

## **Colombia – United States Free Trade Agreement: Summary**

### **Colombian Ministry of Commerce, Industry, and Tourism**

Prologue: Each of us must convert ourselves into students of the Free Trade Treaty: an effort of 22 months of negotiation, which represents a great opportunity and challenge for our country.

Colombia, with 44 million citizens, cannot live in the midst of grand speeches and a poor population. Here, we must pass from words to acts.

This negotiation looks to open in a permanent manner the market of the United States for our products, with the goal of generating employment by means of investment and generating resources to eradicate poverty.

Before agreeing to this Treaty with the United States, the Government did something that was not seen on the horizon of Colombia four years ago: the Andean Community/MERCOSUR treaty, a fundamental step in the union of our South America. And we hope to sign soon a similar agreement with Central America and Europe.

How many countries would like to enter the world's largest market, the United States? We now have that possibility. The Treaty is an opportunity for the country to move in a positive direction; to think, plan, and act in a big way.

There are sectors that will win more than others, but by reorienting our economy correctly, in the end, everyone will win equally.

To help those producers that suffer, that have fears, we have conceived the program of "Agro, Secure Income." Consumers will benefit, because there will be a reduction in the price of essential products and, above all, there will be downward pressure on the growth of inflation. The price of agricultural raw materials will improve, because we will take care to make them tariff free, and the chain of distributors will not have to pay customs duties; we will work so that this favors the producers.

The small businesses that we feared would end up losing will end up winners. It was difficult to reach agreement on the issue of medications, but we salvaged generic medications and the public's health.

This is one of the first treaties – perhaps the first – that the US has signed in which they accept that another country has to protect its environment; and which gives the other country the possibility of advancing phytosanitary issues [NOTE: phytosanitary refers to the problem of pests (insects) and pathogens (diseases) crossing borders by means of trade in agricultural goods].

The workers of this country that are protected by the Constitution, by the Law, by the Work Code, by inspections and by judges, are now, additionally, protected by this treaty, because our

two countries have pledged to respect totally the rights of our workers and to protect the lives of union leaders.

Additionally, the Free Trade Treaty (FTT) is a challenge for Colombia to undertake infrastructure construction that we have dreamed about but have never executed.

This agreement demands of us discipline, work, transparency, but with love for Colombia, we will convert the Free Trade Treaty into a win-win agreement.

Álvaro Uribe Vélez

President

## 1. The Importance of the FTT

The close of negotiations of the Free Trade Treaty of Colombia with the United States represents a great success of the policy of commercial integration of the world that the Colombian government is promoting. With the FTT, Colombia achieves permanent preferential access to the United States, in addition to the access we already have to Mexico and the countries of South America.

Colombia will now be part of a small group of countries with preferential access to the US market. This privileged access is a great opportunity for our country, providing us with the commercial space that we need to take advantage of our entrepreneurial energy and transform it into well-being and wealth for all. We Colombians have great qualities. We can compete successfully with the rest of the world. The FTT opens opportunities and challenges, and Colombians, by means of a joint effort between the government and citizens, have reached the historic moment and we can make the adjustments and changes that will determine a better future for all of us.

The commercial integration with the world's largest market will convert Colombia into a platform for exports and convert us into an attractive pole for domestic and foreign investment. More investments and more capital are the ideal complement to inspire our entrepreneurial spirit.

The FTT is a historic opportunity for Colombia for three reasons. In the first place, we are taking advantage of the opportunity to consolidate for our country the preferences that were granted to us by the Andean Trade Promotion and Drug Eradication Act, or ATPDEA [NOTE: The Andean Trade Preferences Act was a system of unilateral commercial preferences granted by the US to Andean countries as a contribution in the struggle to combat illegal drugs; it was replaced in 2002 by the Andean Trade Promotion and Drug Eradication Act, a US law that permitted duty-free access to more than 6,000 types of Colombian products to the important US market; this Act expired in December of 2006], thanks to which important lines of export products have evolved, such as flowers, textiles, footwear, and cigarettes, to mention only a few. The ATPDEA represented \$4.935 billion in exports in 2005, or 52.8 percent of exports to the US. In the second place, we are winning more access in comparison with our direct competitors in the international market. The countries that already have free trade treaties, like Chile, Mexico, and the countries of Central America, will not be able to take advantage of us; without this important commercial access, our exports would be considerably reduced and the other countries would be much more attractive to new investments. In the third place, we are winning an important tool to gain competitiveness and to conquer the market before other countries, like China and India, do so.

The United States is the largest economy in the world (32% of the world's Gross Domestic Product in 2003) and is a market with high purchasing power; its income per capita in 2004 was \$35,500 (US dollars), while Colombia's was \$2,000. It is an economy that purchased \$1.4

trillion worth of goods from other countries in the world in 2004, which is equal to almost 200 times our exports to that market.

A commercial agreement like the one that has just been negotiated has notable economic implications for the relative importance of the United States and for the positive economic impacts on employment and the reduction of poverty.

The FTT is a necessary complement to other governmental policies oriented to the achievement of better rates of economic growth. Studies indicate that economic growth can reach 4.2% as a consequence of the treaty and employment will grow by at least 380,000 jobs in a period of 5 years. Additionally, the FTT is a factor in making the country more attractive to foreign investment. A study by the Banco de La República estimates that between 2007 and 2010 investment would grow by \$2.135 million as a result of the treaty. International experience shows that these results are feasible for economies that integrate themselves more into the global economy.

The treaty thus implies that Colombia will have to make a great effort toward modernization. The country should become more agile and flexible. The FTT implies obligations to facilitate commerce that will reduce the bureaucracy and shorten times for procedures such as customs, logistics, and electronic commerce.

## 2. Contents of the Free Trade Treaty between Colombia and the United States

The text of the agreement has 23 chapters and various annexes. The chapters, similar to other commercial treaties, cover the usual subjects; there are also specific elements, for example, Colombia's interest in biodiversity along with health and phytosanitary issues. The annexes contain all the appropriate elements for each country and these are the major differences between this and other treaties; so the annex regarding the timetable for the elimination of tariffs (tax relief) on goods in the FTT between Colombia and the United States is very different than the one in the CAFTA (Central American Free Trade Agreement) or in the treaty between Chile and the United States.

### 2.1 Institutional Aspects of the Treaty

Among the institutional matters are included the arrangements that reflect the compatibility between the FTT and the Andean Community agreement (CAN). This is an important objective for Colombia and the other Andean countries. Decision 598 of the CAN authorized members to negotiate with third countries, taking into account the concerns of other CAN members that do not participate in the negotiations. The application of the Most Favored Nation principle between Andean countries assures that any benefits extended to Colombia will also be extended to other members of CAN.

Another significant achievement is the creation of a Free Trade Commission, composed of the Ministry of Commerce, Industry, and Tourism, representing Colombia, and the United States Trade Representative, with the objective of speeding the administration of the treaty. Different

from other treaties, the FTT allows the Commission to monitor the effects of the treaty on small- and medium-sized businesses.

The treaty recognizes that it is necessary to strengthen the commercial capacity of Colombia and toward that end it seeks to encourage better commercial conditions and create value in a variety of areas. This need is recognized as one of the functions of the Administrative Commission of the Treaty; to implement this, a Committee on the Strengthening of Commercial Capacity has been created. This committee is charged with managing international cooperation processes beginning with a national strategy of cooperation for Colombia. Since the beginning of the negotiations, several sources of cooperation, public and private, have been convened. It is worth noting that the treaty specifies that international technical assistance rather than public debt shall be used for this goal.

The Committee on the Strengthening of Commercial Capacity presented and has achieved the financing of 72 projects that are oriented primarily toward the strengthening of private and public capacity to implement the treaty and strengthening the competitiveness of the productive sector. The projects are oriented toward themes such as strengthening the sanitary system, the creation of risk assessment process for providing credit to small- and medium-sized businesses, improving the system of regulation and technical norms, to cite only a few examples. Our countries will continue working to design projects even after negotiations have concluded.

There are other groups working on more specific issues related to other aspects of the treaty, including agriculture, textiles, obstacles to commerce, financial services, public contracting, professional services, and labor and environmental matters.

Among the institutional matters are included provisions to promote transparency by means of the appropriate publicizing of norms, rules, procedures, and administrative resolutions related to different aspects of the treaty; the appropriate publicizing of the proposed norms and the availability of mechanisms to gather data, such as efficient mechanisms for explaining and clarifying concerns or observations regarding the projects and norms. Transparency is a commitment that contributes to the strengthening of nondiscriminatory treatment and avoiding surprising changes in the rules of the game.

Although countries sign commercial treaties with the clear intention of complying with their obligations and benefiting mutually from the accord, in the process of implementation and development differences of interpretation and application of the treaty emerge. For this reason, there is a chapter on the Solution of Controversies which defines the procedures for resolving disputes that might appear. The mechanism consists first in a meeting of the parties, and if there is no resolution then the matter is referred to the Commission on Free Commerce; the Commission has concrete steps and if their application is not successful an arbitration panel will be arranged. If this is not successful, there are mechanisms for compensating those who have been hurt and penalizing those who do not comply. These mechanisms are fundamental for

guaranteeing the legal security of that which has been agreed to and it is one of the reasons why the FTT is much better in this regard than the arrangements for the Andean Treaty. Unilateral preferences don't have payable-on-demand mechanisms as they have in the FTT.

## 2.2 Access to Markets

The chapters on market access have as their objective the removal of tariff (taxes designed to raise prices and protect domestic industries) and non-tariff (such as licenses, quotas, technical and sanitary specifications, safeguards, etc.) barriers on the movement of goods and services. The removal of these barriers will create preferential access, since the products of other countries will continue to confront those barriers; the obvious consequence of this is that the benefiting country will obtain a better market position which their competitors do not have.

### 2.2.1 Agriculture

The central objective of Colombia was guaranteeing that domestic agriculture would be a net winner, in such a way that the balance of the negotiation was a result between the needs of exporting agricultural products and reasonable protection of domestic production that might be affected by competition from the United States.

The final result of the negotiations is totally consistent with this objective, since it not only opens the country to great opportunities to export, but also creates specific mechanisms to obtain real access for our products and to protect those sectors of our agriculture sensitive to competition.

In terms of access, Colombia achieved all the preferences in the Andean Treaty and guaranteed the immediate entry of strategic Colombian products. For these products, the FTT offers more stable conditions than we have today, since in contrast to the Andean Treaty, it will not be necessary to renew the FTT periodically.

The final result will promote the export to the United States of agricultural products in which we are competitive: meat, dairy, flowers, fruits, vegetables, margarines and other oil-based products, sugar and products with sugar, such as chewing gum, candies and chocolates, cigarettes, tobacco, and cotton, among others.

In the case of sugar, Colombia managed to triple the quota, which includes certain types of candies and chocolates for industrial use, to which the country will now have access to 75,000 tons, 50,000 under the FTT and 25,000 under the World Trade Organization. This will proceed under certificates of eligibility. Additionally, Colombia obtained immediate access, without tariffs, for ethanol and biodiesel, in such a way that once the FTT is in force, Colombia will have a comparative advantage in bio-fuels in the principal market in the world: the United States.

In tobacco, we obtained a quota of 4 million tons, in addition to the 3 million through the WTO. This product is very important in terms of rural employment, since it generates more than 250 jobs per hectare. In addition, we obtained new quotas for dairy products of 9,000 tons,

distributed as follows: 100 tons of liquid milk, 2,000 tons of butter, 300 tons of ice cream, 4,600 tons of cheese, 2,000 tons of other dairy products and free access for yogurt. These quotas and the free access for yogurt are a great opportunity to export agricultural products of great value and generate rural employment.

The FTT offers the agricultural sector conditions for modernizing its processes to make it more productive. The treaty establishes protective mechanisms, such as baseline tariffs, special automatic safeguards, ample tax-free periods, importation quotas, grace periods for sensitive products, among others, so that our agricultural sector can adapt to the new competitive environment. It is also now possible to avoid sanitary and phytosanitary measures becoming non-tariff barriers for the entry of Colombian products into the U.S. market.

Real access means expedited process for the approval of animal, vegetable, and human products, and thus Colombia obtained reciprocal commitments. There is now a permanent committee for dealing with these matters, similar to the arrangements in the agreements with Chile and Central America.

Additionally, Colombia achieved commitments without precedent in free trade treaties: the commitment that our applications for health and phytosanitary issues will be dealt with promptly; the commitment that our technical evaluations (data and scientific evidence) will be used by agencies that process and facilitate our applications for access for our agricultural products. Additionally, there is a commitment to carry out a process of joint technical cooperation to achieve real access.

However, it is necessary that our domestic health and phytosanitary standards meet international norms and this is a great challenge for our country. The work has already begun and this is reflected in the progress we have made recently to improve the quality of our meat products and in technical cooperation projects which will complement the improvement of our poultry farming products.

For rice, we have secured a period of tariff reduction of 19 years to eliminate the tariff of 80 percent, with a grace period of 6 years during which the tariff will not be reduced. Colombia will grant the US an import quota of 79,000 tons of white rice. Domestic producers will share in the profits from these sales and this will generate income for our rice producers. The government is aware that it must help the rice sector in the face of competition. For this reason, the “Agro, Secure Income” program has specified internal aid measures for each hectare of rice planted.

To protect the domestic poultry market, we secured special treatment for chicken legs and seasoned meat. Tariff reduction will extend for 18 years for fresh chicken legs, beginning with a tariff of 164.4 percent and a five year grace period and for seasoned meat a tariff of 70 percent for 18 years and a 10 year grace period. Colombia grants a leg and seasoned meat quota of 26,000 tons and an annual growth rate of 4 percent. The administration of the quota will be

through an auction system that permits domestic producers to participate in the generation of tariffs monies.

Additionally, the treaty provides for a blanket agricultural production safeguard and a bilateral clause for the revision of the treaty in the ninth year. It is clear that the best defense against competition is a competitive poultry sector. Therefore, in addition to tax relief of primary materials, there will be an automatic reduction of production quotas that includes additional support for health coordination for the private sector.

With respect to corn, it is necessary to remember that Colombia imports a large part of the grain it consumes; thus, the effect of the FTT on this front will be really a displacement of importers in favor of the US. Colombia offered an import quota on yellow corn of two million tons with an annual growth rate of 5 percent. It is worth remembering that current imports exceed this level and internal demand is growing at more than 7 percent annually. Beyond this quota, the baseline tariff of 25 percent will fall to zero in 12 years. The import quota on white corn will be 130,000 tons with an annual growth rate of 5 percent. Under the “Agro, Secure Income” program, there is a special emphasis on technical assistance for corn growers. There is a system of agricultural supports, paid per ton of yellow corn produced and paid by hectare sown for white corn.

The quotas established in sensitive sectors take into account domestic consumption concerns and the stability of domestic production.

To support the development of competitive agriculture in Colombia and facilitate processes of adjustment and a conversion of some zones of the country, the “Agro, Secure Income” program has been designed. This program has four types of aid: direct aid paid by ton produced or hectare planted; finance programs for improving sanitary compliance; an incentive program to improve technologies and a line of credit to promote the conversion of land. The budget for this program is \$500,000 annually.

### 2.2.2 Industry

The objectives of Colombia in the negotiations over industrial goods were to obtain permanent preferential treatment for all the exports in this sector, which have registered a notable and dynamic increase in recent years and which generate substantial aggregate value for the economy; to define the rules of the game clearly for commerce in industrial goods between the two countries; and establish adequate conditions for the entry of US goods into Colombia. Negotiations sought apt conditions to encourage the export of new manufactured goods.

Practically all of the exportable industrial goods of Colombia (99.9%) will have immediate access to the US once the treaty comes into force. This includes all textiles and apparel, preferences that go well beyond the Andean Treaty since they cover apparel for home use, and new export goods.



On the import side, Colombia granted the US immediate access for 81.8% of its products, 92.5% of which are raw materials and capital goods not produced in this country; the remaining 7.5% are products that are not ready to compete with the US. 80.5% of the capital goods and 100% of the raw materials for agriculture will have immediate tariff reduction; in the case of industry, 86.8% of capital goods and raw materials will be tariff free. The principal consequence of this improved access will be lower production costs and a subsequent increase in competitiveness and better consumer prices.

There will be a period of five years of tariff reduction affecting paper, inks, iron and steel products, glass and auto parts, among others, while there will be a seven year period for products in the petrochemical/plastics chain.

The negotiation permits the country to maintain export incentives for raw materials; this means that businesses can import raw materials from anywhere without tariff in those cases where the materials will be used to produce goods for export to the US and any other market.

The negotiation over industrial goods opens up great commercial opportunities. For example, in the textile and apparel sector there are long-term preferences which are very important for the production of women's undergarments, house wares, bath wear, and general clothing. Ceramics for the bath and kitchen have a large market in the US and the FTT will permit the consolidation and expansion of that market. In the case of footwear and leather goods, an industry overwhelming composed of small- and medium-sized businesses, the treaty consolidates and expands the commercial preferences of the Andean Treaty. Fats and oils, many of which are made from palms, have great potential, not only because of tariff reduction but because they have a lower content of unhealthy fatty acids.

On the theme of used goods, we have maintained the arrangements for handling and licensure that have been in force to control these types of products since 1995, including used clothing. With respect to remanufactured goods, we have agreed to a definition that permits us to distinguish between used and remanufactured, and to protect this sensitive economic sector with slower tariff reduction in the areas of auto parts, appliances, and machinery.

Small- and medium-sized businesses will be the special beneficiaries of access to industrial goods since tariff reduction not only reduces the cost of production but also reduces the cost of updating technology and improving productivity.

### 2.2.3 Services

International commerce in services has experienced more growth than industrial goods, in part because of the encouragement provided by the internet, advances in communication technology, and the reduced price of international transportation. Colombia has potential in a number of service areas, for which it will be useful to have preferential, barrier-less access to the US.

The objective of the negotiation over services was the elimination of barriers to access that distort commerce and impose discriminatory treatment on service providers; the promotion of competition as an accelerating factor for competitiveness and consumer welfare; to guarantee the autonomy of the government in the design of the social security system; and the elimination of tariffs on digital products (computer programs, video, images, sound recordings, etc.).

The achievements in the area of services are notable for Colombia; they create a favorable environment to improve competitiveness, to encourage deep local development, to attract foreign investment, to generate jobs and increase exports to the largest market in the world.

With regard to the official authorization of credentials, each country has the autonomy to enforce its own rules, but they are able to establish specific agreements of mutual recognition of other country's requirements. Nevertheless, since the chapter on services focuses on the offering of transnational professional services that require accreditation and licensing, Colombia has initiated a working group, which already has an agenda, oriented toward establishing standards for the licensing and certification of service providers and the mutual recognition of their professional organizations. This is an important advance over earlier treaties, since the group is officially part of the institutional setup of the treaty.

With respect to services, Colombia can establish certain reservations, which is to say, it can maintain discretion over certain sectors. Among the most important achievements is the power of the government to establish controls over the movement of capital, with the objective of maintaining macroeconomic stability, the opening of competition for transnational services in the area of insurance, the inclusion of bonds for mobile telephones and the exclusion of bonds for rural telephones.

It is important to highlight that the negotiations achieved one of the best cultural preservation agreements of any free trade treaty. The Colombian government obtained a reserve clause with the goal of protecting the essential cultural aspects and the rights of ethnic groups. In the case of culture, the government can retain or establish stimuli for the cultural expression sector.

Regarding television, current legislation is retained and screen quotas will be modified moderately on weekends and holidays beginning in 2009. Finally, the government will retain its discretion to legislate in favor of ethnic groups and preserve the constitutional rights over its territories.

#### 2.2.4 Investment

With the FTT Colombia gains potential as a platform for investment not only from the US but from other parts of the world, attracting projects oriented toward the production of goods and services destined for the US market. The FTT creates a positive environment for investment with reciprocal guarantees for our investments in the US and US investments in Colombia.

Colombia's principal objective on this matter was to establish a fair and transparent judicial standard to promote investment by means of the creation of a stable and predictable environment to protect investors, their investments, and related capital flows, without unnecessary obstacles. The negotiation also included protection for Colombian investors in the US and nondiscriminatory treatment for those investments.

Colombia experienced an important reduction in investment as a proportion of GDP during the 1990s. Different authorities have estimated that for the economy to reach an annual growth rate of 5% there needs to be investment equal to 25% of GDP. The rules of the game established on this issue in the FTT should result in a growth in foreign investment and an increase in domestic investment that will allow us to reach this level.

This part of the agreement establishes (1) nondiscriminatory treatment for investors; (2) minimum standards to assure the physical and legal protection of investors; (3) free movement of investment capital; (4) absence of requirements for the performance and administration of investments; and (5) respect of investor rights over their investments.

The agreement respects all our National Constitutional restrictions and contains clauses for mutual legal respect. Exceptions for public order are recognized, the maintenance of state monopolies and the control of capital. It is clear that our Constitution will govern these questions with respect to those who invest in Colombia.

### 2.2.5 Public Purchases

Public purchases have special economic importance because governments are big consumers of goods and services in each country. The objective of the negotiations was to create a bilateral opening for these purchases, by means of lists defining what government enterprises were included in the agreement.

With the FTT, we eliminated barriers and permitted access for Colombian businesses to federal and sub-federal level purchases in the US whose value is calculated at \$300 billion annually. Without the FTT, we would not have this access, since the "Buy American Act" authorized federal entities to purchase goods and services from foreign providers only in specific situations, such as when a country has an agreement to participate in public sector purchasing.

Recognizing the importance of the market for public sector purchasing for the development of our national industry, Colombia established an asymmetrical reserve clause favoring Colombia, exclusively for small- and medium-sized businesses in contracts up to \$125,000 even though the total reserved for small- and medium-sized business in the US is \$100,000.

### 2.2.6 Other Market Access Issues

The chapter entitled Technical Obstacles to Commerce has as its objective the avoidance of norms and technical regulations being used as nontariff barriers to trade in industrial and

agricultural goods between Colombia and the US. This chapter is key for achieving real access and taking advantage of preferential treatment.

All countries have norms and technical regulations designed to protect the life of people, plants, and animals; they are also designed to protect the environment and consumers (for example, to avoid fraud over quality control issues). Just as sanitary and phytosanitary issues protect agricultural products, norms and technical regulations of a scientific or technological nature are required for goods to enter a country; for example, the characteristics of packaging or seatbelt rules for cars.

The FTT establishes mechanisms of cooperation and transparency. A committee on technical obstacles has been created that has among its functions the implementation of this chapter, preventing norms and regulations from impeding commerce, working on the convergence or harmonization of norms, and improving systems of verification and compliance.

It is hoped that the agreement will contribute to the reduction of the proliferation of norms and regulations, facilitating commerce by means of compliance with the mechanisms of evaluation, and increasing the quality and competitiveness of Colombian products bound for international markets, as international standards converge. This last point is of utmost importance; if the norms and regulations for a product are different in Colombia than in other countries, the product will have to be made according to the specifications of each market; the convergence of norms will guarantee standardization and, by means of this route, reducing costs and taking advantage of economies of scale.

The Rules of Origin define the characteristics that goods should have to be considered beneficiaries of the preferences in the treaty. In other words, it is a matter of determining the level of inputs and value added to determine the origin of a good.

The treaty defines three grades of goods that qualify for this label. The first includes goods obtained or produced in their totality in the countries of the agreement. This is the case in the majority of agricultural goods and those made with 100% domestic raw materials. Second, goods that are produced with goods made from raw materials from signatory countries. For example, Colombian goods for export to the US made with Andean raw materials. The third group includes those that are produced using raw materials from third countries, such as cigarettes that combine domestic and Asian tobacco. For those products that are produced with raw materials from third countries there are criteria for determining what their origin will be based on an acceptable level of non-regional inputs or raw materials.

The flexibility of these rules of origin allows Colombian businesses to seek raw materials from other countries when they are not available domestically or regionally without losing preferential treatment. This is the case with respect to women's undergarments, since the treaty allows flexibility regarding the origin of nylon.

To define things in this way will benefit both countries since it clarifies the rules of the game and protects preferential treatment from those third countries that have not signed the agreement.

One of the objectives of the FTT is the implementation of simplified Customs Procedures, expedited and clear, that will allow swift and cheap importing and exporting of goods. This reduces uncertainty and permits the optimum delivery of products to clients.

The agreement will assist in the modernization of customs procedures in Colombia, with the goal of reaching international standards of foreign commerce.

Both countries are committed to the actions necessary to keep the receiving and sending of goods to a maximum of 48 hours. Similarly, there will be a modernization and automation of information systems, creating systems compatible between the countries and accessible to customs clients, optimizing risk systems, and permitting better identification of risky (illicit) goods and improving the steps for the movement of low risk goods; strengthening cooperation and the exchange of information between customs agencies, including information about modification of norms; and eliminating overcharges and steps for clients.

The chapter on Commercial Defense seeks to regulate safeguards, in cases of tariff reduction in cases where imports increase, causing or threatening to cause grave damage to a branch of domestic industry. Similarly, antidumping measures will be implemented to avoid damage to domestic industries.

Safeguarding is an instrument that permits temporary suspension of tariff reductions or even increasing them without surpassing levels specified in the agreement. The FTT allows a period long enough to repair grave damage or permit adjustments, but not to exceed two years; nevertheless, there is a possibility of extending this two more years. The safeguard can only be applied temporarily, which is to say, during the tariff reduction period specified in the treaty.

One aspect to keep in mind is that the use of this tool is for avoiding or repairing grave damage to a productive sector, but it entails a cost for the country that uses it, since the other country should be compensated (the equivalent of the additional tariffs raised during the postponement of the tariff reduction calendar).

## 2.3 Crosscutting Themes

In addition to the institutional aspects and those oriented toward creating the conditions for real market access under permanent preferential conditions, the FTT includes various chapters that reinforce discipline and stabilize the rules of the game for businesses in different fields; these are treated in chapters on Intellectual Property, Competition Policy, Labor Issues, and Environmental Issues.

### 2.3.1 Intellectual Property

This chapter seeks to establish rules for adequate and effective protection of intellectual property. The challenge is to find the correct balance between incentives and protection in order to generate research and investigation, the development of the arts, and the evolution of science and culture in general, and adequate access to technology and knowledge.

The incentive consists of the right of the innovator to exclusive use of their product for a specified time. The protection is directed to the preservation of that exclusive right. Nevertheless, for Colombia it was always clear that the good of our citizens was above any commercial interest and thus health is above commercial interests. In no case was the country disposed to restrict its sovereignty to watch over the fundamental rights of Colombia citizens by means of difficult concessions on intellectual property.

The importance of this issue for investment decisions and incentives for innovators is obvious. A country that does not respect the rights of authors restricts innovation in the fields of culture as well as science and although a country is interested in participating the world-wide knowledge economy it will not do so at the cost of the wellbeing of its citizens.

To achieve a balance among these objectives, Colombia clearly defined its interests in the negotiation regarding restrictions and the points on which it would never concede. The results reflect that the proposed objectives will be enforced and it is crystal clear that we have safeguarded Colombians' access to medicines, technology, and knowledge.

The most important objective was the preservation of access to health at similar levels of protection for intellectual property contained in current national legislation, the maintenance of discretion for the use of mechanisms to exempt protection and the inclusion of incentives to attract new medicines to the Colombian market. The result achieves these goals. In patents and test data, intellectual property in medicine, Colombia maintains its current standard without creating new obstacles to access to medicines and it preserves the flexibility to defend the public health. In exchange, the country is committed to better efficiency and transparency in the administration of the offices of patents and sanitation control.

On another path pioneered by Colombia, we will use intellectual property protection to aid our own knowledge. For the first time in a free trade agreement, the US recognizes the importance of our biodiversity and the traditional knowledge associated with it and the sovereignty of the state over these resources; the need to have previous permission of the state to obtain access to genetic material associated with biodiversity; and to distribute equitably with the community the benefits obtained by the use of genetic material and traditional knowledge.

At Colombia's initiative, included for the first time in a free trade treaty is the issue of the promotion of innovation and the development of technology as a mechanism for the transfer of technology. In this way, a cooperative framework for science and technology will be administered by organizations for Science and Technology in each country to strengthen technological capacity.

Additionally, several new themes of interest to the country were included in the treaty. In the field of author rights, Colombia maintains its own legislation and updates it with respect to the application of new technologies to the internet, resulting in an adequate balance between the protection of authors of digital material and access to culture, education, and information. The FTT recognizes the relevance of important institutions for the country such as those dealing with the collective management of author rights whose function is to respect the rights of our singers, authors, and other artists.

The FTT will not affect the availability of generic medicines or increase the price of medicine. With the FTT, Colombia will continue protecting its medicines in the way it always has. Our country grants patents since 1994 for pharmaceutical products and protects data since 2002. During this period, market share for generics has increased. One study found that after eleven years of patent protection for pharmaceuticals there are only seventeen such products that have been commercialized, which is equivalent to only 1.3% of the market. The FTT will not affect or raise the price of medicines. On the contrary, generic medicines from the US will not be taxed and will thus lower prices for consumers. Besides, Colombia retains the capacity to use price controls, mandatory licenses, and parallel imports to avoid or correct the abuse of intellectual property rights by their holders.

### 2.3.2 Competitiveness Policy

The objective of Colombia in the negotiation of competitiveness policy was to endow the treaty with mechanisms that would permit the safeguarding of a competitive zone of free commerce and insure that the benefits of the liberalization of commerce would not be harmed by restrictive practices of economic actors.

This chapter allows regulatory autonomy over competitiveness, but obliges the parties to abide by standards with the goal of prohibiting non-competitive practices and promoting efficiency and consumer welfare.

These arrangements are compatible with the Andean Treaty and they establish mechanisms of cooperation between the two countries in order to apply the norms of competition.

### 2.3.3 Labor Matters

Fundamental rights in this area include the right of association, the right to organize and bargain collectively, the prohibition of forced or obligatory labor, a minimum age for employment, the prohibition and elimination of the worst forms of child labor, acceptable working conditions and minimum wages, work hours and work security, and occupational safety.

The FTT recognizes the sovereignty of each country with regard to labor legislation and assumes a commitment not to undermine that legislation in order to generate artificial advantages for international commerce or investment.

This chapter creates a labor matters advisory board with the objective of supervising the implementation of the agreement and resolving disputes and discrepancies that may arise in the development and application of the treaty. Additionally, the treaty establishes mechanisms of cooperation that will contribute to better application of labor laws and the interchange of information regarding policies, regulations, and procedures involved in labor law.

This chapter benefits Colombian workers in the sense that the treaty provides incentives for the country to be more strict in the application of labor norms and to prevent exporters from avoiding their obligations so that they can sell more.

#### 2.3.4 Environmental Issues

The chapter on environmental issues focuses on two subjects: the adoption of measures for the protection of the environment and the specification of measures of cooperation between the parties to facilitate that protection. The treaty specifies that complying with domestic environmental legislation is essential.

The treaty establishes a balance between commerce and the environment, in so far as it requires both countries to respect and comply with environmental legislation. In this sense, it insures that more commerce will not have negative effects on the environment.

The negotiation recognized national sovereignty to establish levels of environmental protection (including policies, priorities, and laws) that the country considers adequate. The FTT clearly specifies sovereign rights over natural resources, their uses and betterment.

Another theme that provoked significant interest during the course of the negotiation was biodiversity. This chapter recognizes the rights of each country to establish whatever measures are necessary for conservation and sustainable use, to respect and preserve the knowledge and traditional practices of our indigenous communities, Afrocolombia and local.

We should note that this is the first time the US has agreed to include in a free trade treaty a reference to the importance of conservation and sustainable biodiversity for sustainable development and the contribution of the knowledge and traditions that indigenous populations bring to preservation, as well as the need to increase joint efforts to assure conservation and sustainable use.

In parallel with negotiation on environmental matters, an Environmental Cooperation Agreement was negotiated with the goal of creating a tool for implementing the treaty. Areas of cooperation include strengthening our capacity to comply with the treaty, including the provision of resources and programs to protect biodiversity, the promotion of environmental goods and services and the development of voluntary environmental management programs.



### 3. Internal Agenda for Productivity and Competitiveness

The Internal Agenda for Productivity and Competitiveness is a group of plans, projects, and measures taken by the country to maximize the benefits and mitigate the risks of the commercial treaties and of the process of the internationalization of the economy.

Thanks to the participative method by which it was constructed, the Internal Agenda is a voluntary agreement among the National Government, the territories, political actors, the private sector, academia, and civil society regarding the strategic actions necessary to respond to the challenges of the FTT. The Internal Agenda is also part of Colombia's Second Century Vision which, currently, is being discussed throughout the length and breadth of the country under the coordination of the Department of National Planning.

The items on the Internal Agenda include the following:

**Infrastructure:** For its crucial effect on productivity and efficiency on the productive sector, infrastructure is indispensable for Colombia to correct its lack of development in order to compete on the global stage. Several significant priorities have been identified:

- Consolidate the national and regional roadways.
- Modernize and integrate air transportation.
- Enlarge the capacity of our ports.
- Consolidate transportation around the principal regions of the country.
- Integrate the existing rail system.
- Develop logistical and frontier zones.
- Promote efficient transportation services.

Our first estimate for achieving the required infrastructure suggests that Colombia needs to invest 206 billion pesos (2005 peso value) between 2006 and 2019, 45% of which would come from the public sector and 55% from the private sector. Furthermore, we will develop transportation corridors that permit the coordination of economic activity and regional production chains.

**Business Development, Technological Development, and Human Capital Formation:** Low levels of productivity in Colombia are explained by deficient education and work skills, complicated by barriers to business financing, little innovation and technological advancement, and the absence of compensation for workers displaced by innovation. To respond to this situation, we propose:

- Integration of micro-, small-, and medium-sized businesses in the strategy of international competitiveness.
- Vertical integration and the creation of clusters and strategic alliances.
- Developing capital markets and encouraging private funding systems and better access to credit.

- Development of institutional and regulatory tools to promote the development of means to care for the environment.
- Strengthening the link between investigation and innovation to promote the development and transfer of technology with the goal of improving productivity.
- Advancing areas of strategic knowledge such as biodiversity, genetic resources, biotechnology, food science, and agro-industry.
- Increasing the coverage and quality of programs for training with an emphasis on investigation, science, and technology.

Information: To promote an informed society, we propose to initiate a national development plan for information technology, increase coverage of communication services, and guarantee levels of appropriate access. It is also a priority that we adapt our goals and institutions to create incentives for competition and technological convergence.

Market Access: The achievements in terms of market access should be supported by a clear strategy that responds to the health and phytosanitary barriers of external markets. Toward this end, we have established the following priorities:

- Institutional, scientific, and operational improvements that permit us to comply with health and phytosanitary restrictions.
- Improvements in our ability to develop and comply with technical norms.

In this sense, Colombia has already defined a policy spelled out in earlier commitments and agreements.

International Adjustments: Although the Colombian government has made direct efforts to encourage business development utilizing financial and non-financial instruments and adjusting policies of regulation and control, it is necessary:

- To improve coordination among the organizations which formulate and implement national and local competitiveness policies.
- To create stable legal and taxation conditions in order to promote investment.
- To reduce transaction costs.
- To develop a national policy on intellectual property.

Rationalization and Compensation: This policy is oriented toward benefiting both promising sectors as well as those affected by the FTT. Aid will be subject to clear rules, time-limited, and restricted in scope and with respect to the performance and rationalization goals. Internal aid to producers will consist of incentives for innovation, monetary support for rationalization, and, in some specific cases, direct compensation.

## **FREQUENTLY ASKED QUESTIONS ABOUT THE FREE TRADE AGREEMENT**

### **Why does foreign commerce improve the well being of citizens?**

Suppose that Colombia only produced coffee for domestic consumption, which is approximately 2 million sacks per year. To produce this much coffee, the labor of 60,000 to 70,000 families is required. In truth, Colombia produces an average of 12 million sacks of coffee per year, which permits us to export 10 million sacks. Producing for export generates work for another 380 thousand Colombian families. Are these jobs generated by commerce? Possibly not all of them, since not using the land for coffee would result in the land being used for other things which would generate employment. International commerce generates jobs in our ports. Exporting coffee means having the right infrastructure, such as stores, offices, machinery to load boats, laboratories to check quality, and many people to perform these jobs. Furthermore, the foreign exchange received for exports helps us buy things we do not produce, like computers, machinery, and raw materials. All the activity for these imports creates jobs as well: specialists in international commerce, cargo handlers, workers to build factories, domestic transportation and logistics, insurance agents, security employees, distributors, advertisers, etc. Now, we can achieve a balance. Without exporting we would not be able to import things needed for growth; we would have less employment; we would be left behind technologically compared to other countries; and without income, demand would not grow.

### **Will the country be inundated by used goods?**

In no way will this occur. The government maintained current legislation in this respect. Importation of used goods requires licensing. In recent months, applications for these licenses have been concentrated in the areas of machinery and equipment necessary to make Colombia more productive. This is not expected to change.

### **The FTT: a springboard for small- and medium-sized businesses?**

Small- and medium-sized businesses had a special place in the FTT negotiations. Representatives for these businesses made sure that there was a place for them in every round of the talks. For the first time in a treaty, a segment of the business sector has such a prominent role. This is clear from the fact that the Commission on Free Trade, as the administrator of the treaty, has a continuing role in implementing measures affecting these businesses. Additionally, the chapter on public purchases favored these businesses by reserving a segment of government contracting under \$125,000. 72 projects were approved, of which 23 are focused directly on these businesses while others will have indirect impacts. It is also worth mentioning that these businesses will have improved access to capital goods and raw materials as well as guaranteed access to the US market for their products. Finally, the working group on professional services will especially benefit these businesses.

## **Preferential Access: what is it and what is its purpose?**

Agreements like the FTT permit preferential access to other markets. Preferential access consists of the reduction or elimination of tariffs and other barriers to commerce between countries that sign the accord; for other countries, tariffs are maintained. This is important for increasing our exports and growing our economy.

One example will demonstrate the positive effects generated by preferential access. Let's analyze the importation of shirts to the US. In 1990, Mexico sold the US \$6 million worth of shirts, which represented 1% of the imports of this product, while Colombia sold \$4 million, representing .7 percent; both countries paid a tariff of around 7 percent. Mexico obtained preferential access with NAFTA, reducing its tariffs to near zero. The average tariff paid by Colombia between 1990 and 2002 was 16 percent. Preferential access allowed Mexico to convert itself into the principal provider in this market, reaching a maximum market share of 31% in 2001, the year in which US sales were more than \$1 billion. In the same year, Colombia barely sold the US \$12 million in shirts, which represented just .4%. With the Andean Treaty, in 2003 the US offered Colombia a tariff preference near zero. As a result, in 2004, Colombian shirt sales rose to \$30 million or .8% of the market. The benefits of preferential access are clear: while Colombia multiplied its shirt sales to the US by seven times between 1990 and 2004, Mexico increased its sales by 133 times. Can you imagine how much employment would have risen in both countries?

## **What will happen to culture and television?**

The Colombia government put a cultural reserve clause in the FTT, maintaining the discretion of the state to develop policies to support the cultural sector. This means that current policies promoting culture (tax and direct incentives, government loans, guaranties, heritage claims) and other future policies will continue to be applied. With this protection, the government can continue to support artisans, maintain the quota on movie theaters, adopt and maintain the quota on publicity, and continue to protect our cultural heritage (such as events and traditional festivals). We have also preserved our policies with respect to television, which includes the discretion over the number of open television stations, restrictions on foreign investment and requirements for domestic content (screen quotas) during main viewing hours; there is only one change in the screen quota on weekends and holidays, which is reduced from 50 to 30 percent.

## **Will the rights of ethnic groups be harmed?**

The Constitution provides special protection to ethnic minorities, such as indigenous peoples and gypsies, Afrocolombian communities, and the raizal of the San Andres Islands. It also grants special treatment to those territories where these groups reside. At no time during the FTT negotiations were these rights put at risk; on the contrary, it was taken for granted that Colombia reserved the right to adopt and maintain whatever measure granted preferences or rights to disadvantaged social and ethnic minorities and ethnic groups. In the same manner, Colombia

reserved the right to adopt or maintain those measures with regard to territories where ethnic minorities live, based on article 63 of the Constitution, which says “territories belonging to ethnic groups, protected lands, . . . and other possessions determined by law are inalienable, without expiration, and not subject to seizure.”