and non-tariff barriers to information

⁷ 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.

⁸ Ibid.

⁹ Tariff rate quotas are limits on the quantity of imports that can enter a country duty-free before tariff-rates are applied.

¹⁰ USDA, Foreign Agricultural Service, *U.S.-Colombia Trade Promotion Agreement: Benefits for Agriculture*, May 2012.

¹¹ Ibid.

¹² Ibid.

¹³ USTR, *2017 National Trade Estimate Report on Foreign Trade Barriers*, March 2017, p 98, available at <https://ustr.gov/>.

technology products. Colombia agreed to allow trade in remanufactured goods, which increases export and investment opportunities for U.S. businesses involved in remanufactured products such as machinery, computers, cellular telephones, and other services.

Textiles and Apparel

In textiles and apparel, products that meet the agreement's rules of origin requirements received duty-free and quota-free treatment immediately upon entry into force. The United States and Colombia have cooperation commitments under the agreement that 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 allows 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 provides 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 cover the purchases of Colombia's ministries and departments, as well as its legislature and courts. U.S. companies are 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 have full rights to establish subsidiaries or branches for banks and insurance companies. Portfolio managers are allowed 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 are designed to help establish a stable legal framework for foreign investors from the partner country. All forms of investment are protected, including enterprises, debt, concessions and similar contracts, and intellectual property. U.S. investors are treated as Colombian investors with very few exceptions. U.S. investors in Colombia 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 are 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.¹⁴

¹⁴ USTR, "U.S.-Colombia Trade Agreement: Increasing American Competitiveness," October 12, 2012, available at <https://ustr.gov/uscolombiatpa/investment>.

IPR Protection

The agreement provides intellectual property rights (IPR) protections for U.S. and Colombian companies. In all categories of IPR, U.S. companies are to be treated no less favorably than Colombian companies. In trademark protection, the agreement requires 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 to 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 will 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 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, the U.S.-Colombia FTA limits 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 protects products against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. In addition, the agreement requires the establishment of procedures to prevent marketing of pharmaceutical products that infringe patents, and provides 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.

On music and motion picture property piracy, the agreement's IPR provisions include penalties for piracy and counterfeiting and criminalize end-user piracy. It requires the parties to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. The agreement mandates both statutory and actual damages for copyright infringement and trademark piracy. This is to ensure that monetary damages could be awarded even if a monetary value to the violation is difficult to assess.

Customs Procedures and Rules of Origin

The agreement includes comprehensive rules of origin provisions to ensure that only U.S. and Colombian goods 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 labor chapter are 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 have fair, equitable, and transparent access to labor tribunals or courts. It has a labor cooperation and capacity building mechanism to pursue bilateral or regional cooperation activities, which may include the principles embodied in the 1998 ILO Declaration and activities to promote compliance with ILO Convention 182 on the Worst Forms of Child Labor. The United States and Colombia agreed to cooperate on 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 requires 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 will weaken or reduce protections. The agreement includes procedural guarantees to 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 are 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 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 will 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.

Bipartisan Trade Framework of May 10, 2007

In early 2007, some Members of Congress indicated that some labor and environmental provisions in pending U.S. FTAs would have to be strengthened to gain their approval. After several months of negotiation, bipartisan congressional leadership and the Bush Administration reached an understanding on May 10, 2007, on a new bipartisan trade framework that included internationally recognized labor rights and environmental provisions in the text of pending free trade agreements.

The amendments to the FTA are similar to the amendments made to the U.S.-Peru free trade agreement, which was approved by Congress in December 2008. 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 enforceable through the FTA's dispute settlement mechanism.

Basic Labor Provisions

After the bipartisan agreement, the Administration reached an agreement with Colombia to amend the FTA to require the parties to “adopt, maintain and enforce in their own laws and in practice” the five basic internationally recognized labor principles, 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 principles 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. A 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.

Other Provisions

Other amendments to the 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 impeded the entry of generic 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. Food and 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 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 will be allowed to include environmental protection requirements in their procurements. Concerning port security, an added provision ensures that if a foreign-owned company were to provide services at a U.S. port that would raise national security concerns, the agreement would not be an impediment for U.S. authorities in taking actions to address those concerns.¹⁵

¹⁵ USTR, *Colombia FTA Briefing Materials*, “The United States–Colombia FTA Protects U.S. Ports,” October 2008, p. 33, available at <https://ustr.gov/archive/>.

U.S.-Colombia Free Trade Commission

On October 22, 2021, the United States and Colombia held the third meeting of the Free Trade Commission under the U.S.-Colombia FTA. Government officials from the two countries reviewed trade and economic developments since the last Commission meeting in August 2021. They stated that they reaffirmed commitment “to working together on shared priorities, including labor and environment, and their shared interest in promoting inclusive trade policies.”¹⁶ In addition, the parties:

- received reports from the Committees on Agricultural Trade, Sanitary and Phytosanitary Matters, and Technical Barriers to Trade, and discussed bilateral issues of concern;
- agreed to hold an Environmental Affairs Council (“EAC”) meeting in 2022 to review implementation of the environmental chapter;
- directed customs and trade facilitation teams to hold follow-up discussions on best practices, lessons learned, and future plans;
- directed staff to include exchange of information regarding each country’s programs related to small and medium-sized businesses;
- had a “robust discussion of labor matters,” including the Biden Administration’s Worker-Centered Trade Policy; and
- discussed other issues of concern, including textiles and apparel, intellectual property, *de minimis*, agriculture-related issues, and steel and aluminum.¹⁷

U.S.-Colombia Trade Relations

With a population of 51 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, after Brazil, Mexico, Argentina, and Chile, is small when compared to the U.S. economy. Colombia’s gross domestic product (GDP) in 2021 in purchasing power parity (PPP) basis¹⁸ was estimated at \$871 billion, equal to about 3.8% of U.S. GDP of \$23.0 trillion (see **Table 2**). The economy of Colombia is slightly more reliant on trade than that of the United States. Colombia’s exports of goods and services were equal to 16% of its GDP in 2021, compared to 11% for the United States, while its imports of goods and services equaled 24% of its GDP, compared to 15% for the United States.

The United States is Colombia’s dominant trading partner in both imports and exports. Changes in Colombia’s market since the U.S.-Colombia FTA’s entry into force, however, have resulted in gradual reductions in overall trade with the United States. Colombia has regional trade agreements with most countries in Latin America, including the Central America Northern Triangle (Guatemala, Honduras, and El Salvador); Mexico; Mercosur (Brazil, Argentina,

¹⁶ Office of the United States Trade Representative, *The United States and Colombia Meet to Review Implementation of the United States-Colombia Trade Promotion Agreement*, Press Release, October 22, 2021.

¹⁷ *Ibid.*

¹⁸ Purchasing power parity (PPP) is an estimate at measuring gross domestic product (GDP) by attempting to factor in price differences across countries when estimating the size of a foreign economy in U.S. dollars. Many economists attempt to calculate a PPP exchange rate, based on price surveys that are conducted across countries, to reflect the actual purchasing power of each currency relative to the dollar in real terms.

Paraguay, and Uruguay); and Chile. An FTA with Canada, approved by both countries in 2010, entered into force on August 15, 2011. Colombia signed an FTA with the European Union, which entered into force in August 2013, and recently saw its trade agreement with South Korea enter into force in July 2016. In addition, Colombia is one of four countries comprising the Pacific Alliance, an evolving regional trade integration arrangement that also includes Chile, Mexico, and Peru.¹⁹ In February 2014, the presidents of all four Pacific Alliance countries signed a protocol to eliminate tariffs on 92% of goods traded within the Alliance; the outstanding 8% of items with tariffs remaining are in the agricultural sector and will be phased out over a period of 17 years.²⁰

Table 2. Key Economic Indicators for Colombia and the United States

	Colombia		United States	
	2011	2021	2011	2021
Population (millions)	46	51	312	333
Nominal GDP (\$ billions) ^a	335	314	15,600	22,999
GDP, PPP ^a Basis (\$ billions) ^a	530	871	15,600	22,999
Per Capita GDP (\$)	7,336	6,130	50,066	69,079
Per Capita GDP in \$PPP ^b	11,604	16,992	50,066	69,080
Exports of goods and services (\$ billions)	65	51	2,116	2,480
Exports as % of GDP ^b	19%	16%	14%	11%
Imports of goods and services (\$ billions)	68	76	2,696	3,396
Imports as % of GDP ^b	20%	24%	17%	15%

Source: Compiled by CRS based on data from the Economist Intelligence Unit (EIU) on-line database. Some figures for 2021 are estimates. Figures are rounded to nearest whole number.

Notes:

- a. Nominal GDP is calculated by EIU based on figures from World Bank and World Development Indicators. 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.
- b. Exports and Imports as percentage of GDP are derived by the EIU and include trade in both goods and services.

U.S.-Colombia Merchandise Trade

Colombia accounts for a very small percentage of U.S. total merchandise trade (less than 1% in 2021). In 2021, Colombia ranked 21st among U.S. export markets and 32nd among foreign exporters to the United States. U.S. merchandise exports to Colombia totaled \$16.5 billion in 2021, while U.S. imports totaled \$13.2 billion. As shown in **Table 3**, the dominant U.S. import category from Colombia in 2021 was crude petroleum oil (31.6% of total imports from Colombia), followed by gold, coffee, fresh-cut flowers, and non-crude petroleum products. The

¹⁹ See CRS Report R43748, *The Pacific Alliance: A Trade Integration Initiative in Latin America*, by M. Angeles Villarreal.

²⁰ Lucien O. Chauvin, “Eliminating Tariffs on 92% of Goods,” *International Trade Daily*, February 11, 2014.

leading U.S. export categories to Colombia were non-crude petroleum products (17.8% of total exports to Colombia), corn, civilian aircraft and engines, immunological products, and soybeans.

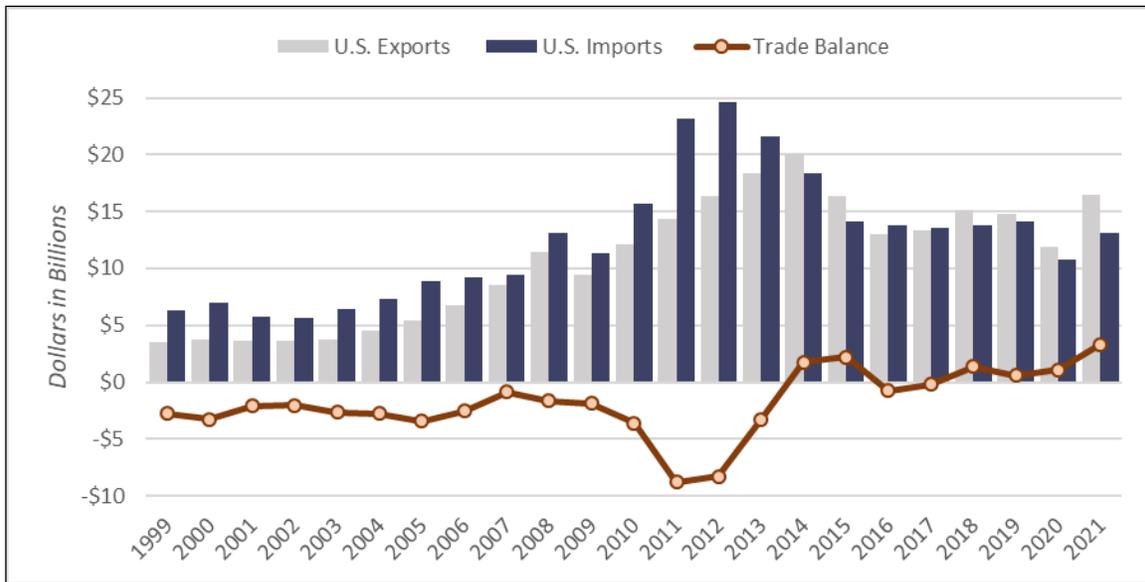
Table 3. U.S. Merchandise Trade with Colombia in 2021

U.S. Exports			U.S. Imports		
Leading Items (HTS 4 Digit Level)	\$ Millions	Share	Leading Items (HTS 4 Digit Level)	\$ Millions	Share
Petroleum oil products (other than crude)	2,934.65	17.8%	Crude petroleum oil	4,154.93	31.59%
Corn	1,103.30	6.7%	Gold	1,564.53	12%
Civilian aircraft, engines, and parts	837.99	5.1%	Coffee	1,365.97	10.39%
Human & animal blood; immunological prod; vaccines & like products	644.90	3.9%	Cut flowers	1056.22	8.03%
Soybeans and soybean oil	544.82	3.3%	Petroleum oil products (other than crude)	950.96	7.23%
All other	10,386	63.1%	All other	4,059.41	30.87%
Total exports	16,451.44	—	Total imports	13,152.02	—

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

Figure 1. U.S. Merchandise Trade with Colombia: 1996-2021

(Billions of dollars)



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

U.S. merchandise trade with Colombia increased notably from 2011 to 2013, the period of time during which Congress approved the agreement and its entry into force. After 2013, trade between the two countries declined and then fluctuated by relatively small amounts between 2015 and 2018. In 2021, total U.S.-Colombia merchandise trade increased 30%, after having dropped

over 20% in 2020 due to the negative impact of the Coronavirus Disease 2019 (COVID-19) pandemic. U.S. exports to Colombia increased 38% (\$4.5 billion) in 2021 while imports increased 22% (\$2.4 billion). The United States had a merchandise trade surplus with Colombia in 2021 of \$3.3 billion (see **Figure 1**).

U.S. Colombia Services Trade

The economic effects of the COVID-19 pandemic affected services trade significantly between the United States and Colombia. Total services trade with Colombia was \$7.2 billion in 2020 (latest data available), down from \$12.2 billion in 2018 and \$12.1 billion in 2019 (see **Figure 2**). In 2020, U.S. services exports to Colombia totaled \$4.8 billion, compared to \$7.4 billion in 2018. Services imports from Colombia totaled \$2.3 billion in 2020, compared to \$4.8 billion in 2018. The U.S. services trade surplus with Colombia was \$2.5 billion in 2021. **Table 4** shows leading services imports from and exports to Colombia in 2020. These services included air and sea transport, travel, telecommunications, business services, and financial services.

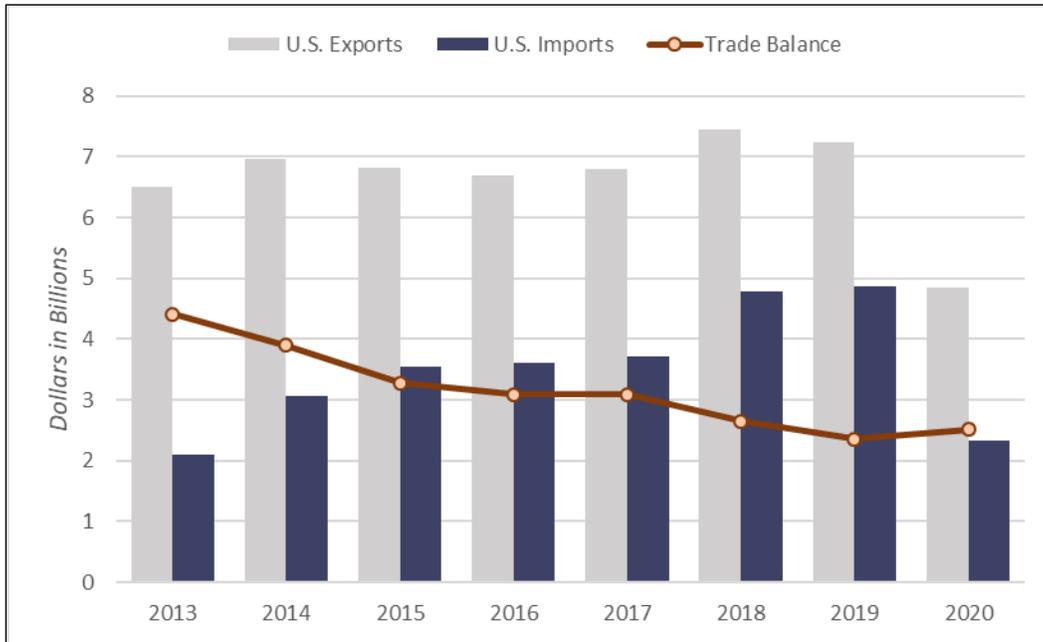
Table 4. U.S. Services Trade with Colombia in 2020

U.S. Exports			U.S. Imports		
Leading Items	\$ Millions	Share	Leading Items	\$ Millions	Share
Air and Sea Transport	954	20%	Air Transport	919	39%
Travel (for all purposes including education)	939	19%	Travel (for all purposes including education)	484	21%
Telecommunications, computer, and information services	751	16%	Other Business Services	302	13%
Other Business services	659	14%	Telecommunications, computer, and information services	94	4%
Financial services	596	12%	Financial services	83	4%
All other	941	19%	All other	446	19%
Total exports	4,840	—	Total imports	2,328	—

Source: Compiled by CRS using U.S. Department of Commerce Bureau of Economic Analysis (BEA)

Notes: The table above was created using the 2017 North American Industry Classification System (NAICS) from the Office of Management and Budget's (OMB). Not all items listed correspond to a specific NAICS code, as some service items were combined under larger categories to allow for comparison.

Figure 2. U.S. Services Trade with Colombia: 2013-2020

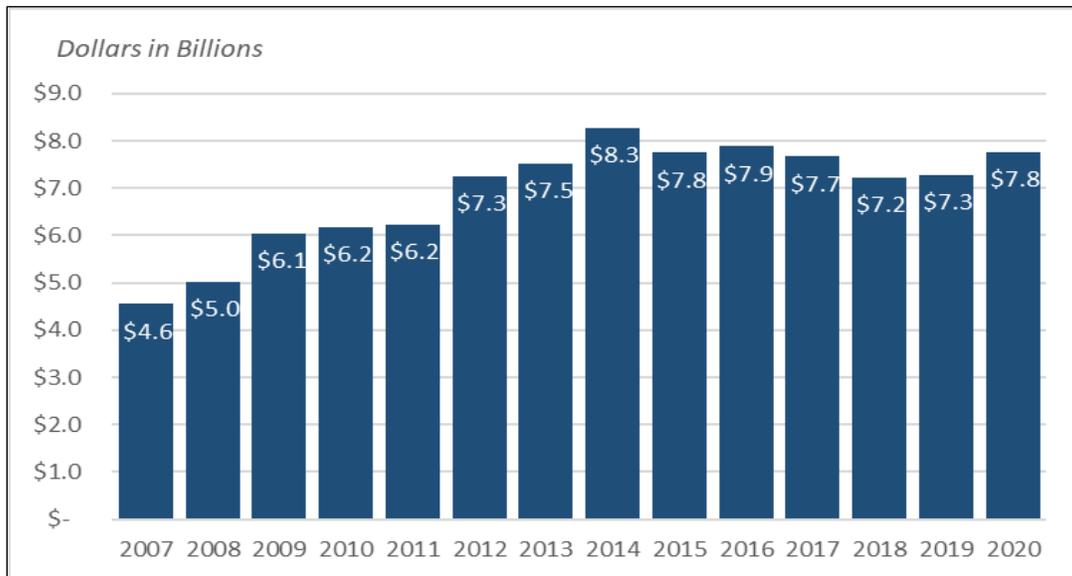


Source: Compiled by CRS using U.S. Department of Commerce Bureau of Economic Analysis, International Economic Accounts at <https://www.bea.gov>.

Notes: Graph shows all available data.

Figure 3. U.S. Foreign Direct Investment in Colombia

Historical-cost Basis



Source: Bureau of Economic Analysis, International Economic Accounts.

U.S. Foreign Direct Investment in Colombia

U.S. foreign direct investment in Colombia on a historical-cost basis totaled \$7.8 billion in 2020, up from \$7.3 billion in 2019 (see **Figure 3**). The largest amount was in mining, which accounted for 37%, or \$2.9 billion, of total U.S. FDI in Colombia. The second-largest amount, \$1.6 billion (21% of total), was in manufacturing, followed by \$994 million in finance and insurance (13% of total). The U.S.-Colombia FTA likely improved investor confidence in Colombia.

FTA Economic Impact

Upon its entry into force, CTPA eliminated 80% of duties on U.S. exports of consumer and industrial products to Colombia. An additional 7% of U.S. exports received duty-free treatment after the five-year mark (2017), and most remaining tariffs were eliminated within 10 years after entry into force. The remaining tariffs will be eliminated over periods of 19 years by 2031. The U.S.-Colombia FTA will likely have a small, but positive, net economic effect on the United States with some possible adjustment costs. The full effects of the agreement are difficult to measure because of the number of variables that affect trade, such as GDP growth, exchange rates, socioeconomic conditions, and investor confidence.²¹

The net overall effect on the United States is likely minimal because Colombia's economy is very small when compared to the U.S. economy and the value of the 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 are likely due to Colombia's removal of tariff barriers and other trade restrictions. Approximately 90% of U.S. imports from Colombia entered the United States duty-free before the agreement entered into force, either unconditionally or under the ATPA or other U.S. provisions; hence, the marginal effects of the FTA on the U.S. economy are not significant.

2006 USITC Study Estimates on Economic Impact

A 2006 study by the United States International Trade Commission 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.²² 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:²³

- 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%).

²¹ Recent studies on the economic impact of the U.S.-Colombia Trade Promotion Agreement were not readily available at the time this report was updated. A 2021 report by the United States International Trade Commission (USITC) on the economic impact of trade agreements implemented under trade authorities procedures mentions that the agreement increased certainty in trade conditions for Colombian firms, leading to a rise in the number of varieties of goods traded between the United States and Colombia. It also cites a case study that recounts how U.S. exporters of yellow corn were able to gain tariff advantages in Colombia relative to other global corn exporters. See United States International Trade Commission, *Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures, 2021 Report*, Publication Number: 5199, June 2021.

²² 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). Findings are based on a projected 2007 baseline.

²³ USITC, December 2006, pp. 2-1 and 2-2.

- 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.
- 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.²⁴ 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.²⁵

The nongovernmental Institute for International Economics (IIE)²⁶ did a study in 2006 assessing the possible impact of a U.S.-Colombia FTA on both the U.S. and Colombian economies.²⁷ The study found that a 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%.²⁸ 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 minor sectoral effects 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.²⁹

²⁴ 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.

²⁵ USITC, December 2006, pp. 7-1 to 7-4.

²⁶ Now known the Peterson Institute for International Economics (PIIE).

²⁷ Jeffrey J. Schott, editor, Institute for International Economics (IIE), *Trade Relations Between Colombia and the United States*, August 2006. (Hereinafter IIE, August 2006).

²⁸ 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.

²⁹ IIE, August 2006, p. 112.

One of the drawbacks to the bilateral free trade agreement is that it may result in trade diversion because it is not fully inclusive of all regional trading partners.³⁰ Trade diversion results when a 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 U.S.-Colombia FTA 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%.³¹

Estimated Economic Impact on Agriculture

The USITC study found that one of the impacts of a U.S.-Colombia FTA would be increased U.S. agricultural exports to Colombia as a result of enhanced U.S. access to the Colombian market.³² 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.
- Colombia's elimination of trade barriers and certain government support measures would likely result in increased U.S. grain exports to Colombia.
- U.S. exports to Colombia in soybeans, soybean products, and animal feeds would likely increase under an FTA.³³

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 stated 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.³⁴

Issues Related to Violence and Labor

The debate on U.S. free trade agreement with Colombia brought attention to the issue of labor rights violations in Colombia and whether the government was doing enough to curb violence,

³⁰ 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 production shifts to another country.

³¹ IIE, August 2006, pp. 88-89.

³² USITC Publication 3896, p. xv.

³³ USITC Publication 3896, pp. xvi-xvii.

³⁴ IIE, August, 2006.

especially against union members; address the problem of human rights abuses; and end impunity.³⁵

Numerous Members of Congress opposed the FTA with Colombia because of concerns about violence in Colombia against labor union members and other human rights defenders. Policymakers who voiced opposition to the agreement generally were concerned about the impunity issue in Colombia, the lack of investigations and prosecutions, and the role of the paramilitary.

Some Republican and Democratic supporters of the FTA took issue with these charges against the Colombian government and contended that Colombia has made significant progress in recent years to curb the violence. Some policymakers stated that Colombia was a crucial ally of the United States in Latin America and that if the FTA with Colombia did not enter into force, it would have led to further problems in the country and other Latin American countries.

The Colombian government responded to U.S. concerns and acknowledged that, while there continued to be killings in Colombia, the situation had improved significantly since 2002. According to government data, assassinations of labor union activists and teachers decreased by 86% between 2002 and 2009. Data on the number of labor leaders murdered varied by source. In 2006, the Colombian government estimated that 60 labor union members were killed, while the National Labor School (ENS), a Colombian labor organization, estimated that 78 labor union members were killed.³⁶ In 2010, the Colombian government recorded 34 murders, while the ENS recorded 51. According to the ENS, there were 24 murders of labor union members in 2012, 36 in 2013, and 20 in 2014.³⁷ In 2017, Colombia's Ministry of Labor stated that the homicide rate for labor union members had decreased 51% between years 2010-2016.³⁸ The ENS, meanwhile pointed to a 31% jump in homicides between years 2015-2016.³⁹ According to the government, about 475 unionists benefit from state-funded security services.⁴⁰ Whether labor activists were being targeted at the time because of their union activity or for other reasons is an issue that was highly debated.

Colombia Action Plan related to Labor Rights

The United States and Colombia negotiated to develop an “Action Plan Related to Labor Rights” (the Action Plan) to help resolve the following U.S. concerns related to labor-related issues in Colombia: alleged violence against Colombian labor union members; inadequate efforts to bring

³⁵ For more information on Colombia, see CRS Report R43813, *Colombia: Background and U.S. Relations*, by June S. Beittel.

³⁶ U.S. Department of State, “Memorandum of Justification Concerning Human Rights Conditions with Respect to Assistance for the Colombian Armed Forces,” September 9, 2010. The State Department reports that the ENS revised its figures upward to 47 after initially reporting 39 homicides for 2009.

³⁷ Escuela Nacional Sindical (ENS), *Report on the First Four Years of the Implementation of the Labor Action Plan (2011)*, 2015, p. 49, available at <http://ens.org.co/>.

³⁸ Ministerio del Trabajo, “Tasa de homicidios de sindicalistas se ha reducido 51% en los últimos seis años,” Comunicados 2017, July 17, 2017, available at <http://www.mintrabajo.gov.co/web/guest/prensa/comunicados/2017/julio/>.

³⁹ Escuela Nacional Sindical (ENS), “31% crecieron casos de violencia antisindical en Colombia en el último año. Informe especial.” July 12, 2017, available at <http://ail.ens.org.co/informe-especial/31-crecieron-casos-violencia-antisindical-colombia-ultimo-ano-informe-especial/>.

⁴⁰ Ministerio del Trabajo, “Tasa de homicidios de sindicalistas se ha reducido 51% en los últimos seis años,” Comunicados 2017, July 17, 2017, available at <http://www.mintrabajo.gov.co/web/guest/prensa/comunicados/2017/julio/>.

perpetrators of violence to justice; and insufficient protection of workers' rights in Colombia. The governments of the United States and Colombia announced the plan on April 7, 2011. It includes numerous specific commitments made by the Colombian government to address U.S. concerns. The Obama Administration's announcement of the plan stated that the successful implementation of key elements of the plan was a precondition for the agreement to enter into force.⁴¹ The plan includes a number of obligations with target dates throughout 2011, and with a final target date of 2014 for the completion of hiring extra labor inspectors. The most significant target dates were April 22, 2011, and June 15, 2011.

Details of the Action Plan

This section summarizes the details of the Action Plan as reported by the Office of the United States Trade Representative (USTR).⁴²

Creation of a Labor Ministry

One of Colombia's key commitments under the Action Plan was to create a new Labor of Ministry. By November 2011, the Colombian government had established the new ministry. On October 31, 2011, the Colombian government had established the new ministry. On October 31, 2011, President Santos announced the appointment of Liberal Party leader Rafael Pardo to lead the country's newly formed Labor Ministry, with the goal of implementing a broader and more effective regime to protect labor rights. The Colombian government expected that the Labor Ministry would provide the framework to mobilize resources and strengthen enforcement of labor laws. During the Uribe Administration, Colombia's labor-related functions were managed under the Ministry of Social Protection (MSP), which was created in 2002 by President Alvaro Uribe. The MSP had combined Colombia's Ministry of Health and previous Ministry of Labor into one central agency.

The Action Plan's target dates for the measures related to the labor ministry ranged from April 22, 2011, to December 15, 2011.⁴³ The Action Plan included the following as part of the Colombian government's commitments:

- Plan and budget for the hiring of 480 new labor inspectors over a four-year period, including the hiring of at least 100 new labor inspectors during 2011 and budgeting for an additional 100 new inspectors in the 2012 budget.
- Improve the system for citizens to file complaints concerning labor rights violations. The system is to have a toll-free telephone hotline and a new web-based mechanism for registering complaints. The MSP/Labor Ministry will conduct outreach to promote awareness of the complaint mechanisms.
- Improve the MSP/Labor Ministry mediation and conflict resolution system in all 32 departments (Colombian states) by assigning specialized resources to the

⁴¹ The White House, Office of the Press Secretary, "Leveling the Playing Field: Labor Protections and the U.S.-Colombia Trade Promotion Agreement," April 6, 2011, available at https://obamawhitehouse.archives.gov/sites/default/files/09302011_labor_protections_and_the_colombia_trade_agreement.pdf.

⁴² Office of the U.S. Trade Representative, *Colombian Action Plan Related to Labor Rights*, April 7, 2011, at <http://ustr.gov>.

⁴³ On April 6, 2011, the Colombian Congress overwhelmingly approved to split three fused ministries and grant President Juan Manuel Santos extraordinary powers over the following six months to restructure parts of the Colombian government. President Santos has six months to divide the three ministries and reconstruct certain departments. The new ministries will be: Interior, Justice and the Law, Health and Social Protection, Labor, Environment and Sustainable Development, and Housing, Cities, and Territory.

MSP's regional offices, training workers and employers in conflict resolution, and conducting outreach. The MSP will also conduct outreach to the public, employers, and workers through TV programs and printed material.

Criminal Code Reform

The Colombian government submitted legislation to the Colombian Congress to reform the country's criminal code by establishing criminal penalties for employers that undermine the right to organize and bargain collectively. The new article in the criminal code encompasses a wide range of practices that adversely affect fundamental labor rights and would penalize violators with up to five years of imprisonment. The Colombian government committed to have the legislation enacted by the Colombian Congress by June 15, 2011. Legislation on this matter entered into force on June 24, 2011.

Cooperatives

The Colombian government agreed to accelerate the effective date of the provisions of Article 63 of the 2010 Law of Formalization and First Employment, passed in December 2010. This provision of the law prohibits the misuse of cooperatives or any other kind of labor relationship that affects labor rights, and imposes significant fines for violations. The government submitted legislation to the Colombian Congress to move the effective date from July 1, 2013, to June 15, 2011. The Colombian congress approved the bill.

The Labor Ministry was to direct 50 of the 100 new labor inspectors referenced above to be assigned exclusively to cases involving cooperatives. The hiring and training of these inspectors was to be completed by December 15, 2011. Most of these inspectors had been hired as of early December 2011. A second group of 50 labor inspectors specializing in cooperatives were to be hired during 2012. The priority sectors for labor inspections will be the palm oil, sugar, mines, ports, and flower sectors. The Colombian government agreed to confirm to the U.S. government by April 22, 2011, that these inspections had begun.

The Colombian government agreed to issue regulations implementing the 2010 cooperatives law by June 15, 2011. The purpose of these regulations was to

- clarify earlier cooperatives laws;
- ensure coherence among earlier laws and the new cooperatives law;
- increase inspections of cooperatives;
- increase sanctions for labor law violators;
- strictly apply and enforce the requirements that cooperatives be autonomous and self-governing; and
- develop and conduct an outreach program to inform and advise workers of the following: their rights under Colombian law; remedies and courses of action available to them through the courts in order to enforce recognition of a direct employment relationship; and the existence of criminal penalties for employers who are responsible for undermining the right to organize and bargain collectively (upon congressional approval of the criminal code reforms in Colombia).

The Colombian government agreed to work with the U.S. government to ensure that the agreed objectives are addressed and provide quarterly reports on the enforcement results to all interested parties.

Temporary Service Agencies

The Colombian government committed to implement a regime to prevent the use of temporary service agencies to circumvent labor rights. This would include actions such as improving the inspection process, designing a new training program for labor inspectors, and building databases to identify regions and sectors where there have been abuses. The enforcement regime is to include a monitoring and reporting mechanism in which all interested parties could verify progress and compliance with labor laws. As a first step, the MSP was to issue quarterly reports for interested parties that include the results of preventive inspections, penalties, fines, the cancellation of licenses and permits, and the list of those agencies found to be in violation. The Colombian government agreed the MSP, and later the Labor Ministry, would share a draft of the enforcement plan with the U.S. government by April 22, 2011; work with the U.S. government to ensure that the agreed upon objectives are addressed; conduct a series of preventive inspections by June 15, 2011; and fully implement the enforcement plan by December 15, 2011, which according to the USTR, was accomplished.

Collective Pacts

The Colombian government committed to include in the bill on criminal code reform a provision stating it is a crime, subject to imprisonment, to use collective pacts to undermine the right to organize and bargain collectively. Approval of the criminal code reform took place in June 2011. The provision prohibited collective pacts from extending better conditions to non-union workers. The MSP/Labor Ministry began conducting a public outreach campaign after the criminal code reform was approved to promote awareness. Colombia's Labor Ministry was enforcing the reforms through preventive inspections and the new labor complaint mechanisms to detect and prosecute violations. The Colombian government committed to request technical assistance from the International Labor Organization (ILO) to monitor the use of collective pacts and work with the U.S. government to ensure that the agreed objectives were addressed.

Essential Services

Colombia agreed that the MSP would collect the body of Colombian doctrine, case law, and jurisprudence that has narrowed the definition of essential services. The MSP disseminated this information and relevant guidelines to labor inspectors, the judicial branch, unions, and employers by the target date of April 22, 2011.

ILO Office

The Colombian government's formal request to the ILO for technical assistance was accomplished by the target date of September 15, 2011. The Colombian government had committed to request cooperation, advice, and technical assistance from the ILO to help in the implementation measures in the Action Plan. It committed to work with the ILO to strengthen the presence and expand the capacity and role of the ILO in Colombia. The U.S. and Colombian governments committed to working together to identify the necessary resources and sources of support.

Protection Programs

Colombia's Ministry of Interior and Justice issued a Ministerial Resolution, by the target date of April 22, 2011, to broaden the definition of who was covered by its protection program. The broader definition included (1) labor activists; (2) persons who were engaged in active efforts to

form a union; and (3) former unionists who were under threat because of their past activities. The Colombian government planned and budgeted for necessary additional resources for this expansion by increasing the FY2011 allocation by 50% (approximately US \$6 million) to provide adequate support for the expansion in the protection program. For FY2012, the Colombian government assessed the level of funding necessary to support the program and presented the requested budget to the Colombian Congress before the target date of July 30, 2011.

The Ministry of Interior and Justice committed to eliminate the backlog of risk assessments on union member applications for protection, by July 30, 2011, through an emergency plan that had begun earlier. After the backlog elimination, the Colombian government committed to a national policy on conducting risk assessments to comply with the law to process all risk assessments within a 30-day period. On May 1, 2011, the Colombian government committed to providing monthly updates to interested parties.

The Colombian government committed to issue a decree to reform the scope and functioning of the interagency committee that reviews risk assessments by September 15, 2011. The new committee was to include representatives from the Inspector General's Office and the Public Defender's Office to enhance objectivity in the assessment process. The Colombian government agreed to share with the U.S. government the relevant parts of the draft decree by April 22, 2011, and agreed to work with the U.S. government to ensure that the agreed objectives are addressed. The Colombian government also committed to strengthen the existing protection system by immediately implementing administrative measures.

Colombia agreed to amend its teacher relocation and protection program, contained in Resolution 1240 (*Resolución 1240*) of 2010, to ensure that meritorious requests were granted to teachers and to eliminate sanctions against teachers not found to be under extraordinary risk. The Colombian government agreed to work with the U.S. government to ensure that the program was achieving the objective of effectively protecting those covered by it and to ensure that the agreed objectives were addressed. Colombia began the sharing of quarterly reports on the program with interested parties beginning July 1, 2011.

Criminal Justice Reform

The Colombian government agreed to assign 95 additional full-time judicial police investigators to exclusively support prosecutors investigating criminal cases involving union members and activists. The first 50 of these judicial police were assigned by June 30, 2011, and most of the remaining police were assigned by December 15, 2011. The government stated that it would approve a request to increase funding for the Prosecutor General's Office for necessary resources to reduce impunity and for implementing the Action Plan. The Prosecutor General submitted the budget request by May 20, 2011.

The Prosecutor General's Office of Colombia informed the Colombian government of numerous actions it had taken or plans to take to combat impunity in cases involving union members and labor activists:

- Issued a directive requiring criminal investigators to determine whether a victim was a union member or labor activist in the initial phase of the investigation;
- Issued a directive to the chiefs of the Unit of Justice and Peace and the Unit of Human Rights to share evidence and information about criminal cases involving union members, labor activists, teachers, journalists, and human rights activists;
- Developed a plan and identified budgetary needs for training judicial police investigators and prosecutors on crime scene management, and in investigative

- techniques with specific reference to the issues involved in labor cases; worked with the U.S. government in developing a detailed training program;
- Developed a plan and specified budgetary needs by May 20, 2011, to strengthen the institutional capacity, number of prosecutors and number of judicial police investigators;
 - Finalized an analysis by July 15, 2011, on closed cases of homicides of union members and activists, in order to extract lessons that could improve investigations and prosecutions in future cases; the results of this analysis were widely publicized to help reduce impunity and deter future crimes;
 - Developed a plan and identified specific budgetary needs for victims' assistance centers specialized in human rights cases, including labor cases; the Prosecutor General's Office agreed to staff the centers with professionals with expertise on human rights and labor issues; Colombia agreed to share the plans and budgetary allocations for this project to the U.S. government by June 15, 2011;
 - Developed a program by the Prosecutor General's Office to address the backlog of unionist homicide cases that included (a) meeting with representatives of the union confederations and the National Labor School, *Escuela Nacional Sindical* (ENS), an independent labor rights monitoring body, in order to try to reconcile discrepancies; and (b) internal guidance to prosecutors to accelerate action on cases with leads, with a special focus on "priority labor cases", and to provisionally close cold cases by June 15, 2011; and
 - Improved public reporting of completed criminal cases involving labor violence by the Prosecutor General's Office through the following: (a) publication by April 22, 2011, of cases decided as of January 1, 2011, and thereafter; and (b) identification of methods by June 15, 2011, for posting information regarding all completed cases on the Prosecutor General's Office website.

Responses to the Action Plan in Colombia

After the announcement of the Action Plan, at least two of Colombia's labor confederations responded favorably to working with the Santos Administration and with business representatives to come to an agreement on labor issues. Labor unions in Colombia responded favorably to at least some elements that were included in the Action Plan, especially those related to work cooperatives. The Secretary General of Colombia's National Labor Confederation remarked in November 2010 that President Santos' proposal under the 2010 labor cooperatives law was a "great achievement" for the trade union movement in Colombia.⁴⁴

Although initial responses to the Action Plan from Colombian unions were mostly favorable, some labor unions continued to oppose the FTA with the United States. The ENS stated that the Action Plan was the most significant advance for the labor movement in Colombia in 20 years, but also stated that it had gaps, such as not going far enough to address the labor abuses that are occurring in labor cooperatives.⁴⁵ The Solidarity Center in the Andean Region contended that Colombia had not met its full commitment in the Action Plan to implement the 2010 Cooperatives Law because the decree that was signed in June 2011 was only a "partial decree" that left out other forms of contracting.

⁴⁴ ENS, "Trade Unions Comment on Government Proposal to Dismantle Associated-Work Cooperatives (Cooperativas de trabajo asociado), November 26, 2010.

⁴⁵ In-person interview with ENS on June 1, 2011.

Colombia's Action's in Meeting Milestones As Reported by the Office of the United States Trade Representative (USTR)

Major Actions Taken by April 22, 2011

Began hiring 100 additional labor inspectors and budgeted for the hiring of 100 more labor inspectors in 2012.

Improved systems for citizens to file labor-related complaints via phone or internet.

Implemented an inspection system to detect improper use of temporary service agencies to circumvent labor rights and developed an enforcement plan to prevent abuses.

Established enforcement regime to detect and prosecute the use of collective pacts to undermine worker rights.

Began workshops to train labor inspectors and other government personnel in conflict resolution and launched a related outreach program to the public, employers, and workers.

Expanded government protection program and increased funding to provide protection for labor activists, workers who are trying to organize or join a union, and former unionists who are under threat.

Strengthened the teacher relocation and protection program.

Mandated early identification in all new homicide cases of whether the victim was a union member or activist.

Developed a plan for training judicial police investigators and prosecutors on cases involving unionists.

Improved public reporting of completed cases by posting labor violence cases.

Began process to reconcile discrepancies in the number of outstanding unionist homicide cases.

Major Actions Taken by June 15, 2011

Obtained congressional approval of legislation to establish a new Labor Ministry.

Obtained congressional approval of legislation to establish criminal penalties for labor rights violations.

Enacted legal provisions prohibiting the misuse of cooperatives or other types of labor relationships.

Issued regulations implementing a new cooperatives law, including provisions to clarify earlier cooperatives laws, ensure coherence among these laws, and impose significant fines for companies violating these laws.

Launched a public outreach program to inform workers of their labor rights, with a focus on the new laws governing cooperatives; criminal anti-union conduct and abuse of collective pacts; and available courses of action.

Developed and disseminated legal information regarding definition of essential services, especially with regard to laws establishing a public service as essential and exempt from the right to strike.

Reduced by 75% the backlog of risk assessments for unionists applying for the government protection program.

Issued internal guidance to prosecutors to accelerate action on cases with leads, especially those related to labor.

Developed a plan to strengthen the institutional capacity in regional offices of the Prosecutor General.

Developed a plan and identified budgetary needs for victims' assistance centers, including labor cases.

Submitted a budget request for the necessary government resources to end impunity and implement the LAP.

Developed a methodology for public posting of information regarding completed criminal cases involving labor.

Major Actions Taken by September 15, 2011

Completed an analysis by the Prosecutor General's Office of closed homicide cases of unionists for the purpose of extracting lessons to improve the investigation and prosecution of future cases.

Formally submitted a request for technical assistance to the ILO for implementation of Action Plan measures.

Eliminated the backlog of risk assessments for applicants to the protection program.

Completed the reassignment of 50 judicial police investigators to criminal cases involving unionists.

Other Actions as of February 2015

Increased the budget for hiring additional personnel for protection of union members and labor activists.

Increased the size of the labor inspectorate from 424 inspectors to 718 inspectors, with an additional 188 slated to be hired; completed first round of training for inspectors in alternative dispute resolution; and implemented temporary service agency enforcement plan. Increased inspections in the five priority sectors of palm oil, sugar, mines, ports and flowers for illegal subcontracting; and imposed fines for unlawful subcontracting.

Source: USTR, Colombian Embassy, *Colombian Action Plan Related to Labor Rights: Accomplishments to Date*, at <http://www.ustr.gov>; USTR and U.S. Department of Labor, *Standing up for Workers: Promoting Labor Rights through Trade*, Special Report, February 2015.

On May 26, 2011, a tripartite labor agreement was reached among representatives of the Colombian government, the private sector, and some labor representatives. The agreement included a consensus to request the ILO to provide cooperation, advice, and technical assistance on the implementation of the Action Plan measures. Two of Colombia's major labor confederations, however, the Confederation of Workers of Colombia (CTC) and the Central Union of Workers (CUT), did not sign the agreement. However, two other confederations, the General Labor Confederation (CGT) and the Colombian Pensioners Confederation (CPC), signed the agreement and stated that it was one of the most significant advances in many years in strengthening labor movement in Colombia.⁴⁶

Policy Issues

Market Access for U.S. Exporters

Proponents of the agreement contend that it improves market access for U.S. exporters. Much of the U.S. business contended that the agreement helped increase exports of U.S. products, especially in agriculture. The National Pork Producers Council, for example, argued that the trade agreement provides significant new export opportunities for U.S. pork producers.⁴⁷

Prior to passage of the agreement, U.S. exporters were concerned that they were losing market share in the Colombian market as a result of passage of FTAs that Colombia had negotiated with other countries. Some U.S. exporters were especially concerned about the Colombia-Canada FTA that entered into force in August 2011. U.S. wheat producers estimated that the agreement resulted in a decline in the U.S. share of Colombia's wheat as Canada's share increased.⁴⁸

Numerous policymakers voiced concern about the United States losing market share of the Colombian market if Congress did not approve the U.S.-Colombia FTA. Over the ten years prior to the U.S.-Colombia FTA entering into force, Colombia entered into five FTAs with 12 countries in Latin America, in addition to the Colombia-Canada FTA. Colombia also signed FTAs with the European Union, and the EFTA (Iceland, Liechtenstein, Norway, and Switzerland). Colombia also joined an effort to create the Pacific Alliance, a regional trade integration agreement with Chile, Mexico, and Peru.⁴⁹

Colombian Farmer Concerns

Farmers in Colombia and their supporters were concerned that the FTA with the United States was hurting small farmers. Colombia's relatively high tariff structure of agricultural imports from the United States is to be phased out over a 19-year period, but tariffs on certain products, such as wheat and soybeans, were removed immediately upon the agreement's entry into force. Many in Colombia's farming sector argued that the agreement and other liberal trade policies were "undermining local food production and putting small farmers out of business" as lower cost imports enter the Colombian market. In August 2013, a nationwide strike in Colombia lasted over

⁴⁶ ENS, "Labor Agreement: CGT and CPC signed it, the CTC and the CUT did not sign it but presented proposals," June 1, 2011.

⁴⁷ National Pork Producers Council, *NPCC Applauds President for Sending Trade Deal to Congress*, April 7, 2008.

⁴⁸ National Association of Wheat Growers, *Fact Sheet: U.S.-Colombia Free Trade Agreement*, April 2011.

⁴⁹ See CRS Report R43748, *The Pacific Alliance: A Trade Integration Initiative in Latin America*, by M. Angeles Villarreal.

a week as more than 200,000 coffee growers, dairy farmers, and other agricultural workers and their supporters blocked roads and launched protests against the U.S.-Colombia FTA.⁵⁰

Some observers argued that the problems that farmers were facing go beyond the free trade agreement with the United States. For example, farmers in rural areas face extremely expensive credit rates and production supplies. Many also face challenges in transporting their goods to the main producers because of the poor state of supply routes. While there may be opportunities for some agriculture producers by exporting other goods, such as Colombia's array of exotic fruits, the mounting challenges for smaller producers may be too large for them to handle.⁵¹

Bilateral Cooperation on Labor

April 2016 marked the fifth anniversary of the Colombian Action Plan Related to Labor Rights. An Obama Administration report commemorating the occasion stated that Colombia had made "meaningful" progress since the plan's inception. Major achievements, according to the report, included reductions in the number of fake worker cooperatives and a doubling of labor inspectors within the Colombian Ministry of Labor. The report also listed certain issues that required attention going forward. According to the text, other forms of illegal subcontracting have started to replace worker cooperatives, threatening the improvements made over the past five years. Similarly, the report found that the government was slow to address the culture of impunity that surrounded labor law violations and that the government was not been effective in collecting fines levied against employers.⁵²

Complaint Filed with the Office of Trade and Labor Affairs (OTLA)

In 2016, the U.S. Office of Trade and Labor Affairs (OTLA) received a complaint from five Colombian labor organizations and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). The group alleged that the Colombian Government had failed to comply with the terms described in the labor chapter of the U.S.-Colombia FTA. Those alleged failures, according to the complaint, were especially damaging, as they helped undermine the fundamental labor rights of Colombian workers, particularly their rights to freedom of association and collective bargaining. The group provided examples from the petroleum and sugar sectors to illustrate specific shortcomings.⁵³

The OTLA investigated the group's claims and published its findings on January 11, 2017. It wrote that the Colombian government, despite making progress in certain aspects of the labor question, was marred by inconsistencies that endangered recent advances in labor rights. The OTLA specifically highlighted problems with the Labor Inspectorate, the inspection process, and the process for collecting fines.⁵⁴ The OTLA also stated that Colombia's "high rate of impunity"

⁵⁰ Matthew Bristow, "Colombia President Approval Plunges as Protests Roil Nation," Bloomberg Government, September 4, 2013.

⁵¹ NTN24 *Nuestra Tele Noticia*, "Colombia in Focus: Why Colombian Farmers Hate the US Free Trade Agreement," August 29, 2013.

⁵² United States Department of Labor and Office of the United States Trade Representative, *The Colombian Labor Action Plan: A Five Year Update*, April 11, 2016, available at https://www.dol.gov/ilab/reports/pdf/2016_colombia_action_plan_report_final.pdf.

⁵³ United States Department of Labor, Bureau of International Labor Affairs (ILAB), Office of Trade and Labor Affairs (OTLA), *Public Report of Review of U.S. Submission 2016-02 (Colombia)*, January 11, 2017. Available online at DOL website: <http://www.dol.gov>.

⁵⁴ The Labor Inspectorate (*Unidad Especial de Inspección, Vigilancia, y Control de Trabajo*) enforces Colombia's labor, employment, and social security laws. It is composed of two specialized offices at the national level and 32

in cases of violence against unionists, its unlawful collective labor pacts, and pervasive subcontracting practices were major obstacles for worker rights in the country.⁵⁵

The OTLA included a list of 19 recommendations in its investigation report to help the Government of Colombia address its labor rights issues. These included, among other things, strengthening the Ministry of Labor's labor inspection system; investigating and prosecuting cases of violence against unionists more thoroughly; and combating abusive subcontracting practices and collective pact agreements. The OTLA also encouraged the Secretary of Labor of the United States to "initiate consultations" with the Government of Colombia and indicated it would seek to involve relevant members of civil society in the consultation process. OTLA stated it would reevaluate the government's progress "within nine months and thereafter, as appropriate."⁵⁶

In January 2018, OTLA published an assessment of the actions taken by Colombia in response to the recommendations included in the January 2017 report. According to the assessment, Colombia has "taken several steps" toward satisfying some of the recommendations found in the 2017 report.⁵⁷ The Ministry of Labor, for example, mandated the installation and use of an electronic case management system in all regional offices and two special administrative offices.⁵⁸ It also took steps to address high turnover rates within the inspectorate body by converting close to 90 percent of its existing inspector positions into career civil servant positions.⁵⁹

The OTLA assessment also noted other changes that, if fully implemented, would contribute to addressing the issues and questions raised in the 2017 report. Some of these include remedial training for ministry employees, and a larger budget appropriation from the Colombian Congress for 2018. Despite some positive signs, however, the OTLA warns that not all listed recommendations have received full attention. The OTLA stated it would continue to monitor Colombia's progress with the help of the U.S. Department of State and the U.S. Trade Representative.⁶⁰

regional offices.

⁵⁵ United States Department of Labor, Bureau of International Labor Affairs (ILAB), Office of Trade and Labor Affairs (OTLA), *Public Report of Review of U.S. Submission 2016-02 (Colombia)*, January 11, 2017, p. ii. Available online at DOL website: <http://www.dol.gov>.

⁵⁶ United States Department of Labor, Bureau of International Labor Affairs (ILAB), Office of Trade and Labor Affairs (OTLA), *Public Report of Review of U.S. Submission 2016-02 (Colombia)*, January 11, 2017, p. iii. Available online at DOL website: <http://www.dol.gov>.

⁵⁷ OTLA, "First Periodic Review of Progress to Address Issues Identified in the U.S. Department of Labor's Public Report of Review of Submission 2016-02 (Colombia)," January 8, 2018.

⁵⁸ The electronic case management system was created to integrate all statistics and documents handled by Colombia's Ministry of Labor. Although ILO designed the project in 2011, the offices of the ministry only recently adopted the system.

⁵⁹ OTLA, "First Periodic Review of Progress to Address Issues Identified in the U.S. Department of Labor's Public Report of Review of Submission 2016-02 (Colombia)," January 8, 2018.

⁶⁰ *Ibid.*

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