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UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT IMPLEMENTATION ACT

SEPTEMBER 20, 2012.—Ordered to be printed

Mr. BAUCUS, from the Committee on Finance, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1641]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 1641) to implement the United States-Colombia Trade Promotion Agreement, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. REPORT AND OTHER MATERIALS OF THE COMMITTEE

A. Report of the Committee on Finance

The Committee on Finance, to which was referred the bill (S. 1641) to implement the United States-Colombia Trade Promotion Agreement ("Agreement"), having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

B. Summary of Congressional Consideration of the Agreement

1. Background

On November 18, 2003, U.S. Trade Representative Robert B. Zoellick notified Congress of the Administration's intent to negotiate a free trade agreement ("FTA") with the Republic of Colombia ("Colombia"), Peru, Ecuador, and Bolivia. Ambassador Zoellick consulted with the relevant congressional committees, including the Senate Committee on Finance, with respect to the initiation of negotiations. He also attended meetings of the Congressional Oversight Group on November 6, 2003, and May 6, 2004, to discuss the initiation of negotiations.

Negotiations with Colombia, Peru, and Ecuador were launched on May 18, 2004, with Bolivia participating as an observer. The United States and Colombia subsequently decided to pursue a separate agreement, and U.S. Trade Representative Rob Portman announced that the United States and Colombia had successfully concluded those negotiations on February 27, 2006.

The President notified Congress of his intent to enter into the Agreement with Colombia on August 24, 2006, and published notice of his intent in the Federal Register on August 28, 2006. On September 20, 2006, the U.S. Trade Representative submitted to Congress and the President the reports from 27 trade advisory groups commenting on the final text of the Agreement. The Office of the U.S. Trade Representative also made the reports publicly available on its website. On November 22, 2006, the Agreement was signed by Deputy U.S. Trade Representative John Veroneau and Colombian Minister of Trade, Industry, and Tourism Jorge Humberto Botero.

On May 10, 2007, the Bush Administration and the bipartisan leadership of the U.S. Senate Committee on Finance and the U.S. House of Representatives Committee on Ways and Means reached

an agreement on trade policy. As discussed further below in Section I.D., the May 10 bipartisan trade deal required groundbreaking changes to the labor, environmental, intellectual property, government procurement, services, and investment provisions of the Agreement. The United States and Colombia signed amendments to the Agreement to reflect those changes on June 28, 2007.

2. Trade promotion authority procedures in general

Article I, section 8 of the Constitution of the United States vests Congress with the authority to regulate international trade. Congress has periodically delegated a portion of this authority to the President in order to advance the economic interests of the United States. This delegation represents a compact between Congress and the Administration, by which Congress guarantees it will vote on a trade agreement entered into by the Administration without amendment and the Administration guarantees close consultation with Congress during the negotiation of the trade agreement in order to achieve the objectives that Congress identifies. Thorough and timely consultation by the Administration with Congress is the essential bedrock upon which Congress's delegation of constitutional authority rests. This longstanding compact, spanning decades, has resulted in the successful negotiation and implementation of numerous trade agreements that have contributed significantly to increased economic growth and prosperity in the United States.

The most recent incarnation of this compact is found in the Bipartisan Trade Promotion Authority Act of 2002 ("the Act"), which was included in the Trade Act of 2002 (Pub. L. 107–210). The Act includes prerequisites for congressional consideration of a trade agreement under expedited procedures (known as Trade Promotion Authority ("TPA") procedures), which are found in sections 2103 through 2106 of the Act (19 U.S.C. §§ 3803–3806) and section 151 of the Trade Act of 1974 (19 U.S.C. § 2191). Section 2103 of the Act authorizes the President to enter into reciprocal trade agreements with foreign countries to reduce or eliminate tariff or nontariff barriers and other trade-distorting measures. Section 2102 of the Act outlines the negotiating objectives that the President must achieve if the President intends to use TPA procedures to implement a trade agreement. And section 151 of the Trade Act of 1974 sets forth expedited procedures for congressional consideration of a trade agreement without amendment. The President's authority under section 2103 extends to trade agreements entered into on or before June 30, 2007.

3. Notification prior to negotiations

Under section 2104(a)(1) of the Act, the President must provide written notice to Congress at least 90 calendar days before initiating negotiations. On November 18, 2003, the U.S. Trade Representative notified Congress of the President's intent to initiate negotiations with Colombia. The negotiations were initiated on May 18, 2004. Section 2104(a)(2) requires the President, before and after submission of the notice, to consult regarding the negotiations with the relevant congressional committees and the Congressional Oversight Group established under section 2107 of the Act. The Ad-

ministration engaged in the requisite consultations with respect to this Agreement, including an appearance by the U.S. Trade Representative at meetings of the Congressional Oversight Group on November 6, 2003, and May 6, 2004.

4. Notification of intent to enter into an agreement

Under section 2105(a)(1)(A) of the Act, the President must notify Congress at least 90 calendar days before entering into an agreement of his intent to enter into the agreement. On August 24, 2006, the President notified Congress of his intent to enter into the United States-Colombia Trade Promotion Agreement. The Agreement was signed on November 22, 2006.

5. Development of the implementing legislation

Under TPA procedures, Congress and the Administration work together to produce legislation that implements a free trade agreement. Draft legislation is developed in close consultation between the Administration and the committees with jurisdiction over the laws that must be enacted or amended to implement the agreement. The committees may hold informal meetings to consider the draft legislation and to make non-binding recommendations to the Administration. The Administration then finalizes the implementing legislation for formal submission to Congress and referral to the committees of jurisdiction. These procedures are meant to ensure close cooperation between the executive and legislative branches of government to develop legislation that faithfully implements the agreement. Under TPA and predecessor legislation, trade agreement implementing bills may include only those provisions that are necessary or appropriate to implement the agreement.

The Senate Committee on Finance met in open executive session on July 7, 2011, to consider informally the draft implementing legislation for the Agreement and the draft Statement of Administrative Action ("SAA"). The draft implementing legislation included provisions to extend the Generalized System of Preferences ("GSP") and the Andean Trade Preference Act ("ATPA"). These provisions are "necessary or appropriate" to implement the Agreement, as required by TPA and predecessor legislation. The "necessary or appropriate" standard has applied to virtually every trade agreement considered by Congress since 1974, creating an extensive history of legislative practice. That practice clearly supports the inclusion of the GSP and ATPA extensions in the draft legislation implementing this Agreement. Specifically, the Uruguay Round Agreements Act of 1994 included provisions to extend GSP that were very similar to the provisions included in this draft legislation.

The Committee did, however, consider three other amendments to the draft implementing legislation. First, Senator Cardin offered an amendment to include the Colombian Action Plan Related to Labor Rights ("Labor Action Plan") in the draft implementing legislation. Second, Senator Menendez offered an amendment to require the Administration to report to Congress on the enforcement and implementation of the Labor Action Plan. Third, Senator Enzi offered an amendment to ensure that Colombia and the United States are subject to equivalent labor law requirements. All three amendments failed by voice vote.

The Committee approved the draft legislation and draft SAA without amendment by a roll call vote of 18 ayes, 6 nays. Ayes: Baucus, Conrad, Bingaman, Kerry (proxy), Wyden, Cantwell, Nelson, Carper, Hatch, Grassley (proxy), Kyl (proxy), Crapo, Roberts, Enzi, Cornyn (proxy), Coburn (proxy), Thune, and Burr (proxy). Nays: Rockefeller (proxy), Schumer, Stabenow, Menendez, Cardin, and Snowe (proxy). Separately, the Committee on Ways and Means in the House of Representatives approved the draft implementing legislation and draft SAA, as amended, on July 7, 2011, by a roll call vote of 22 ayes, 14 nays.

6. Formal submission of the agreement and implementing legislation

When the President formally submits a trade agreement to Congress under section 2105 of the Act, the President must include in the submission the final legal text of the agreement, together with implementing legislation, an SAA describing regulatory and other changes to implement the agreement, a statement setting forth the reasons of the President regarding how and to what extent the agreement makes progress in achieving the applicable purposes, policies, priorities, and objectives set forth in the Act, and a statement setting forth the reasons of the President regarding how the agreement serves the interests of U.S. commerce. The implementing legislation is introduced in both Houses of Congress on the day it is submitted by the President and is referred to committees with jurisdiction over its provisions.

On April 8, 2008, President Bush transmitted to Congress the final text of the Agreement, the implementing legislation, the SAA and other supporting information under section 2105 of the Act. The bill was introduced that same day by Mr. Reid, for himself, Mr. Grassley and Mr. McConnell. That bill was not considered by the Senate.

On October 3, 2011, President Obama transmitted to Congress the final text of this Agreement, the implementing legislation, the SAA, and the other supporting information required under section 2105 of the Act. That same day, Mr. Baucus, for himself, Mr. Hatch and Mr. McConnell introduced the bill as S. 1641. The legislation was also introduced that same day in the House of Representatives (H.R. 3078).

S. 1641 is substantially the same as the draft legislation considered by the Committee during the open executive session on July 7, 2011. S. 1641, however, does not contain the provisions of the draft legislation extending the GSP program. Those provisions were included in separate legislation, H.R. 2832, which the House and Senate approved and the President signed into law on October 21, 2011.

To qualify for TPA procedures, the implementing legislation itself must contain provisions formally approving the agreement and the SAA. And, as noted above, the implementing legislation must contain only those provisions necessary or appropriate to implement the Agreement. The implementing bill reported here—which approves the Agreement and the accompanying SAA and contains provisions necessary or appropriate to implement the Agreement into U.S. law—was referred to the Senate Committee on Finance.

7. Committee and floor consideration

When the requirements of the Act are satisfied, implementing revenue bills, such as the United States-Colombia Trade Promotion Agreement Implementation Act, are subject to the legislative procedures of section 151 of the Trade Act of 1974. The following schedule for congressional consideration applies under these procedures:

(i) House committees have up to 45 calendar days in session in which to report the bill; any committee which does not do so in that period will be automatically discharged from further consideration.

(ii) A vote on final passage by the House must occur on or before the 15th calendar day in session after the committees report the bill or are discharged from further consideration.

(iii) Senate committees must act within 15 calendar days in session of receiving the implementing revenue bill from the House or within 45 calendar days in session of Senate introduction of the implementing bill, whichever is later, or they will be discharged automatically.

(iv) The full Senate then must vote within 15 calendar days in session on the implementing bill.

Once the implementing bill has been formally submitted by the President and introduced, no amendments to the bill are in order in either House of Congress. Floor debate in each House is limited to no more than 20 hours, to be equally divided between those favoring the bill and those opposing the bill.

The Committee on Finance met in open executive session on October 11, 2011, to consider favorably reporting S. 1641. At the meeting, the Committee favorably reported S. 1641 without amendment by roll call vote of 18 ayes, 6 nays. Ayes: Baucus, Conrad (proxy), Bingaman, Kerry, Wyden, Cantwell, Nelson, Carper, Hatch, Grassley (proxy), Kyl (proxy), Crapo, Roberts, Enzi, Cornyn (proxy), Coburn (proxy), Thune, and Burr (proxy). Nays: Rockefeller (proxy), Schumer (proxy), Stabenow, Menendez, Cardin, and Snowe (proxy). The Committee on Ways and Means in the House of Representatives favorably reported the House version of the legislation, H.R. 3078, on October 5, 2011, by a roll call vote of 24 ayes, 12 nays.

The House passed H.R. 3078 on October 12, 2011, by a roll call vote of 262 ayes, 167 nays. On the same day, the Senate passed H.R. 3078 by a roll call vote of 66 ayes, 33 nays. President Barack H. Obama signed H.R. 3078 into law on October 21, 2011 (Pub. L. 112–42).

C. Trade Relations With Colombia

1. United States-Colombia trade

Colombia ranks 20th among U.S. export markets and 25th among foreign exporters to the United States. U.S. exports to Colombia totaled $12 billion in 2010, while U.S. imports totaled $15.7 billion. Major U.S. exports to Colombia include petroleum and coal products; agriculture and construction machinery; basic chemicals, resin, synthetic rubber and products; and general purpose machinery. Major U.S. imports from Colombia include oil and gas; nonferrous metal; fruits and tree nuts; petroleum and coal products; and coal and petroleum gases.

2010 U.S. EXPORTS TO COLOMBIA

HTS Code Product	Value in USD
84—NUCLEAR REACTORS, BOILERS, MACHINERY ETC.; PARTS	2,775,095,093
27—MINERAL FUEL, OIL ETC.; BITUMIN SUBST; MINERAL WAX	2,248,909,618
85—ELECTRIC MACHINERY ETC; SOUND EQUIP; TV EQUIP; PTS	941,762,933
29—ORGANIC CHEMICALS	815,928,838
39—PLASTICS AND ARTICLES THEREOF	615,912,331
90—OPTIC, PHOTO ETC, MEDIC OR SURGICAL INSTRMENTS ETC	601,321,642
87—VEHICLES, EXCEPT RAILWAY OR TRAMWAY, AND PARTS ETC	487,850,013
98—SPECIAL CLASSIFICATION PROVISIONS, NESOI	338,682,586
10—CEREALS	291,709,526
88—AIRCRAFT, SPACECRAFT, AND PARTS THEREOF	265,596,538
OTHER	2,686,521,586
TOTAL	12,069,290,704

(Source: U.S. Department of Commerce, International Trade Administration)

2010 U.S. IMPORTS FROM COLOMBIA

HTS Code Product	Value in USD
27—MINERAL FUEL, OIL ETC.; BITUMIN SUBST; MINERAL WAX	10,486,082,491
71—NAT ETC PEARLS, PREC ETC STONES, PR MET ETC; COIN	1,646,574,854
09—COFFEE, TEA, MATE & SPICES	817,229,965
06—LIVE TREES, PLANTS, BULBS ETC.; CUT FLOWERS ETC.	561,772,687
08—EDIBLE FRUIT & NUTS; CITRUS FRUIT OR MELON PEEL	268,996,013
99—SPECIAL IMPORT PROVISIONS, NESOI	211,862,018
39—PLASTICS AND ARTICLES THEREOF	154,885,668
62—APPAREL ARTICLES AND ACCESSORIES, NOT KNIT ETC.	139,536,356
21—MISCELLANEOUS EDIBLE PREPARATIONS	126,133,674
61—APPAREL ARTICLES AND ACCESSORIES, KNIT OR CROCHET	120,464,249
OTHER	11,611,819,555
TOTAL	15,659,275,039

(Source: U.S. Department of Commerce, International Trade Administration)

2. Tariffs and trade agreements

Colombia acceded to the World Trade Organization ("WTO") in 1995, with an average bound tariff rate of 42.8 percent for all goods (91.4 percent for agricultural goods and 35.4 percent for non-agricultural goods). In 2010, Colombia maintained an average applied tariff rate of more than 12.5 percent for all goods (17.2 percent for agricultural goods and 11.8 percent for nonagricultural goods). The United States, by contrast, provides duty-free treatment to most products from Colombia. In 2010, more than 90 percent of imports from Colombia entered the United States duty free under our most-favored nation tariff rates and U.S. trade preference programs. Given that the Agreement will greatly reduce this existing tariff asymmetry, the U.S. International Trade Commission ("Commission") found that the Agreement likely will result in a larger increase in U.S. exports to Colombia than in U.S. imports from Colombia.

Colombia has FTAs in place with Canada, the Mercosur countries (including Brazil and Argentina), Mexico, Guatemala, El Salvador, Honduras, and Chile. It has signed FTAs with the European Union and the European Free Trade Association countries (Norway, Liechtenstein, Iceland, and Switzerland). It has also initiated FTA negotiations with South Korea, Japan, and Panama. Colombia has entered into bilateral investment agreements with Japan, Peru, Spain, and Switzerland.

3. U.S. International Trade Commission study

In December 2006, the Commission released the results of its investigation (Investigation No. TA–2104–023) into the probable economic effect of the Agreement (USITC Pub. 3896). The Commission found that the expected growth in U.S. trade with Colombia under the Agreement would likely have a small but positive impact on the U.S. economy, predicting a $2.5 billion increase in U.S. gross domestic product. The Commission indicated, however, that these benefits may be tempered by the relatively small size of Colombia's economy, its small share of total U.S. trade, and its existing duty-free access to the U.S. market under ATPA.

As noted above, the Commission also concluded that the Agreement likely will result in a much larger increase in U.S. exports to Colombia than in U.S. imports from Colombia. More specifically, it estimated that annual U.S. exports to Colombia will increase by $1.1 billion while annual U.S. imports from Colombia will increase by $487 million. It further estimated that the Agreement will increase U.S. exports of meat (beef and pork), grains, soybeans, soybean products, animal feeds, chemical, rubber, plastic products, machinery, electronics, and transportation equipment. It also estimated that the Agreement will result in a small increase of U.S. imports from Colombia of textiles and apparel, sugar, and cut flowers.

With respect to services, the Commission concluded that U.S. service firms will benefit from improved market access, national treatment, and regulatory transparency under the Agreement. The Commission noted, however, that these benefits will be moderated by the relatively small size of Colombia's economy and the relatively small and domestically-focused nature of its service sector.

D. Overview of the Agreement

1. Background

The Agreement establishes a bilateral free trade area that eliminates tariffs on trade between the United States and Colombia for all qualifying goods except sugar. The Agreement also liberalizes trade in services and contains provisions that address telecommunications, electronic commerce, intellectual property rights, labor, environment, government procurement, and investment issues. In addition, the Agreement contains provisions that promote bilateral consultation and cooperation, procedural and substantive due process, administrative and judicial review, transparency, and the rule of law. It also contains a mechanism for settling disputes that arise under the Agreement.

As noted above, the Bush Administration and the bipartisan leadership of the U.S. Senate Committee on Finance and the U.S. House of Representatives Committee on Ways and Means reached an agreement on trade policy on May 10, 2007. The United States-Colombia Trade Promotion Agreement incorporates the provisions of the May 10 agreement. This Agreement therefore includes the following provisions: (1) fully enforceable commitments by the Parties to adopt, maintain, and enforce the 5 core international labor standards incorporated in the 1988 International Labor Organization Declaration on Fundamental Principles and Rights at Work; (2) fully enforceable commitments by the Parties to adopt, main-

tain, and enforce their obligations under certain common multilateral environmental agreements; (3) modifications to the intellectual property chapter that balance the need for access to medicines with patent protections for pharmaceutical products; (4) modifications to the government procurement chapter that allow the Parties to condition government contracts on adherence to core labor standards; (5) confirmation that the United States can prevent foreign companies from supplying services at U.S. ports if the United States deems such action necessary to protect our national security; and (6) confirmation that the Agreement accords foreign investors in the United States no greater substantive rights with regard to investor protections than U.S. investors in the United States.

2. Office of the U.S. Trade Representative summary of the agreement

The Office of the U.S. Trade Representative prepared a summary of the Agreement that was included among the documents that the President transmitted to Congress on October 3, 2011. This summary was distributed to Members of the Committee to aid in their consideration of the implementing legislation, and it is reprinted below:

THE UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT

Summary of the Agreement

This summary briefly describes key provisions of the United States-Colombia Trade Promotion Agreement ("Agreement") that the United States has concluded with Colombia and represents an authoritative expression of Administration views regarding the interpretation of the Agreement both for purposes of U.S. international obligations and domestic law.

PREAMBLE

The Preamble to the Agreement provides the Parties' underlying objectives in entering into the Agreement and provides context for the provisions that follow. It includes the following statement:

"AGREE that foreign investors are not hereby accorded greater substantive rights with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in this Agreement".

This statement clarifies that, as stated in the Bipartisan Trade Promotion Authority Act of 2002, under the Agreement foreign investors in the United States are not to be accorded greater substantive rights with respect to investment protections than United States investors in the United States.

CHAPTER ONE: INITIAL PROVISIONS AND GENERAL DEFINITIONS

Section A of Chapter One sets out provisions establishing a free trade area and affirming the Parties' existing rights and obligations with respect to each other under the *Marrakesh Agreement Establishing the World Trade Organization* (WTO) and other agreements to which they are party.

Section B defines certain terms that recur in various chapters of the Agreement.

CHAPTER TWO: NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Chapter Two and its relevant annexes and appendices set out the Agreement's principal rules governing trade in goods. Each Party must treat products from the other Party in a non-discriminatory manner, provide for the phase-out and elimination of tariffs on "originating" goods (as defined in Chapter Four) traded between the Parties, and eliminate a wide variety of non-tariff trade barriers that restrict or distort trade flows.

Tariff Elimination. Chapter Two provides for the elimination of customs duties on originating goods traded between the Parties. Duties on most tariff lines covering industrial and consumer goods will be eliminated as soon as the Agreement enters into force. Duties on other goods, including all industrial goods, will be phased out over periods of up to 10 years. Some agricultural goods will have longer periods for elimination of duties or be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (TRQs). The General Notes to the U.S. and Colombia Schedules to Annex 2.3 include detailed provisions on staging of tariff reductions and application of TRQs for certain agricultural goods. The Chapter provides that the Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect.

Waiver of Customs Duties. The Parties may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement. Chapter Two defines the term "performance requirements" so as not to restrict a Party's ability to provide duty drawback on goods imported from the other Party.

Temporary Admission. The Parties will provide duty-free temporary admission for certain products. Such items include professional equipment, goods for display or demonstration, and commercial samples. The Chapter also includes specific provisions on transit of vehicles and containers used in international traffic.

Import/Export Restrictions, Fees, and Formalities. The Agreement clarifies that restrictions prohibited under the *General Agreement on Tariffs and Trade* (GATT) 1994 and this Agreement include export and import price requirements (except under antidumping and countervailing duty orders and undertakings) and import licensing conditioned on the fulfillment of a performance requirement. In addition, a Party must limit all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered. The United States will not apply its merchandise processing fee on imports of originating goods. Colombia will not require a person of the United States to have or maintain a relationship with a "distributor" as a condition for allowing the importation of a good.

Distinctive Products. Colombia will recognize Bourbon Whiskey and Tennessee Whiskey as "distinctive products" of the United States, meaning Colombia will not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey unless it was manufactured in the United States in accordance with applicable laws and regulations.

Committee on Trade in Goods. The Parties establish a Committee on Trade in Goods to consider matters arising under Chapters Two, Four (Rules of Origin and Origin Procedures), and Five (Customs Administration and Trade Facilitation). The functions of the Committee are to promote trade in goods between the Parties and address barriers to trade in goods and to provide advice and recommendations on trade capacity building with respect to matters those chapters cover.

Agriculture

TRQs. Under Chapter Two, each government must administer TRQs in a manner that is transparent, non-discriminatory, responsive to market conditions, and minimally burdensome on trade. In addition, the Parties will make every effort to administer TRQs in a manner that allows importers to fully utilize import quotas. In addition, the Chapter provides that Parties may not condition application for, or utilization of, import licenses or quota allocations on the re-export of an agricultural good.

Export Subsidies. Each Party will eliminate export subsidies on agricultural goods destined for the other Party. Under Article 2.16, no Party may introduce or maintain an export subsidy on agricultural goods destined for the other Party unless the exporting Party believes that a third country is subsidizing its exports to that other Party. In such a case, the exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

Safeguards. Chapter Two sets out a transitional agricultural safeguard mechanism that allows a Party to impose a temporary additional duty on specified agricultural products if imports exceed an established volume “trigger.” The safeguard measure will remain in force until the end of the calendar year in which the measure applies. A Party may not apply an agricultural safeguard on a good after the date that the good is subject to duty-free treatment under the Party’s Schedule to Annex 2.3 of the Agreement.

A Party may not apply a safeguard measure to a good that is already the subject of a safeguard measure under either Chapter Eight (Trade Remedies) of the Agreement or Article XIX of GATT 1994 and the WTO *Agreement on Safeguards*. All agricultural safeguard measures must be applied and maintained in a transparent manner and the Party applying such a measure must, on request, consult with the other Party concerning the application of the measure.

Neither Party may impose safeguard duties pursuant to the WTO *Agreement on Agriculture* on originating goods.

Sugar. The Agreement contains several unique features applicable to imports of sugar into the United States. First, imports under the TRQs provided for in the Agreement will be limited to the lesser of (i) the quantity established in the TRQ, or (ii) Colombia’s trade surplus in specific sugar goods. (“Colombia’s trade surplus” is the amount by which Colombia’s exports to all destinations exceed its imports from all sources in specified sugar and sweetener goods, except that Colombia’s exports of sugar to the United States and

its imports of high fructose corn syrup from the United States are not included in the calculation of its trade surplus). The aggregate quantities established for the TRQ start at 50,000 metric tons in the first year and go up to 60,500 metric tons by year 15 of the Agreement. After year 15, the quantities increase by 750 metric tons per year. Second, in contrast to how it will treat other commodities subject to TRQs, the United States will not eliminate its over-quota duty on sugar imports under the Agreement. Lastly, the Agreement includes a mechanism that allows the United States, at its option, to provide some form of alternative compensation to Colombian exporters in place of imports of sugar in any given year.

Additional Provisions. Chapter Two provides for the creation of a Committee on Agricultural Trade. The Committee will be established within 180 days after the date the Agreement enters into force and will provide a forum for promoting cooperation in the implementation and administration of the Agreement, as well as for consultations on matters related to the agricultural provisions of the Agreement. In addition, the Chapter provides that the Parties will consult on and review the operation of the Agreement as it relates to trade in chicken nine years after the Agreement enters into force.

CHAPTER THREE: TEXTILES AND APPAREL

Tariff Elimination. Chapter Three provides for duties on all originating textile or apparel goods to be eliminated on the date the Agreement enters into force.

Safeguards. The Chapter also establishes a transitional safeguard procedure for textile and apparel goods, under which an importing Party may temporarily impose additional duties up to the level of the normal trade relations (most-favored-nation) (NTR(MFN)) duty rates on imports of textile or apparel goods that cause, or threaten to cause, serious damage to a domestic industry as a result of the elimination or reduction of duties under the Agreement. An importing Party may impose a textile safeguard measure only once on the same textile or apparel good. The measure may not be in place for more than two years, or three years if the measure is extended. The ability to impose or maintain textile safeguards lapses five years after the Agreement enters into force. A Party may not apply a textile safeguard measure to a good while the good is subject to a safeguard measure under (i) Chapter Eight (Trade Remedies), or (ii) Article XIX of the GATT 1994 and the WTO *Agreement on Safeguards.*

A Party imposing a safeguard measure under Chapter Three must provide the exporting Party with mutually agreed compensation in the form of trade concessions for textile or apparel goods that have a value substantially equivalent to the increased duties resulting from application of the safeguard measure. If the Parties cannot agree on compensation, the exporting Party may raise duties on any goods from the importing Party in an amount that has a value substantially equivalent to the increased duties resulting from application of the safeguard measure.

Rules of Origin and Related Matters. A textile or apparel good will generally qualify as an "originating good" eligible to receive preferential treatment under the Agreement only if all processing from the yarn stage to the final product (e.g., yarn-spinning, fabric

production, cutting, and assembly) takes place in the United States, Colombia, or both, or if there is an applicable change in tariff classification under the specific rules of origin contained in Annex 3–A of the Agreement.

Chapter Three sets out special rules for determining whether a textile or apparel good is an "originating good," including a *de minimis* exception for non-originating yarns or fibers, a process for designating inputs not available in commercial quantities, a rule for treatment of sets, an exception for use of certain nylon filament yarn, and consultation provisions.

The *de minimis* rule applies to goods that ordinarily would not be considered originating goods because certain of their fibers or yarns do not undergo an applicable change in tariff classification. Under the rule, the Parties will consider a good to be "originating" if those fibers or yarns constitute ten percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to goods containing elastomeric yarns in the component of the good that determines the classification.

Annex 3–B of the Agreement sets out a list of fabrics, yarns, and fibers that the Parties have determined are not available in commercial quantities in a timely manner from producers in the United States and Colombia. A textile or apparel good that includes the fabrics, yarns, or fibers included in this list will be treated as if it is "originating" for purposes of the specific rules of origin in Annex 3–A of the Agreement, regardless of the actual origin of those inputs. Chapter Three establishes procedures under which the United States will determine whether additional fabrics, yarns, or fibers are not available in commercial quantities in the United States and Colombia. The United States may also remove a fabric, yarn, or fiber from the list if it determines that the fabric, yarn, or fiber has become available in commercial quantities.

Customs Cooperation. In Chapter Three, the Parties commit to cooperate in enforcing their laws related to trade in textile and apparel goods, to ensure the accuracy of claims of origin, and to prevent circumvention of the Parties' laws or agreements relating to trade in textile and apparel goods. The Chapter also provides that, under certain circumstances, the exporting Party must conduct a verification to determine that a claim of origin is accurate, or to determine compliance with relevant laws. A verification may include visits to the premises of the exporter or producer of the goods in question. If there is insufficient information to make the relevant determination, or if an enterprise provides incorrect information, the importing Party may take appropriate action, which may include denying application of preferential tariff treatment or denying entry to the goods in question. Further, either Party may convene consultations to resolve technical or interpretive issues arising with respect to customs cooperation or may request technical assistance from the other Party in implementing the Chapter's customs cooperation provisions.

Duty Free Treatment for Certain Goods. The United States and Colombia will provide duty-free treatment for goods that both Parties may agree qualify as handmade, hand-loomed, or traditional folklore goods.

CHAPTER FOUR: RULES OF ORIGIN AND ORIGIN PROCEDURES

To benefit from various trade preferences provided under the Agreement, including reduced duties, a good must qualify as an "originating" good under the rules of origin set out in Chapter Four and Annex 4.1. These rules ensure that the preferential tariff treatment and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the Parties' territories.

Key Concepts. Chapter Four provides general criteria under which a good may qualify as "originating:"

- When the good is wholly obtained or produced entirely in Colombia, the United States, or both countries (*e.g.,* crops harvested or minerals extracted in the United States); or
- When the good is produced entirely in Colombia, the United States, or both countries and: (1) is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in Colombia, the United States, or both countries; or (2) meets any applicable "regional value content" requirement (see below); and (3) satisfies all other requirements of Chapter Four, including Annex 4.1, or Annex 3–A; or
- When the good is produced entirely in Colombia, the United States, or both countries, exclusively from "originating" materials.

De Minimis. Even if a good does not undergo a specified change in tariff classification, it will be treated as an originating good if the value of non-originating materials that do not undergo the required tariff shift does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets the criteria of the Chapter. This *de minimis* exception does not apply to certain agricultural and textile goods.

Regional Value Content. Some origin rules under the Agreement require that certain goods meet a regional value content test in order to qualify as "originating," meaning that a specified percentage of the value of the good must be attributable to originating materials. In general, the Agreement provides two methods for calculating that percentage: (1) the "build-down method" (based on the value of non-originating materials used); and (2) the "build-up method" (based on the value of originating materials used). The regional value content of certain automotive goods, however, must be calculated on the basis of the net cost of the good. Finally, accessories, spare parts, and tools delivered with a good are considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The *de minimis* rule does not apply in calculating regional value content.

Claims for Preferential Tariff Treatment. Under the Chapter, importers who wish to claim preferential tariff treatment for particular goods must be prepared to demonstrate, on the request of the importing Party's customs authority, that the goods are originating. A Party may only deny preferential treatment through a written determination that the claim is invalid as a matter of law or fact. The Chapter provides that, subject to certain conditions, a Party must allow for the filing of claims for preferential treatment

and for seeking a refund of any excess duties paid up to one year after a good is imported. Chapter Four also provides that a Party will not penalize an importer if the importer promptly and voluntarily corrects an incorrect claim and pays any duties owed.

Verification. Each Party must ensure that its customs authority is empowered to conduct verifications for purposes of determining whether a good is an originating good. Where an importing Party determines through a verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported statements, declarations, or certifications that a good is an originating good, the Party may suspend preferential tariff treatment to identical goods from that importer, exporter, or producer until the importing Party determines that the importer, exporter, or producer is in compliance with the rules set out in the Chapter.

Additional Rules. Chapter Four provides specific rules with respect to the treatment of (1) packing materials and containers; (2) indirect materials; (3) fungible goods; and (4) sets of goods for purposes of determining origin. The Chapter provides that a Party may not treat a good as originating if the good undergoes production or any operation in a third country other than being unloaded, reloaded, or preserved in good condition, or if it is shipped through a third country and does not remain under the control of customs authorities there.

CHAPTER FIVE: CUSTOMS ADMINISTRATION AND TRADE FACILITATION

Chapter Five establishes rules designed to encourage transparency, predictability, and efficiency in the operation of each Party's customs procedures and to provide for cooperation between the Parties on customs matters.

General Principles. In Chapter Five, each Party commits to observe certain transparency obligations. Each Party must promptly publish its customs measures, including on the Internet, and, where possible, solicit public comments before amending its customs regulations. Each Party must also provide written advance rulings, on request, to its importers and to exporters and producers of the other Party, regarding whether a product qualifies as an "originating" good under the Agreement, as well as on other customs matters. In addition, each Party must guarantee importers access to both administrative and judicial review of customs decisions. The Parties must release goods from customs promptly and expeditiously clear express shipments. After the Agreement enters into force Colombia will have one year to comply with the Chapter's rules on release of goods; two years to comply with the Chapter's express shipments obligations and certain of its transparency obligations; and three years to comply with the Chapter's requirement to provide advance rulings.

Cooperation. Chapter Five also is designed to enhance customs cooperation. The Parties are encouraged to give each other advance notice of customs developments likely to affect the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the implementation and operation of the provisions of the Agreement governing importations and exportations. It includes specific provisions requiring the Parties to share customs information where a Party has a rea-

sonable suspicion of unlawful activity relating to its laws and regulations governing importations.

CHAPTER SIX: SANITARY AND PHYTOSANITARY MEASURES

Chapter Six defines the Parties' obligations to each other regarding sanitary and phytosanitary (SPS) measures. It reflects the Parties' understanding that implementation of existing obligations under the WTO *Agreement on the Application of Sanitary and Phytosanitary* Measures (SPS Agreement) is a shared objective. Nothing in the Agreement imposes new limitations on the United States in terms of maintaining high safety and inspection standards.

Key Concepts. SPS measures are laws or regulations that protect human, animal, or plant life or health from certain risks, including plant- and animal-borne pests and diseases, additives, contaminants, toxins, or disease-causing organisms in food and beverages.

Cooperation. Under Chapter Six, the Parties will establish an SPS Committee consisting of relevant trade and regulatory officials. The objectives of the Committee are to (i) enhance the implementation by each Party of the WTO SPS Agreement; (ii) assist each Party to protect human, animal, or plant life or health; (iii) enhance consultation and cooperation between the Parties on SPS matters; and (iv) address SPS measures affecting trade between the Parties. The Committee will also provide a forum for enhancing mutual understanding of each Party's SPS measures and the regulatory processes that relate to those measures; consulting on SPS matters that may affect trade between the Parties; and consulting on issues, agendas, and positions for meetings of certain international organizations that address SPS matters.

Dispute Settlement. No Party may invoke the Agreement's dispute settlement procedures for a matter arising under Chapter Six. Instead, any dispute between the Parties involving an SPS measure must be resolved through the WTO.

CHAPTER SEVEN: TECHNICAL BARRIERS TO TRADE

Chapter Seven builds on WTO rules related to technical barriers to trade to promote transparency, accountability, and cooperation between the Parties on regulatory issues.

Key Concepts. The term "technical barriers to trade" (TBT) refers to barriers that may arise in preparing, adopting, or applying voluntary product standards, mandatory product standards ("technical regulations"), and procedures used to determine whether a particular good meets such standards, i.e., "conformity assessment" procedures.

International Standards. The principles articulated in the WTO TBT Committee's *Decision on Principles for the Development of International Standards, Guides and Recommendations* emphasize the need for openness and consensus in the development of international standards. Under Chapter Seven, the Parties will apply these principles when determining whether an international standard exists and consult on pertinent matters under consideration by relevant international or regional bodies.

Cooperation. In Chapter Seven, the Parties establish a Committee on Technical Barriers to Trade through which the Parties will cooperate to reduce technical barriers and improve market ac-

cess. The Committee's specific functions will include: (i) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures; (ii) facilitating sectoral cooperation between governmental and non-governmental conformity assessment bodies; (iii) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures; and (iv) consulting, at a Party's request, on any matter arising under the Chapter.

Conformity Assessment. Chapter Seven provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment results. Each Party will recognize conformity assessment bodies in the territory of the other Party on terms no less favorable than it accords conformity assessment bodies in its own territory.

Transparency. Chapter Seven contains various transparency obligations, such as requiring each Party to: (i) allow persons of the other Party to participate in the development of technical regulations, standards, and conformity assessment procedures on a non-discriminatory basis; (ii) transmit regulatory proposals notified under the WTO *Agreement on Technical Barriers to Trade* directly to the other Party; (iii) describe in writing the objectives of and reasons for the proposed technical regulations or conformity assessment procedure; and (iv) consider comments on such proposals and respond in writing to significant comments it receives. Each Party must implement the Chapter's transparency provisions as soon as practicable, and no later than three years after the Agreement enters into force.

CHAPTER EIGHT: TRADE REMEDIES

Safeguards. Chapter Eight establishes a safeguard procedure that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reduction or elimination under the Agreement. The Chapter does not affect the Parties' rights or obligations under the WTO's safeguard provisions (global safeguards) or under other WTO trade remedy rules.

In Chapter Eight, each Party is authorized to impose temporary duties on an imported originating good if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" good.

A safeguard measure may be applied on a good only during the Agreement's "transition period" for phasing out duties. A safeguard measure may take one of two forms—a temporary increase in duties to NTR (MFN) levels or a temporary suspension of duty reductions called for under the Agreement. A Party may not impose a safeguard measure under Chapter Eight more than once on any good. A safeguard measure may be in place for an initial period of up to two years. A Party may extend a measure for up to an additional two years, if it determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and pre-

vent or remedy serious injury. If a measure lasts more than one year, the Party must scale it back at regular intervals.

If a Party imposes a safeguard measure, that Party must provide offsetting trade compensation to the other Party whose goods are subject to the measure. If the Parties cannot agree on the amount or nature of the compensation, the exporting Party may unilaterally suspend "substantially equivalent" trade concessions that it has made to the importing Party.

Global Safeguards. Each Party maintains its right to take action against imports from all sources under Article XIX of GATT 1994 and the WTO *Agreement on Safeguards.* A Party may exclude imports of an originating good from the other Party from a global safeguard measure if those imports are not a substantial cause of serious injury or do not create a threat of serious injury. A Party may not apply a safeguard measure under Chapter Eight at the same time that it applies a safeguard measure on the same good under the WTO *Agreement on Safeguards.*

Antidumping and Countervailing Duties. The Parties confirm that each retains its rights and obligations under the WTO Agreement relating to the application of antidumping and countervailing duties. Antidumping and countervailing duty measures may not be challenged under the Agreement's dispute settlement procedures.

CHAPTER NINE: GOVERNMENT PROCUREMENT

Under Chapter Nine each Party must apply fair and transparent procurement procedures and rules and each government and its procuring entities are prohibited from discriminating in purchasing practices against goods, services, and suppliers from the other Party. The rules of Chapter Nine are broadly based on the rules of the WTO *Agreement on Government Procurement.*

General Principles. Chapter Nine establishes a basic rule of "national treatment," meaning that each Party's procurement rules and the entities applying those rules must treat goods, services, and suppliers of such goods and services from the other Party in a manner that is "no less favorable" than their domestic counterparts. Parties are also barred from discriminating against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Nine also provides rules aimed at ensuring a fair and transparent procurement process.

Coverage and Thresholds. Chapter Nine applies to purchases and other means of obtaining goods and services valued above certain dollar thresholds by those government departments, agencies, and enterprises listed in each Party's schedule. Specifically, the Chapter applies to procurements by listed agencies of the "central government," which for the United States is the federal government, of goods and services valued at $64,786 or more and construction services valued at $7,407,000 or more. The equivalent thresholds for purchases by listed "sub-central" government entities (i.e., "Gobernaciones" for Colombia and U.S. state government agencies) are $526,000 and $7,407,000, for goods and services and construction services, respectively. The Chapter's thresholds for other covered entities are either $250,000 or $593,000 for goods and services, and $7,407,000 for construction services. The thresholds (other than the $250,000 threshold for other covered entities) are subject to adjustment every two years on January 1, with the next adjust-

ment set for January 1, 2012. With respect to construction services, during the three-year period following the date of entry into force of the Agreement, Colombia may apply a threshold of $8,000,000 with respect to all three types of entities. The Agreement also provides that certain Colombian telecommunications and electric utilities that would not otherwise be covered by the Agreement must comply with the national treatment non-discrimination obligations in making purchases.

Transparency. Chapter Nine establishes rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations, and other measures governing procurement, along with any changes to those measures. Procuring entities must publish notices of procurement opportunities in advance. The Chapter also lists minimum information that such notices must include.

Tendering Rules. Chapter Nine provides rules for setting deadlines on "tendering" (bidding on government contracts). Procuring entities must give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (i.e., detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. Chapter Nine provides that procuring entities may not write technical specifications with the purpose or effect of creating an unnecessary obstacle to trade between the Parties while clarifying that an entity may adopt technical specifications to promote environmental conservation. The Chapter also clarifies that an entity may adopt technical specifications that require suppliers to comply with generally applicable laws regarding fundamental principles and rights at work and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health in the territory where they make the product or perform the service that the entity will purchase. It also sets out the circumstances under which procuring entities are allowed to use limited tendering, i.e., award a contract to a supplier without opening the procurement to all interested suppliers.

Award Rules. Chapter Nine provides that to be considered for an award, a tender must be submitted by a qualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract. Chapter Nine also calls for each Party to ensure that suppliers may bring challenges against procurement decisions before independent reviewers.

Additional Provisions. The provisions in Chapter Nine build on the anti-corruption provisions of Chapter Nineteen (Transparency), including by requiring each Party to maintain procedures to declare suppliers that have engaged in fraudulent or other illegal actions in relation to procurement ineligible for participation in the Party's procurement. It establishes procedures under which a Party may modify its coverage under the Chapter, such as when a Party privatizes an entity whose purchases are covered under the Chapter. It also provides that Parties may adopt or maintain measures necessary to protect: (1) public morals, order, or safety; (2) human, animal, or plant life or health, including environmental measures

necessary to protect human, animal, or plant life or health; or (3) intellectual property. Parties may also adopt measures relating to goods or services of handicapped persons, philanthropic institutions, or prison labor.

CHAPTER TEN: INVESTMENT

Chapter Ten establishes rules to protect investors from one Party against wrongful or discriminatory government actions when they invest or attempt to invest in the other Party's territory. The Chapter's provisions reflect traditional standards incorporated in earlier U.S. bilateral investment treaties, previous trade agreements, and customary international law.

Key Concepts. Under Chapter Ten, the term "investment" covers all forms of investment, including enterprises, securities, certain forms of debt, intellectual property rights, licenses, and certain contracts. The Chapter covers both investments existing when the Agreement enters into force and future investments. The term "investor of a Party" encompasses U.S. and Colombian nationals as well as firms (including branches) established in one of the Parties.

General Principles. Under the Agreement, investors enjoy six basic protections: (1) the right to non-discriminatory treatment relative both to domestic investors and investors of non-Parties; (2) limits on imposition by the host Party of "performance requirements;" (3) the right to free transfer of funds related to an investment; (4) protection from expropriation except when done in conformity with customary international law; (5) the right to the minimum standard of treatment of aliens in accordance with customary international law; and (6) the right to hire key managerial personnel without regard to nationality. (As to this last protection, a Party may require that a majority of the board of directors be of a particular nationality, as long as this does not prevent the investor from controlling its investment.)

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter Twelve), Chapter Ten generally applies to all sectors, including service sectors. However, each Party negotiated a limited list, in in Annexes I and II, of exemptions from the Chapter's obligations relating to national treatment, NTR (MFN), performance requirements, or senior management and boards of directors ("non-conforming measures"). Annex I contains each Party's list of existing non-conforming measures at the central and regional levels of government. The United States has scheduled an exemption from all of the aforementioned obligations for all existing state measures. All existing local measures are exempted from those obligations for both Parties without the need to be listed. If a Party liberalizes any of these non-conforming Annex I measures, it must thereafter maintain the measure at least at that level of openness. In Annex II, each Party has listed sectors or activities in which it reserves the right to adopt or maintain future non-conforming measures. (Annexes I and II also include exemptions from Chapter Eleven (Cross-Border Trade in Services). See below).

Investor-State Disputes. Chapter Ten provides a mechanism for an investor of a Party to submit to binding international arbitration a claim for damages against the other Party. The investor may

assert that the Party has breached a substantive obligation under the Chapter or that the Party has breached an "investment agreement" with, or an "investment authorization" granted to, the investor or a covered investment that the investor owns or controls. "Investment agreements" and "investment authorizations" are arrangements between an investor and a host government based on contracts and authorizations, respectively. These terms are defined in Chapter Ten.

Chapter Ten affords public access to information on investor-State arbitrations conducted pursuant to the Agreement. For example, Chapter Ten requires that hearings be generally open to the public and key documents be publicly available, with exceptions for confidential information, including confidential business information. The Parties also authorize tribunals to accept *amicus* submissions from the public. In addition, the Chapter includes provisions similar to those used in U.S. courts to dispose quickly of claims a tribunal finds to be frivolous. Finally, within three years after the Agreement enters into force the Parties will consider whether to establish an appellate body, or similar mechanism, to review arbitral awards rendered by tribunals under the Chapter.

Chapter Ten provides that, "except in rare circumstances," non-discriminatory regulatory actions designed and applied to meet legitimate public welfare objectives, such as public health, safety, and the environment, are not indirect expropriations.

The Agreement does not require the United States to give Colombian investors greater substantive rights that U.S. companies already enjoy in the United States.

CHAPTER ELEVEN: CROSS-BORDER TRADE IN SERVICES

Chapter Eleven governs measures affecting cross-border trade in services between the Parties. Certain provisions also apply to measures affecting investments to supply services.

Key Concepts. Under the Agreement, cross-border trade in services covers supply of a service:

- from the territory of one Party into the territory of the other Party (*e.g.,* electronic delivery of services from the United States to Colombia);
- in the territory of a Party by a person of that Party to a person of the other Party (*e.g.,* a Colombian company provides services to U.S. visitors in Colombia); and
- by a national of a Party in the territory of the other Party (*e.g.,* a U.S. lawyer provides legal services in Colombia).

Chapter Eleven should be read together with Chapter Ten (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border. Chapter Eleven applies where, for example, a service supplier is temporarily present in a territory of a Party and does not operate through a local investment.

General Principles. Among Chapter Eleven's core obligations are requirements to provide national treatment and NTR (MFN) treatment to service suppliers of the other Party. Thus, each Party must treat service suppliers of the other Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the federal government. The Chapter's provisions apply to existing service suppliers

as well as those who seek to supply services. The Parties are prohibited from requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions on the supply of services (e.g., that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter's market access rules apply both to services supplied on a cross-border basis and through a local investment.

Sectoral Coverage and Non-Conforming Measures. Chapter Eleven applies across virtually all services sectors. The Chapter excludes financial services (which are addressed in Chapter Twelve), except that certain provisions of Chapter Eleven apply to investments in financial services that are not regulated as financial institutions and are covered by Chapter Ten (Investment). In addition, Chapter Eleven does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

Each Party has listed in Annexes I and II measures or sectors for which it negotiated exemptions from Chapter Eleven's core obligations (national treatment, NTR (MFN), local presence, and market access). Annex I contains the list of existing non-conforming measures at the central and regional level of government. The United States has scheduled an exemption from national treatment, NTR (MFN), and local presence for all existing state measures. Our coverage under the market access discipline is the same as our commitments under the WTO *General Agreement on Trade in Services*, with the right to take measures not inconsistent with those commitments. All existing local measures are exempted for both Parties without the need to be listed. However, once a Party liberalizes any of these non-conforming Annex I measures, it must thereafter maintain the measure at least at that level of openness. Each Party has listed in Annex II sectors or activities in which it reserves the right to adopt or maintain future non-conforming measures.

Specific Commitments. Chapter Eleven includes a comprehensive definition of express delivery services under which each Party must provide national treatment, NTR (MFN) treatment, and additional benefits to express delivery services of the other Party. The Chapter provides that the Parties will try to maintain the level of market openness for express delivery services they provided on the date the Agreement was signed, and a Party may request consultations with the other if it believes the other Party is not maintaining that level of access. The Chapter also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services. In addition, Colombia has committed to eliminate a requirement that has prevented U.S.-owned companies in Colombia from hiring the managers, professionals, and specialists of their choice for their operations in Colombia.

Transparency and Domestic Regulation. Provisions on transparency and domestic regulation complement the core rules of Chapter Eleven. The transparency rules apply to the development and application of regulations governing services. The Chapter's rules on domestic regulation govern the operation of approval and

licensing systems for service suppliers. Like the Chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through a local investment.

Exclusions. Chapter Eleven does not apply to any service supplied "in the exercise of governmental authority"—that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Eleven also does not apply to government subsidies. In addition, the Chapter makes clear that the Agreement does not impose any obligation on a Party with respect to its immigration measures, including admission or conditions of admission for temporary entry.

CHAPTER TWELVE: FINANCIAL SERVICES

Chapter Twelve covers measures relating to the supply of financial services. It provides rules governing each Party's treatment of: (1) financial institutions of the other Party; (2) investors of the other Party, and their investments, in financial institutions; and (3) cross-border trade in financial services.

Key Concepts. The Chapter defines a "financial institution" as any financial intermediary or other enterprise authorized to do business and regulated or supervised as a financial institution under the law of the Party where it is located. A "financial service" is any service of a financial nature, including, for example, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

General Principles. Chapter Twelve's core obligations parallel those in Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services). Specifically, Chapter Twelve imposes rules requiring national treatment and NTR (MFN) treatment, prohibits certain quantitative restrictions on market access of financial institutions, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of the other Party, and services companies that are currently supplying and that seek to supply financial services on a cross-border basis. The rules do not apply to measures adopted or maintained by a Party relating to certain specified services and activities—for example, activities or services forming part of a public retirement plan or statutory system of social security—unless a Party allows its financial institutions to compete with a public entity or a financial institution to supply such services and activities. Provisions such as the prudential and monetary and exchange rate exceptions ensure that governments may continue to regulate the financial sector and to take action to ensure the stability and integrity of the financial system in a financial crisis.

Non-Conforming Measures. Similar to Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services), each Party has listed in an annex (Annex III) particular measures for which it negotiated exemptions from the Chapter's core obligations. Existing non-conforming U.S. state and local laws and regulations are exempted from these obligations. Once a Party, including a state or local government, liberalizes one of these non-conforming measures, however, it must, in most cases, maintain the measure at least at that new level of openness.

Other Provisions. Chapter Twelve also includes provisions on regulatory transparency, "new" financial services, self-regulatory organizations, and the expedited availability of insurance products.

Relationship to Other Chapters. Measures that a Party applies to financial services suppliers of the other Party, other than regulated financial institutions, that make or operate investments in the Party's territory are covered principally by Chapter Ten (Investment) and certain provisions of Chapter Eleven (Cross-Border Trade in Services). In particular, the core obligations of Chapter Ten apply to such measures, as do the market access, transparency, and domestic regulation provisions of Chapter Eleven. Chapter Twelve incorporates by reference certain provisions of Chapter Ten, such as those relating to transfers and expropriation.

CHAPTER THIRTEEN: COMPETITION POLICY, DESIGNATED MONOPOLIES, AND STATE ENTERPRISES

Recognizing that anticompetitive business conduct has the potential to restrict bilateral trade and investment, Chapter Thirteen calls for each government to proscribe such conduct. The Chapter also sets out basic procedural safeguards and rules ensuring against harmful conduct by government-designated monopolies and state enterprises.

Competition Laws. Each Party must adopt or maintain laws prohibiting anticompetitive business conduct and to take appropriate action with respect to such conduct. Each Party must also maintain authorities responsible for enforcing its national competition laws. The Parties affirm that the enforcement policy of each Party's national competition authority is not to discriminate on the basis of nationality. It also obligates each Party to provide certain procedural protections for persons facing enforcement actions. Each Party will ensure that persons subject to sanctions or remedies for competition law violations will be provided a right to be heard and to present evidence, and to seek review by a court or independent tribunal.

Designated Monopolies. There are specific rules governing instances in which a Party gives a private or national government-owned entity a monopoly to provide or purchase a good or service. In particular, the Party must ensure that the entity: (1) abides by the Party's obligations under the Agreement wherever it exercises authority delegated to it by the government in connection with the monopoly good or service; (2) purchases or sells the monopoly product in a manner consistent with commercial considerations; (3) does not discriminate against the other Party's investments, goods, or service suppliers in the purchase or sale of the monopoly product; and (4) does not engage in anticompetitive practices in markets outside its monopoly mandate that harm the other Party's investments.

State Enterprises. Chapter Thirteen sets forth obligations regarding the Parties' responsibilities for "state enterprises," *i.e.*, enterprises owned or controlled by a Party. Each Party must ensure that its state enterprises accord non-discriminatory treatment in the sale of their products to the other Party's investments.

Cooperation and Working Group. Chapter Thirteen provides for bilateral cooperation in relation to the enforcement of competition laws. In addition, the Parties will establish a working group to pro-

mote greater understanding and cooperation between the Parties with respect to the matters covered under the Chapter.

Dispute Settlement. Many of the Chapter's provisions are not subject to the Agreement's dispute settlement procedures, including the provisions requiring a Party to adopt and enforce laws prohibiting anticompetitive business conduct and the provisions governing cooperation and consultations. The Chapter's rules addressing designated monopolies and state enterprises, however, may be enforced through the Agreement's State-to-State dispute settlement mechanism.

CHAPTER FOURTEEN: TELECOMMUNICATIONS

Chapter Fourteen includes disciplines beyond those imposed under Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) on regulatory measures affecting telecommunications trade and investment between the Parties. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications networks in the territory of the other Party. In addition, each Party must regulate its major telecommunications suppliers in ways that will ensure a level playing field for new entrants. The Parties also seek to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality.

Key Concepts. Under Chapter Fourteen, a "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of "information services" (*e.g.*, services that enable users to create, store, or process information over a network). A "major supplier" is a company that, by virtue of its market position or control over certain facilities, can materially affect the terms of participation in the market.

Competition. Chapter Fourteen establishes rules promoting effective competition in telecommunications services. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.*, Colombia must ensure that its public phone companies do not provide preferential access to Colombian banks or Internet service providers, to the detriment of U.S. competitors);
- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party's territory;
- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and
- impose disciplines on the behavior of "major suppliers."

Regulation. The Chapter addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, each Party:

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;
- will require their telecommunications regulators to resolve disputes between suppliers and provide foreign suppliers the right to seek judicial review of those decisions;
- may elect to deregulate telecommunications services when competition emerges and certain standards are met; and
- will avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

CHAPTER FIFTEEN: ELECTRONIC COMMERCE

Chapter Fifteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products such as computer programs, video, images, and sound recordings. The provisions in this and other recent U.S. trade agreements represent a major advance over previous international understandings on this subject.

Customs Duties. Chapter Fifteen provides that a Party may not impose customs duties on digital products of the other Party transmitted electronically and will determine the customs value of an imported carrier medium bearing a digital product based on the value of the carrier medium alone, without regard to the value of the digital product stored on the carrier medium.

Non-Discrimination. The Parties will apply the principles of national treatment and NTR (MFN) treatment to trade in electronically-transmitted digital products. Thus, a Party may not discriminate against electronically-transmitted digital products on the grounds that they have a nexus to another country, either because they have undergone certain specific activities (e.g., creation, production, first sale) there or are associated with certain categories of persons of the other Party or a non-Party (e.g., authors, performers, producers). Nor may a Party provide less favorable treatment to digital products that have a nexus to the other Party than it gives to like products that have a nexus to a third country. The non-discrimination rules do not apply to non-conforming measures adopted under Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), or Twelve (Financial Services).

Additional Provisions. Chapter Fifteen contains additional provisions relating to authentication, online consumer protection, and paperless trade administration.

CHAPTER SIXTEEN: INTELLECTUAL PROPERTY RIGHTS

Chapter Sixteen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

General Provisions. In Chapter Sixteen the Parties commit to ratify or accede to several agreements on intellectual property rights, including, by the date the Agreement enters into force, the

WIPO *Copyright Treaty*, the *Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals*, and the WIPO *Performances and Phonograms Treaty*, and, within specified periods, *the International Convention for the Protection of New Varieties of Plants*, the *Trademark Law Treaty*, and the *Patent Cooperation Treaty*. The United States is already a party to these Agreements. With very limited exceptions, each Party commits to provide national treatment to the other Party's nationals with respect to the enjoyment and protection of the intellectual property rights covered by the Chapter.

Trademarks and Geographical Indications. Each Party must protect trademarks and geographical indications, including by refusing protection or recognition of a geographical indication that is likely to cause confusion with a preexisting trademark. The Chapter provides that trademarks protection includes protection for collective marks and certification marks. Each Party must also establish an electronic system for applying for, registering, and maintaining trademarks, as well as an online database. (Colombia has one year from the date of entry into force of the Agreement to give effect to this provision.) Each Party must also provide efficient and transparent procedures governing applications to protect trademarks and geographical indications. Furthermore, each Party's Internet domain name management system must include a dispute resolution procedure to address trademark cyber-piracy.

Copyright and Related Rights. Under Chapter Sixteen, the Parties must provide broad protection for copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for works measured by a person's life). The Chapter also provides enhancements of the rights of copyright owners over digital copies of their works. Each Party must also provide a right of communication to the public, including the exclusive right to authorize making protected works available online. Each Party must also protect the rights of performers and producers of phonograms.

To curb copyright piracy, government agencies of the Parties must use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-circumvention of effective technological measures, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, Chapter Sixteen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Finally, recognizing the importance of satellite broadcasts, Chapter Sixteen provides that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

Patents. Chapter Sixteen also includes a variety of provisions for the protection of patents. The Parties will make patents available for any invention, subject to limited exclusions. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. Under Chapter Sixteen, each Party must make best efforts to process patent applications and marketing ap-

proval applications expeditiously. With respect to most products, a Party must adjust the patent term to compensate for unreasonable delays that occur while granting a patent. For pharmaceutical products, a Party may provide for such adjustments if there is an unreasonable delay in granting a patent or providing marketing approval for a product.

Certain Regulated Products. Chapter Sixteen includes additional specific provisions relating to pharmaceuticals and agricultural chemicals. Among other things, the Chapter provides for the protection of test data and other data concerning safety or efficacy that a company submits in seeking marketing approval for such products by precluding other firms from relying on the data. It provides specific periods for such protection—normally five years for pharmaceuticals and ten years for agricultural chemicals. This means, for example, that during the period of protection, information that a company submits for approval of a new agricultural chemical product cannot be used without that company's consent in granting approval to market a new product. If a Party bases its decision to approve a pharmaceutical product for marketing in its territory on a marketing approval the other Party has granted for that product, and it approves the product within six months after the company applies for the approval in the Party, the period of test data protection will be counted from the date the other Party approved the product. The Chapter's rules governing test data protection for pharmaceutical products are subject to a public health exception in accordance with the Doha *Declaration on the TRIPS Agreement and Public Health*. The Parties must implement procedures for the expeditious adjudication of disputes concerning the validity or infringement of a patent, a transparent system to provide notice to a patent holder that another person is seeking to market an approved pharmaceutical product during the term of a patent, and sufficient time and opportunity for a patent holder to seek, prior to the marketing of an allegedly infringing product, available remedies for an infringing product.

Public Health. Chapter Sixteen expresses the Parties' understanding that its obligations do not and should not prevent a Party from taking measures to protect public health, in accordance with the Doha *Declaration on the TRIPS Agreement and Public Health*, by promoting access to medicines for all.

Enforcement Provisions. In Chapter Sixteen the Parties also assume obligations with respect to the enforcement of intellectual property rights in administrative, civil, and criminal proceedings, and at the border. For example, each Party, in determining damages in civil proceedings involving copyright infringement or trademark counterfeiting, must take into account the value of the legitimate goods as well as the infringer's profits, and must also provide for damages based on a fixed range (*i.e.*, "pre-established damages") as an option that the right holder can elect instead of actual damages.

Chapter Sixteen further provides that each Party's law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter Sixteen also provides that each Party must apply criminal pen-

alties against willful counterfeiting and piracy, including end-user piracy, on a commercial scale.

Each Party must empower its law enforcement agencies to take *ex officio* enforcement action at the border against pirated or counterfeit goods without waiting for a formal complaint.

Transition Periods. Most obligations in the Chapter take effect on the date the Agreement enters into force. However, Colombia may delay giving effect to certain specified obligations for periods ranging from one year to three years after that date.

CHAPTER SEVENTEEN: LABOR

Chapter Seventeen sets out the Parties' commitments and undertakings regarding trade-related labor rights.

Fundamental Labor Rights. Each Party commits to adopt and maintain in its statutes, regulations, and practice certain enumerated labor rights, as stated in the 1998 ILO *Declaration on Fundamental Principles and Rights at Work and Its Follow Up*. Specifically, these are (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, for purposes of the Agreement, a prohibition on the worst forms of child labor; and (5) the elimination of discrimination in respect of employment and occupation. In order to establish a violation of this obligation, a Party must demonstrate that the other Party has failed to comply in a manner affecting trade or investment between the Parties. Neither Party may waive or otherwise derogate from its statutes or regulations implementing this obligation in a manner affecting bilateral trade or investment where the waiver or derogation would be inconsistent with one of the enumerated rights. For the United States, the Chapter's provisions regarding fundamental labor rights apply to federal law only.

Effective Enforcement. Each Party commits not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting trade or investment between the Parties. The Chapter defines "labor laws" to include laws directly related to the ILO fundamental labor rights, as well as laws providing for acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health, and laws providing labor protections for children and minors, including a prohibition on the worst forms of child labor. For the United States, "labor laws" includes federal statutes and regulations addressing these areas, but it does not cover state or local labor laws.

Procedural Guarantees. Each Party commits to afford procedural guarantees that ensure workers and employers have access to tribunals for the enforcement of its labor laws. To this end, each Party must ensure that proceedings before these tribunals are fair, equitable, and transparent and comply with due process of law. Decisions of such tribunals must be in writing, made publicly available, and based on information or evidence in respect of which the parties were offered the opportunity to be heard. In addition, hearings in such proceedings must be open to the public, except where the administration of justice otherwise requires. Each Party also commits to make remedies available to ensure the enforcement of its labor laws. Such remedies might include orders, fines, penalties, or temporary workplace closures.

Dispute Settlement. Chapter Seventeen provides for cooperative consultations as a first step if a Party considers that the other Party is not complying with its obligations under the Chapter. The complaining Party may, after an initial 60-day consultation period under Chapter Seventeen, invoke the Agreement's general dispute settlement mechanism by requesting additional consultations or a meeting of the Agreement's cabinet-level Free Trade Commission under the provisions of Chapter Twenty-One (Dispute Settlement). If the Commission is unable to resolve the dispute, the matter may be referred to a dispute settlement panel.

Institutional Arrangements, Cooperation and Capacity Building. Chapter Seventeen establishes a cabinet-level Labor Affairs Council to oversee the Chapter's implementation and to provide a forum for consultations and cooperation on labor matters. Each Party must designate a contact point for communications with the other Party and the public regarding the Chapter. Each Party's contact point must provide transparent procedures for the submission, receipt, and consideration of communications from persons of a Party relating to the Chapter.

The Parties also create a labor cooperation and capacity building mechanism through which the Parties will work together to address labor matters of common interest. In particular, the mechanism will assist the Parties to establish priorities for, and carry out, cooperation and capacity building activities relating to such topics as: the effective application of fundamental labor rights; legislation and practice relating to compliance with ILO Convention 182 on the worst forms of child labor; strengthening labor inspection systems and the institutional capacity of labor administrations and tribunals; mechanisms for supervising compliance with laws and regulations pertaining to working conditions; and the elimination of gender discrimination in employment.

CHAPTER EIGHTEEN: ENVIRONMENT

Chapter Eighteen sets out the Parties' commitments and undertakings regarding environmental protection.

General Principles. Each Party must strive to ensure that its environmental laws provide for and encourage high levels of environmental protection and continue to improve its respective levels of environmental protection. Each Party also commits not to waive or otherwise derogate from its environmental laws to weaken or reduce the levels of environmental protection in a manner affecting trade or investment between the Parties other than pursuant to a provision in its environmental law providing for waivers or derogations. Chapter Eighteen further includes commitments to enhance cooperation between the Parties in environmental matters and encourages the Parties to develop voluntary, market-based mechanisms as one means for achieving and sustaining high levels of environmental protection.

Multilateral Environmental Agreements. The Parties recognize that certain multilateral environment agreements (MEAs) play an important role globally and domestically in protecting the environment. The Chapter includes a provision requiring each Party to adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under certain MEAs to which both governments are parties ("covered agreements"). To establish

a violation of this obligation a Party must demonstrate that the other Party has failed to comply in a manner affecting trade or investment between the Parties.

Chapter Eighteen provides that in the event of any inconsistency between a Party's obligations under the Agreement and a covered agreement, the Party must seek to balance its obligation under both agreements, but this will not preclude a Party from taking measures to comply with the covered agreement as long as the measure's primary purpose is not to impose a disguised restriction on trade.

Effective Enforcement. Each Party commits not to fail to effectively enforce its environmental laws, and its laws, regulations, and other measures to fulfill its obligations under the covered agreements, on a sustained or recurring basis in a manner affecting trade or investment between the Parties. For the United States, "environmental laws" comprise federal environmental statutes and regulations promulgated under those statutes that are enforceable by action of the federal government.

Procedural Matters. Each Party commits to make judicial, quasi-judicial, or administrative proceedings available to sanction or remedy violations of its environmental laws. Each Party must ensure that such proceedings are fair, equitable, and transparent, and, to this end, comply with due process of law and are open to the public, except where the administration of justice otherwise requires. Each Party must ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and that those authorities duly consider such requests. Each Party must also make appropriate and effective remedies available for violations of its environmental laws. These remedies may include, for example, fines, injunctions, or requirements to take remedial action or pay for the cost of containing or cleaning up pollution.

Environmental Performance: Each Party will encourage the development and use of flexible, voluntary, and incentive-based mechanisms for environmental protection, and will encourage the development and improvement of performance goals and indicators for measuring environmental performance as well as flexible means for achieving performance goals.

Institutional Arrangements and Cooperation. Chapter Eighteen establishes a senior-level Environmental Affairs Council to oversee implementation of the Chapter. The Council will provide for the public to participate in its work, including by affording an opportunity at each Council meeting, unless the Parties otherwise agree, for the public to express views on how the Chapter is being implemented. The Council must also provide appropriate opportunities for the public to participate in the development and implementation of joint environmental activities, including those developed under a separate bilateral environmental cooperation agreement that the Parties have negotiated.

Public Participation and Submissions. Each Party must provide for the receipt and consideration of submissions from persons of a Party on matters related to implementation of the Chapter. Each Party will also convene a national advisory committee to solicit views on matters related to the implementation of the Chapter. In addition, the Chapter provides that any person of a Party may file

a submission with an independent secretariat asserting that a Party is failing to effectively enforce its environmental laws. The secretariat will review the submission according to specified criteria and in appropriate cases recommend to the Environmental Affairs Council that a factual record concerning the matter be developed. The secretariat will prepare a factual record if a member of the Environmental Affairs Council instructs it to do so. The Council will consider the record and, where appropriate, provide recommendations to an environmental cooperation commission that will be created under the related environmental cooperation agreement. U.S. persons who consider that the United States is failing to effectively enforce its environmental laws may invoke the comparable public submissions process under the North American Agreement on Environmental Cooperation. The Parties will designate the secretariat and make related arrangements through a separate understanding.

Biological Diversity. The Chapter includes a specific provision on biological diversity, in which the Parties recognize the importance of biological diversity, restate their commitment to encouraging and promoting its protection, and agree to enhance their cooperative efforts with respect to biological diversity.

Dispute Settlement. Chapter Eighteen provides for cooperative consultations as a first step if a Party considers that the other Party is not complying with its obligations under the Chapter. The complaining Party may, after an initial 60-day consultation period, invoke the Agreement's general dispute settlement mechanism by requesting additional consultations or a meeting of the Agreement's cabinet-level Free Trade Commission under Chapter Twenty-One (Dispute Settlement). If the Commission is unable to resolve the dispute, the matter may be referred to a dispute settlement panel.

CHAPTER NINETEEN: TRANSPARENCY

Section A of Chapter Nineteen sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of measures on matters covered by the Agreement. Each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning subjects covered by the Agreement, or otherwise make them available. To the extent possible, the Parties must publish proposed regulations in advance and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must provide reasonable notice to the other Party's nationals and enterprises that are directly affected by an agency process, including an adjudication, rulemaking, licensing, determination, and approval process. A Party is to afford such persons a reasonable opportunity to present facts and arguments prior to any final administrative action, when time, the nature of the process, and the public interest permit.

Chapter Nineteen also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

In Section B of Chapter Nineteen, the Parties affirm their commitment to prevent and combat corruption, including bribery in international trade and investment. To this end, each Party is obligated to make it a criminal offense for its public officials to solicit

or accept a bribe, and for any person subject to its jurisdiction to bribe a public official of that Party or a foreign public official in exchange for favorable government action in matters affecting international trade or investment. Each Party must also endeavor to protect persons who, in good faith, report acts of bribery or corruption and to work together to encourage and support initiatives in relevant international fora to prevent bribery and corruption.

CHAPTER TWENTY: ADMINISTRATION OF THE AGREEMENT AND TRADE CAPACITY BUILDING

In Chapter Twenty, the Parties create a Free Trade Commission to supervise the implementation and overall operation of the Agreement. The Commission comprises the Parties' trade ministers and will meet annually. The Commission will assist in the resolution of any disputes that may arise under the Agreement. The Commission may issue interpretations of the Agreement and agree to accelerate duty elimination on particular products and adjust the Agreement's product-specific rules of origin.

Each Party must designate an office to provide administrative assistance to dispute settlement panels and perform such other functions as the Commission may direct.

The Parties also establish a Committee on Trade Capacity Building comprising representatives of each Party. The overall objective of the Committee is to assist Colombia to implement the Agreement and adjust to liberalized bilateral trade. Particular functions of the Committee include: prioritizing trade capacity building projects; inviting international donor institutions, private sector entities, and non-governmental organizations to assist in the development and implementation of trade capacity building projects; and monitoring and assessing progress in implementing those projects.

CHAPTER TWENTY-ONE: DISPUTE SETTLEMENT

Chapter Twenty-One sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other agreements (*e.g.*, the WTO agreements), the complaining government may choose a forum for resolving the matter that is set forth in any valid agreement between the Parties. The selected forum will be the exclusive venue for resolving that dispute.

Consultations. A Party may request consultations with the other Party on any actual or proposed measure that it believes might affect the operation of the Agreement. If the Parties cannot resolve the matter through consultations within a specified period (normally 60 days), any consulting Party may refer the matter to the Free Trade Commission, which will attempt to resolve the dispute.

Panel Procedures. If the Commission cannot resolve the dispute within a specified period (normally 30 days), any consulting Party may refer the matter, if it involves an actual measure, to a panel comprising independent experts that the Parties select. The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the Parties agree otherwise, a panel is to present its initial report within 120 days after the last panelist is selected. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 30 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

Suspension of Benefits. If the Parties cannot resolve the dispute after they receive the panel's final report, the Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure.

If the defending Party considers that the proposed level of benefits to be suspended is "manifestly excessive," or believes that it has modified the disputed measure to make it conform to the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of the assessment will be established by agreement of the Parties or, failing that, will be set at 50 percent of the level of trade concessions the complaining Party was authorized to suspend.

Compliance Review Mechanism. If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining Party must withdraw any offsetting measures it has put in place. Concurrently, the defending government will be relieved of any obligation to pay a monetary assessment.

The Parties will review the operation of the compliance procedures either five years after the Agreement enters into force or within six months after benefits have been suspended or assessments paid in five proceedings initiated under this Agreement, whichever occurs first.

Settlement of Private Disputes. The Parties will encourage the use of arbitration and other alternative dispute resolution mechanisms to settle international commercial disputes between private parties. Each Party must provide appropriate procedures for the

recognition and enforcement of arbitral awards, for example by complying with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

CHAPTER TWENTY-TWO: EXCEPTIONS

Chapter Twenty-Two sets out provisions that generally apply to the entire Agreement. Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of the Agreement, *mutatis mutandis*, and apply to those Chapters related to treatment of goods. Likewise, for the purposes of Chapters Eleven (Cross-Border Trade in Services), Fourteen (Telecommunications), and Fifteen (Electronic Commerce), GATS Article XIV (including its footnotes) is incorporated into and made part of the Agreement. For both goods and services, the Parties understand that these exceptions include certain environmental measures.

Essential Security. Chapter Twenty-Two makes clear that nothing in the Agreement prevents a Party from taking actions it considers necessary to protect its essential security interests, and specifically provides that an arbitration panel must apply the essential security exception if a Party invokes it. With respect to non-conforming measures relating to port activities listed by Colombia and the United States in Annex I and II, respectively, each Party has clarified that the landside aspects of port activities are subject to the Agreement's essential security exception.

Taxation. An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides that the Agreement does not affect a Party's rights or obligations under any tax convention. The exception sets out certain circumstances under which tax measures are subject to the Agreement's: (1) national treatment obligation for goods; (2) national treatment and NTR (MFN) obligations for services; (3) prohibitions on performance requirements; and (4) expropriation rules.

Disclosure of Information. The Chapter also provides that a Party may withhold information from the other Party where such disclosure would impede domestic law enforcement, otherwise be contrary to the public interest, or prejudice the legitimate commercial interests of particular enterprises.

CHAPTER TWENTY-THREE: FINAL PROVISIONS

Chapter Twenty-Three provides that (i) the annexes, appendices, and footnotes are part of the Agreement, (ii) the Parties may amend the Agreement subject to the legal requirements of each Party, and (iii) the English and Spanish texts are both authentic. It also provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

In Chapter Twenty-Three, the Parties establish the procedures for the Agreement to enter into force and terminate. The Chapter provides that any other country or group of countries may accede to the Agreement on terms and conditions that are agreed with the Parties and approved according to each Party's legal requirements.

E. GENERAL DESCRIPTION OF THE BILL TO IMPLEMENT THE AGREEMENT

Sec. 1. Short title; table of contents

This section provides that the short title of the act implementing the Agreement is the "United States-Colombia Trade Promotion Agreement Implementation Act" ("Implementation Act"). Section 1 also provides the table of contents for the Implementation Act.

Sec. 2. Purposes

This section provides that the purposes of the Implementation Act are to approve and implement the Agreement, to strengthen and develop economic relations between the United States and Colombia, to establish free trade between the United States and Colombia through the reduction and elimination of barriers to trade in goods and services and to investment, and to lay the foundation for further cooperation to expand and enhance the benefits the Agreement.

Sec. 3. Definitions

This section defines the terms "Agreement," "Commission," "HTS," and "Textile or apparel good" for purposes of the Implementation Act.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

Sec. 101. Approval and entry into force of the Agreement

This section provides congressional approval for the Agreement and its accompanying SAA. Section 101 also provides that, if the President determines that Colombia has taken measures necessary to comply with obligations that take effect at the time the Agreement enters into force, the President may exchange notes with Colombia providing for the entry into force of the Agreement with respect to the United States on or after January 1, 2012.

Sec. 102. Relationship of the Agreement to United States and state law

This section establishes the relationship between the Agreement and U.S. law. Section 102 clearly states that no provision of the Agreement will be given effect if it is inconsistent with any federal law.

Section 102 also provides that only the United States may bring a court action to resolve a conflict between a state law and the Agreement. And it precludes any private right of action against the federal government, state or local governments, or a private party based on the provisions of the Agreement.

Sec. 103. Implementing actions in anticipation of entry into force and initial regulations

This section provides that, following the enactment of the Act, the President may proclaim such actions, and other appropriate officers of the federal government may issue such regulations, as may be necessary to ensure that provisions of the legislation that take effect on the date the Agreement enters into force are appro-

priately implemented on that date. Section 103 further provides that, with respect to any action proclaimed by the President that is not subject to the consultation and layover provisions contained in section 104, such action may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register. The 15-day restriction is waived, however, to the extent that it would prevent an action from taking effect on the date the Agreement enters into force. Section 103 also provides that, to the maximum extent feasible, initial regulations necessary or appropriate to carry out the actions required by the Implementation Act or proposed in the SAA shall be issued within 1 year after the date on which the Agreement enters into force. In accordance with the SAA, any agency unable to issue a regulation within 1 year must report to the relevant Congressional committees, at least 30 days prior to the end of the 1-year period, the reasons for the delay and the expected date for issuance of the regulation.

Sec. 104. Consultation and layover provisions for, and effective date of, proclaimed actions

This section sets forth consultation and layover steps that must precede the President's implementation of any action by proclamation that is subject to the requirements of this section. Under the consultation and layover provisions, the President must obtain advice regarding the proposed action from the Commission and from the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. § 2155). The President must also submit to the Senate Committee on Finance and the House Committee on Ways and Means a report that sets forth the action proposed, the reasons for the proposed action, and the advice of the appropriate advisory committees and the Commission. Section 104 sets aside a 60-day period following the date of transmittal of the report for the President to consult with the Senate Committee on Finance and the House Committee on Ways and Means on the proposed action.

Sec. 105. Administration of dispute settlement proceedings

This section authorizes the President to establish or designate within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter 21 of the Agreement. Section 105 also authorizes the appropriation of funds to support this office.

Sec. 106. Arbitration of claims

This section authorizes the United States to use binding arbitration to resolve certain claims against the United States pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

Sec. 107. Effective dates; effect of termination

This section provides that the provisions of the Implementation Act and the amendments made by it take effect on the date on which the Agreement enters into force, except for sections 1 through 3, title I, and title V, which take effect on the date of enactment of the Act. This section also provides that the amendments made by section 204, 205, 207, and 401 of the Implementation Act

take effect on the date of enactment of the Implementation Act and apply with respect to Panama on the date on which the Agreement enters into force. Section 107 also provides that the provisions of the Implementation Act (other than this subsection and title V) and the amendments to other statutes made by it (other than the amendments made by title V) will cease to have effect on the date on which the Agreement terminates.

TITLE II—CUSTOMS PROVISIONS

Sec. 201. Tariff modifications

Section 201(a) authorizes the President to implement by proclamation the modification or continuation of any duty, imposition of any additional duties, or the continuation of duty-free or excise treatment that the President determines to be necessary or appropriate to carry out or apply Articles 2.3, 2.5, 2.6, 3.3.13, and Annex 2.3 of the Agreement. In addition, section 201(a) requires the President to terminate the designation of Colombia as a beneficiary developing country for purposes of the GSP and the ATPA program on the date the Agreement enters into force.

Section 201(b) authorizes the President, subject to the consultation and layover provisions of section 104, to proclaim the modification or continuation of any duty, the modification of the staging of any duty elimination, the imposition of additional duties, or the continuation of duty-free or excise treatment that the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Panama provided by the Agreement.

Section 201(c) authorizes the President, with respect to any good for which the base rate of duty in the Tariff Schedule of the United States to Annex 2.3 of the Agreement is a specific or compound rate of duty, to substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

Section 201(d) authorizes the President, in implementing the tariff rate quotas set forth in the Agreement, to take actions necessary to ensure that imports of agricultural goods do not disrupt the orderly marketing of commodities in the United States.

Sec. 202. Additional duties on certain agricultural goods

Section 202 implements the agricultural safeguard provisions of the Agreement. Section 202(a) defines the terms "applicable NTR (MFN) rate of duty," "safeguard good," "schedule rate of duty," "trigger level," "year 1 of the agreement" and "years other than year 1 of the agreement" for purposes of section 202. Section 202(b) requires the Secretary of the Treasury ("Secretary") to impose additional duties on imports of certain Colombian agricultural goods if the Secretary determines that, prior to such importation, the total volume of the imported good in a calendar year exceeds the volume by amounts set forth in this section and in Appendix I of the General Notes to the Schedule of the United States to Annex 2.3 of the Agreement. Section 202(c) provides that the Secretary may not impose an additional duty on a good if, at the time of entry, the good is subject to a safeguard measure under the procedures set out in subtitle A of title III of the Implementation Act or under the safeguard procedures set out in chapter 1 of title II of the Trade Act

of 1974. Finally, Section 202(d) provides that the additional duties shall cease to apply to a good on the date on which duty-free treatment must be provided to that good under the Schedule of the United States to Annex 2.3 of the Agreement.

Sec. 203. Rules of origin

Section 203 implements the general rules of origin set forth in Chapter 4 of the Agreement. These rules define the circumstances under which a good imported from Colombia qualifies as an originating good and is thus eligible for preferential tariff treatment under the Agreement.

Section 203(a) establishes the Harmonized Tariff Schedule of the United States ("HTS") as the basis of any tariff classification. It also provides that any cost or value referred to in section 203 shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced.

Section 203(b) provides that a good is an originating good if it falls within one of three specified categories. First, a good qualifies as an originating good if it is wholly obtained or produced entirely in the territory of Colombia, the United States, or both. Second, a good qualifies as an originating good if the good is produced in the territory of Colombia, the United States, or both, and the materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change and to meet other requirements specified in Annex 3–A or Annex 4.1 of the Agreement. Third, and finally, a good qualifies as an originating good if the good is produced entirely in the territory of Colombia, the United States, or both, exclusively from materials that fall within the first two categories.

The remainder of section 203 sets forth specific rules related to determining whether a good meets the Agreement's specific requirements to qualify as an originating good. Section 203(c) implements provisions in Annex 4.1 of the Agreement that require certain goods to have a specified percentage of "regional value content" to qualify as originating goods. It prescribes alternative methods for calculating regional value content, as well as a specific method that must be used in the case of certain automotive goods. Section 203(d) addresses how materials are to be valued for purposes of calculating the regional value content of a good under subsection 203(c) and for purposes of applying the *de minimis* rules under subsection 203(f). Section 203(e) provides a rule of accumulation for originating materials from the territory of Colombia or the United States that are used in the production of a good in the territory of the other country. Section 203(f) provides that a good is not disqualified as an originating good if it contains *de minimis* quantities of non-originating materials that do not undergo a change in tariff classification. Section 203(g) addresses how to determine whether fungible goods and materials qualify as originating or non-originating under the Agreement. Section 203(h) provides rules for the treatment of accessories, spare parts, or tools that are delivered with a good. Sections 203(i) and (j) address the treatment of packaging materials and containers for retail sale and for shipment in determining whether a good qualifies as an originating good. Section 203(k) provides that indirect materials shall be treated as orig-

inating materials without regard to where they are produced. Section 203(l) provides rules for the treatment of goods that undergo further production in a third country or that otherwise transit through a third country. And section 203(m) provides rules for the treatment of goods classifiable as sets.

Section 203(n) defines various terms used in section 203. Section 203(o) authorizes the President to proclaim the specific rules of origin set forth in Annex 3–A and Annex 4.1 of the Agreement and to modify certain rules of origin in the Agreement by proclamation subject to the consultation and layover provisions of section 104.

Sec. 204. Customs user fees

This section provides for the immediate elimination of the merchandise processing fee for goods qualifying as originating goods under the Agreement. Processing of goods qualifying as originating goods will be financed from the General Fund of the Treasury.

Sec. 205. Disclosure of incorrect information; false certifications of origin; denial of preferential tariff treatment

Section 205(a) amends section 592 of the Tariff Act of 1930 (19 U.S.C. § 1592) to impose penalties on an importer, exporter, or producer that makes an invalid claim for preferential tariff treatment under the Agreement through negligence, gross negligence, or fraud, unless the importer, exporter, or producer, after discovering that the claim is invalid, promptly and voluntarily corrects the claim and pays any customs duties owed. Section 205(b) amends section 514 of the Tariff Act of 1930 (19 U.S.C. § 1514) to provide that, if an importer, exporter, or producer has engaged in a pattern of conduct in providing false representations that a good qualifies as originating, the United States may suspend preferential tariff treatment under the Agreement to identical goods covered by any subsequent representations that the person may make.

Sec. 206. Reliquidation of entries

This section amends section 520(d) of the Tariff Act of 1930 (19 U.S.C. § 1520(d)) to allow an importer to claim preferential tariff treatment for an originating good within 1 year of importation, even if no such claim was made at the time of the importation.

Sec. 207. Recordkeeping requirements

This section amends section 508 of the Tariff Act of 1930 (19 U.S.C. § 1508) to establish recordkeeping requirements for U.S. exporters and producers that issue certifications of origin for goods exported to Colombia.

Sec. 208. Enforcement relating to trade in textile or apparel goods

This section authorizes the President to apply anti-circumvention provisions concerning trade in textile and apparel goods. Pursuant to article 3.2 of the Agreement, the Secretary may request that the Government of Colombia conduct a verification to determine the compliance of exporters and producers with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, and to determine the accuracy of a claim of origin for a textile or apparel good. Section 208(a) provides that the President may direct the Secretary to take "appropriate action" while the

verification is being conducted. Under section 208(b), such appropriate action includes detaining, suspending preferential tariff treatment of, or denying entry to, any textile or apparel good that the person subject to the verification has produced or exported or for which a claim has been made that is the subject of the verification if the Secretary determines there is insufficient information to support a claim for such treatment.

Section 208(c) permits the President to direct the Secretary to take "appropriate action" after a verification has been completed. Section 208(d) defines "appropriate action" to include the denial of preferential treatment or entry to textile or apparel goods that the person subject to the verification has exported or produced until such time as the Secretary receives information sufficient to prove compliance or until an earlier date as the President may direct.

Finally, section 208(e) permits the Secretary to publish the name of any person that the Secretary determines has engaged in circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods or has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

Sec. 209. Regulations

Section 209 authorizes the Secretary to prescribe regulations necessary to carry out the rules of origin and customs user fee provisions in the Implementation Act and to carry out the President's proclamation authority under section 203(o).

TITLE III—RELIEF FROM IMPORTS

Sec. 301. Definitions

This section defines the terms "Colombian article" and "Colombian textile or apparel article" for purposes of this title. Section 301(1) defines "Colombian article" as an article that qualifies as an originating good under section 203(b) of the Implementation Act. And section 301(2) defines "Colombian textile or apparel article" as a textile or apparel good as defined in section 3(4) of the Implementation Act that is a Colombian article.

Subtitle A—Relief From Imports Benefiting From the Agreement

Subtitle A of title III implements the bilateral safeguard provisions set out in Chapter Eight of the Agreement. It authorizes the President, after an investigation and affirmative determination by the Commission, to suspend duty reductions or impose duties temporarily up to NTR (MFN) rates on a "Colombian article" when, as a result of the reduction or elimination of a duty under the Agreement, the article is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to a domestic industry that produces a like or directly competitive good. The standards and procedures set out in this subtitle closely parallel the procedures for global safeguards set forth in sections 201 through 204 of the Trade Act of 1974 (19 U.S.C. §§ 2251–2254).

Sec. 311. Commencing of action for relief

Section 311(a) requires an entity that is representative of an industry to file a petition with the Commission to commence a bilat-

eral safeguard investigation. Section 311(a) defines an entity to include a trade association, firm, certified or recognized union, or a group of workers.

Section 311(b) provides that, upon the filing of a petition, the Commission shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Colombian article is being imported into the United States in such increased quantities and under such conditions that imports of the Panamanian article constitute a substantial cause of serious injury, or threat of serious injury, to the domestic industry producing an article that is like, or directly competitive with, the imported article.

Section 311(c) extends certain provisions (both substantive and procedural) contained in subsections (b), (c), and (i) of section 202 of the Trade Act of 1974 (19 U.S.C. § 2252(b), (c), and (i)), which apply to global safeguard investigations, to any bilateral safeguard initiated under the Agreement. These provisions include, inter alia, the requirement that the Commission publish notice of the commencement of an investigation; the requirement that the Commission hold a public hearing at which interested parties and consumers have the right to be present and to present evidence; the factors to be taken into account by the Commission in making its determinations; and authorization for the Commission to promulgate regulations providing access to confidential business information under protective order to authorized representatives of interested parties in an investigation.

Section 311(d) precludes the initiation of a bilateral safeguard investigation with respect to any Colombian article for which import relief has already been provided under subtitle A.

Sec. 312. Commission action on petition

Section 312(a) establishes deadlines for Commission action following the initiation of a bilateral safeguard investigation. Section 312(b) applies certain statutory provisions regarding an equally divided vote by the Commission in a global safeguard investigation under section 202 of the Trade Act of 1974 (19 U.S.C. § 2252) to Commission determinations and findings under this section. If the Commission renders an affirmative injury determination or a determination that the President may treat as an affirmative determination in the event of an equally divided vote by the Commission, section 312(c) requires the Commission to find and recommend to the President the amount of import relief that is necessary to remedy or prevent the injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Section 312(d) requires the Commission to submit a report to the President regarding its determination and specifies the information that the Commission must include in the report. Upon submitting the report to the President, section 312(e) requires the Commission to promptly release the report to the public, except for any confidential information contained therein, and to publish a summary of the report in the Federal Register.

Sec. 313. Provision of relief

Section 313(a) directs the President, not later than 30 days after receiving the report from the Commission, to provide relief from

imports of the article subject to an affirmative determination by the Commission, or a determination that the President treats as affirmative, to the extent that the President determines is necessary to remedy or prevent the injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Section 313(b), however, provides that the President need not provide import relief if the President determines that the import relief will not provide greater economic and social benefits than costs.

Section 313(c) specifies the nature of the import relief that the President may impose, which includes the suspension of any further reduction in the rate of duty imposed on the article in question under Annex 2.3 of the Agreement and an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of (1) the NTR (MFN) duty rate at the time the import relief is provided; or (2) the NTR (MFN) duty rate on the day before the Agreement enters into force. Section 313(c) also requires the President to provide for the progressive liberalization of import relief at regular intervals during the period of its application if that period exceeds 1 year.

Section 313(d) limits any import relief that the President imposes in a bilateral safeguard action to no more than 4 years in the aggregate. The initial period of import relief that the President imposes may not exceed 2 years. The President may extend the relief up to an additional 2 years, however, if (1) the Commission makes an affirmative determination, or a determination that the President treats as affirmative, that import relief continues to be necessary to remedy or prevent serious injury and that there is evidence that the domestic industry is making a positive adjustment to import competition; and (2) the President makes a determination to the same effect.

Section 313(e) specifies the duty rate to be applied to Colombian articles after termination of a safeguard action. On the termination of import relief, the rate of duty for the remainder of the calendar year shall be the rate that was scheduled to have been in effect 1 year after the initial provision of import relief. For the rest of the duty phase-out period, the President may set the duty either at the rate called for under the Schedule of the United States to Annex 2.3 of the Agreement or in a manner that eliminates the duty in equal annual stages ending on the date set out in that Schedule.

Section 313(f) precludes the application of import relief pursuant to the bilateral safeguard provisions with respect to any Colombian article that is (1) subject to import relief under the global safeguard provisions in chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. § 2251 et seq.); (2) subject to import relief under subtitle B of title III of the Act; or (3) subject to an additional duty assessment under section 202(b) of the Act.

Sec. 314. Termination of relief authority

This section provides that the President's authority to impose import relief under the bilateral safeguard expires 10 years after the date on which the Agreement enters into force. If, however, the period for elimination of duties on a particular article exceeds 10 years, relief may be provided for that article until the date on which the duty elimination period ends.

Sec. 315. Compensation authority

This section authorizes the President, under section 123 of the Trade Act of 1974 (19 U.S.C. § 2133), to grant new concessions to Colombia as compensation for the imposition of import relief pursuant to the bilateral safeguard.

Sec. 316. Confidential business information

This section applies the same procedures for the treatment and release of confidential business information by the Commission in a global safeguard investigation under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. § 2251 et seq.) to investigations under title III of the Act.

Subtitle B—Textile and Apparel Safeguard Measures

Subtitle B of title III implements the Agreement's textile and apparel safeguard.

Sec. 321. Commencement of action for relief

Section 321(a) requires an interested party to file a request with the President in order to commence action for relief under the textile and apparel safeguard. Upon the filing of a request, the President must review the request to determine, from information presented in the request, whether to commence consideration of the request on its merits. Section 321(b) provides that, if the President determines that the request contains the information necessary for the request to be considered on the merits, the President must publish notice in the Federal Register stating that the request will be considered and seeking public comments on the request. The notice must contain a summary of the request and the dates by which comments and rebuttals must be received.

The Committee notes our regulatory processes should be administered in an open and transparent manner that can serve as a model for our trading partners. For example, the Committee understands that, in addition to publishing a summary of a request for safeguard relief, the President plans to make the full text of the request available on the U.S. Department of Commerce's International Trade Administration website, subject to the protection of confidential business information, if any. The Committee encourages this and similar efforts to enhance government transparency.

Sec. 322. Determination and provision of relief

Section 322 sets out the procedures to be followed in considering a request filed under section 321. If a positive determination is made under section 321(b), section 322(a) requires the President to determine whether, as a result of the elimination of a duty under the Agreement, a Colombian textile or apparel article is being imported into the United States in such increased quantities and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. Section 322(a) also provides that, in making such a determination, the President shall examine the effect of increased imports on the domestic industry's output, productivity, capacity utilization, inventories, market share, exports, wages, employment, domestic prices, profits and

losses, and investment, none of which is necessarily decisive. Finally, section 322(a) provides that the President shall not consider changes in consumer preference or technology as factors supporting a determination of serious damage or actual threat thereof.

Section 322(b) authorizes the President, in the event of an affirmative determination of serious damage or actual threat thereof, to provide import relief to the extent that the President determines is necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry. Section 322(b) also specifies the nature of the import relief that the President may impose, which consists of an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of (1) the NTR (MFN) duty rate in place for the textile or apparel article at the time the import relief is provided; or (2) the NTR (MFN) duty rate for that article on the day before the Agreement enters into force.

Sec. 323. Period of relief

Section 323(a) limits any import relief that the President imposes under the textile and apparel safeguard to no more than 3 years in the aggregate. Section 323(b) provides that if the initial period of import relief is less than 3 years, the President may extend the relief (to a maximum of 3 years) if the President determines that continuation is necessary to remedy or prevent serious damage and to facilitate adjustment, and that the domestic industry is, in fact, adjusting to import competition.

Sec. 324. Articles exempt from relief

This section provides that relief may not be granted to an article under the textile and apparel safeguard if: (i) relief previously has been granted to that article under the textile and apparel safeguard; or (ii) the article is subject, or becomes subject, to a safeguard measure under (a) Chapter Eight of the Agreement (corresponding to subtitle A of title III of the bill), or (b) chapter 1 of title II of the Trade Act of 1974.

Sec. 325. Rate after termination of import relief

This section provides that on the date import relief terminates, imports of the textile or apparel article that was subject to the safeguard action will be subject to the rate of duty that would have been in effect on that date in the absence of the relief.

Sec. 326. Termination of relief authority

This section provides that authority to provide relief under the textile and apparel safeguard will expire 5 years after the date on which the Agreement enters into force.

Sec. 327. Compensation authority

This section authorizes the President, under section 123 of the Trade Act of 1974 (19 U.S.C. § 2133), to grant new concessions to Colombia as compensation for the imposition of import relief pursuant to the textile and apparel safeguard.

Sec. 328. Confidential business information

This section provides that confidential business information submitted in the course of consideration of a request for a textile or

apparel safeguard may not be released absent the consent of the party providing the information. It also provides that a party submitting confidential business information in a textile or apparel safeguard proceeding must submit a non-confidential version of the information or a summary of the information.

Subtitle C—Cases Under Title II of the Trade Act of 1974

Subtitle C of title III implements the global safeguard provisions of the Agreement. It authorizes the President, in granting global import relief under the global safeguard provisions in sections 201 through 204 of the Trade Act of 1974 (19 U.S.C. §§ 2251–2254), to exclude imports of originating articles from the relief when certain conditions are present.

Sec. 331. Findings and action on goods of Panama

Section 331(a) provides that, if the Commission makes an affirmative determination, or a determination that the President may treat as an affirmative determination, in a global safeguard investigation initiated under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. § 2251 et seq.), the Commission must find and report to the President whether imports of the article from Colombia that qualify as originating goods under section 203(b) of the Implementation Act are a substantial cause of serious injury or threat thereof. Section 331(b) provides that, if the Commission makes a negative finding under section 331(a), the President may exclude the Colombian articles from the global safeguard action.

TITLE IV—PROCUREMENT

Sec. 401. Eligible products

This section amends section 308(4)(A) of the Trade Agreements Act of 1979 (19 U.S.C. § 2518(4)(A)) to implement the government procurement provisions of the Agreement.

TITLE V—EXTENSION OF ANDEAN TRADE PREFERENCE ACT

Section 501. Extension of Andean Trade Preference Act

Section 501(a)(1) of the implementing bill provides for an extension of ATPA benefits with respect to Colombia until July 31, 2013. Although Colombia's designation as a beneficiary country under ATPA will terminate on the date the Agreement enters into force, this extension will allow imports from Colombia to continue to benefit under the program until the earlier of such entry into force date or July 31, 2013.

Section 501(a)(2) provides for an extension of ATPA benefits with respect to Ecuador until July 31, 2013.

Section 501(b) provides for consequential time period adjustments for both Colombia and Ecuador. Section 501(c) provides for the retroactive application of duty-free treatment for entries from Colombia and Ecuador made after ATPA expired on February 12, 2011, and before the 15th day after the date of enactment of the Implementation Act (the effective date of the extension), if those entries would have qualified for duty-free treatment if they had been made on February 12, 2011.

TITLE VI—OFFSETS

Sec. 601. Elimination of Certain NAFTA Customs Fees Exemption

This section amends section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") to eliminate the current exemption from customs user fees for air and sea passengers arriving from Canada, Mexico, and the Caribbean. The amendment leaves in place the exemption for travelers arriving from U.S. territories and possessions.

Sec. 602. Extension of customs user fees

This section amends section 13031 of COBRA to extend from August 3, 2021 until September 30, 2021 the merchandise processing fees and from December 9, 2020 until August 31, 2021 the passenger and conveyance processing fees authorized under that act.

Sec. 603. Time for payment of corporate estimated taxes

This section increases the amount of the required installment of estimated tax otherwise due from a corporation with at least $1 billion in assets in July, August, or September 2016 by .50 percent. The bill reduces the next required installment to reflect the prior increase.

F. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that on October 11, 2011, S. 1641 was ordered favorably reported, without amendment, by a roll call vote of 18 ayes, 6 nays. Ayes: Baucus, Conrad (proxy), Bingaman, Kerry, Wyden, Cantwell, Nelson, Carper, Hatch, Grassley (proxy), Kyl (proxy), Crapo, Roberts, Enzi, Cornyn (proxy), Coburn (proxy), Thune, and Burr, (proxy). Nays: Rockefeller (proxy), Schumer (proxy), Stabenow, Menendez, Cardin, and Snowe (proxy).

II. BUDGETARY IMPACT OF THE BILL

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 12, 2011.

Hon. MAX BAUCUS,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1641, the United States-Colombia Trade Promotion Agreement Implementation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kalyani Parthasarathy.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

Summary: S. 1641 would approve the trade promotion agreement between the government of the United States and the government of Colombia that was signed on November 22, 2006. It would provide for tariff reductions and other changes in law related to imple-

mentation of the agreement. It also would retroactively extend the Andean Trade Preference Act (ATPA) from February 12, 2011, through July 31, 2013, while removing Colombia from eligibility for trade preferences under that program. The bill would extend user fees collected by Customs and Border Protection (CBP) that expire under current law, and remove an exemption from those fees for travelers to the United States from Mexico, Canada, and certain Caribbean countries. It also would shift some corporate income tax payments between fiscal years.

The Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT) estimate that enacting S. 1641 would reduce revenues by $139 million in 2012 and by about $1.5 billion over the 2012–2021 period. CBO estimates that enacting S. 1641 would decrease direct spending by $68 million in 2012 and by about $1.5 billion over the 2012–2021 period. The net impact of those effects is an estimated reduction in deficits of $22 million over the 2012–2021 period. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues.

Further, CBO estimates that implementing the legislation would result in discretionary costs of $4 million over the 2012–2016 period, assuming the availability of appropriated funds.

CBO has determined that the nontax provisions of S. 1641 contain no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), and would impose no costs on state, local, or tribal governments.

CBO has determined that the nontax provisions of the bill contain private-sector mandates with costs that would exceed the annual threshold established in UMRA for private-sector mandates ($142 million in 2011, adjusted annually for inflation).

JCT has determined that the tax provision of S. 1641 contains no private-sector or intergovernmental mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1641 is shown in the following table. The costs of this legislation fall within budget functions 150 (international affairs), 370 (commerce and housing credit), 750 (administration of justice), and 800 (general government).

Basis of estimate: For the purposes of this estimate, CBO assumes that S. 1641 will be enacted early in fiscal year 2012.

Revenues

Under the United States-Colombia trade promotion agreement, tariffs on U.S. imports from Colombia would be phased out over time. The tariffs would be phased out for individual products at varying rates, ranging from immediate elimination on the date the agreement enters into force to gradual elimination over 10 or more years. According to the U.S. International Trade Commission, the United States collected about $9 million in customs duties in 2010 on $16 billion of imports from Colombia. However, since 1991, imports to the United States from Colombia have been subject to reduced tariff rates in accordance with the ATPA, which was expanded in legislation enacted in 2002, and expired on February 12, 2011. The ATPA overlaps to a large extent with the trade promotion agreement that would be implemented by this bill. As a re-

sult, enacting the bill would effectively extend the ATPA for Colombia, while also lowering tariff rates not covered by the ATPA.

Based on expected imports from Colombia, CBO estimates that implementing the tariff schedule outlined in the U.S.-Colombia trade promotion agreement would reduce revenues by $55 million in 2012, and by about $1.4 billion over the 2012–2021 period, net of income and payroll tax offsets.

	By fiscal year, in millions of dollars—											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012–2016	2012–2021
CHANGES IN REVENUES												
Preferential Trade Agreement	−55	−100	−110	−122	−135	−148	−159	−171	−185	−199	−522	−1,384
Extend ATPA	−84	−19	0	0	0	0	0	0	0	0	−103	−103
Corporate Payment Shift	0	0	0	0	344	−344	0	0	0	0	344	0
Estimated Revenues	−139	−119	−110	−122	209	−492	−159	−171	−185	−199	−282	−1,488
CHANGES IN DIRECT SPENDING [a]												
Extend Customs User Fees:												
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	−754	0	−754
Estimated Outlays	0	0	0	0	0	0	0	0	0	−754	0	−754
Eliminate COBRA Fee Exemption:												
Estimated Budget Authority	−83	−111	−112	−113	−114	−116	−117	−118	−35	−80	−533	−999
Estimated Outlays	−83	−111	−112	−113	−114	−116	−117	−118	−35	−80	−533	−999
Exemption from Merchandise Processing Fee:												
Estimated Budget Authority	15	26	28	29	30	32	34	35	10	5	128	243
Estimated Outlays	15	26	28	29	30	32	34	35	10	5	128	243
Total, Direct Spending [a] Estimated Budget:												
Authority	−68	−85	−84	−84	−84	−84	−83	−83	−25	−829	−405	−1,510
Estimated Outlays	−68	−85	−84	−84	−84	−84	−83	−83	−25	−829	−405	−1,510
NET INCREASE OR DECREASE (−) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND RECEIPTS												
Impact on Deficit	71	34	26	38	−293	408	76	88	160	−630	−123	−22

Source: Congressional Budget Office and the staff of the Joint Committee on Taxation.
Note: Components may not sum to totals because of rounding.
ATPA = Andean Trade Preference Act; COBRA = Consolidated Omnibus Budget Reconciliation Act.
a. In addition, CBO estimates that implementing the provisions of S. 1641 would have a discretionary cost of $4 million over the 2012–2016 period, assuming appropriation of the necessary amounts.

This estimate includes the effects of increased imports from Colombia that would result from the reduced prices of imported products in the United States, reflecting the lower tariff rates. It is likely that some of the increase in U.S. imports from Colombia would displace imports from other countries. In the absence of specific data on the extent of this substitution effect, CBO assumes that an amount equal to one-half of the increase in U.S. imports from Colombia would displace imports from other countries.

The Generalized System of Preferences, which allows duty-free importation of a wide range of products from 129 countries, including Colombia, expired on December 31, 2010. If those preferences were extended through July 13, 2013, in other legislation enacted prior to S. 1641 (such as in H.R. 2832 as passed by the Senate on September 22, 2011), then the revenue loss from implementing the tariff reductions in S. 1641 would be reduced by $6 million over the 2012–2021 period, to $1.378 billion instead of $1.384 billion.

Under S. 1641, the ATPA trade preferences, which expired on February 12, 2011, would be extended, retroactively, for each of the beneficiary countries: Colombia and Ecuador. (The free trade agreement with Peru supersedes that country's ATPA preferences. Bolivia, which had been a member country in previous years, had its eligibility revoked in June 2009.) The preferences would be extended from February 12, 2011, through July 31, 2013, with Colombia losing its eligibility for ATPA preferences upon enactment of the trade promotion agreement. CBO estimates that the retroactive extension of the ATPA preferences, including removing Colombia for eligibility, would reduce revenues from customs duties by $84 million in 2012, including refunds of duties paid by importers in 2011, and $19 million in 2013, net of income and payroll tax offsets.

S. 1641 also would shift payments of corporate estimated taxes between fiscal years 2016 and 2017. For corporations with at least $1 billion in assets, the bill would increase the portion of corporate estimated payments due from July through September of 2016. JCT estimates that this change would increase revenues by $344 million in 2016 and decrease revenues by $344 million in 2017.

Direct Spending

Under current law, user fees collected by CBP will expire in January of 2020. The bill would permit CBP to collect COBRA fees (which were established in the Consolidated Omnibus Budget Reconciliation Act of 1985) from December 9, 2020, through August 31, 2021, and to collect merchandise processing fees from August 3, 2021, through September 30, 2021. CBO estimates that those changes would increase offsetting receipts (a credit against direct spending) by about $750 million in 2021.

Under current law, certain travelers arriving in the United States from Mexico, Canada, and some Caribbean countries are exempt from paying COBRA fees; the bill would remove this exemption. CBO estimates that this would increase offsetting receipts by about $1 billion over the 2012–2021 period.

In addition, the bill would exempt imports from Colombia from merchandise processing fees. CBO estimates that this would reduce offsetting receipts by about $130 million over the five-year period and by $245 million over the 10-year period.

Spending Subject to Appropriation

Implementing provisions of S. 1641 would increase the costs of several agencies affected by the bill including:

- The Department of Commerce to provide administrative support for dispute-settlement panels established in the agreement,
- The International Trade Commission to conduct investigations, if petitioned, into whether Colombian imports might threaten or cause serious injury to domestic competitors, and
- The Department of the Treasury and the United States Trade Representative to establish regulations to carry out provisions of the agreement.

Based on information from the agencies, CBO estimates that these activities would cost $4 million over the 2012–2016 period, assuming appropriation of the necessary amounts.

Pay-As-You-Go Considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 1641 AS ORDERED REPORTED BY THE SENATE COMMITTEE ON FINANCE ON OCTOBER 11, 2011

	By fiscal year, in millions of dollars—											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012–2016	2012–2021
	NET INCREASE OR DECREASE (−) IN THE DEFICIT											
Statutory Pay-As-You-Go Impact	71	34	26	38	−293	408	76	88	160	−630	−123	−22
Memorandum:												
Changes in Revenues	−139	−119	−110	−122	−209	−492	−159	−171	−185	−199	−282	−1,488
Changes in Outlays	−68	−85	−84	−84	−84	−84	−83	−83	−25	−829	−405	−1,510

Estimated impact on state, local, and tribal governments: CBO has determined that the nontax provisions of S. 1641 contain no intergovernmental mandates as defined in UMRA, and would impose no costs on state, local, or tribal governments. JCT has determined that the tax provision of the bill contains no intergovernmental mandates as defined in UMRA.

Estimated impact on the private sector: CBO has determined that the nontax provisions of S. 1641 would impose private-sector mandates, as defined in UMRA, by extending the customs user fees, increasing merchandise processing fees, and by enforcing new record-keeping requirements. CBO estimates that the aggregate costs of those mandates would exceed the annual threshold established in UMRA for private-sector mandates ($142 million in 2011, adjusted annually for inflation). JCT has determined that the tax provision of S. 1641 contains no private-sector mandates as defined in UMRA.

Previous CBO estimate: On October 5, 2011, CBO transmitted a cost estimate for H.R. 3078, the United States-Colombia Trade Promotion Agreement Implementation Act, as ordered reported by the House Committee on Ways and Means on October 5, 2011. S. 1641 and H.R. 3078 are similar, and the CBO cost estimates are the same.

Estimate prepared by: Federal Revenues: Kalyani Parthasarathy; Federal Spending: Sunita D'Monte, Mark Grabowicz, Matthew Pickford, and Susan Willie; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: Marin Randall.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis; Frank Sammartino, Assistant Director for Tax Analysis.

III. REGULATORY IMPACT OF THE BILL AND OTHER MATTERS

Pursuant to the requirements of paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee states that the bill will not significantly regulate any individuals or businesses, will not affect the personal privacy of individuals, and will result in no significant additional paperwork.

The following information is provided in accordance with the Unfunded Mandates Reform Act of 1995 ("UMRA") (Pub. L. No. 104–04). The Committee has reviewed the provisions of S. 1641 as approved by the Committee on October 11, 2011. In accordance with the requirements of UMRA, the Committee has determined that the bill contains no intergovernmental mandates, as defined in the UMRA, and will not affect the budgets of State, local, or tribal governments. The Committee has determined that S. 1641 would impose private-sector mandates, as defined in UMRA, by extending customs user fees, increasing merchandise processing fees, and enforcing new record-keeping requirements. CBO estimates that the aggregate costs of those mandates would exceed the annual threshold established in UMRA for private-sector mandates ($142 million in 2011, adjusted annually for inflation).

IV. ADDITIONAL VIEWS OF RANKING MEMBER ORRIN G. HATCH AND SENATOR JON KYL

Several elements of this report deserve significant elaboration. The May 10, 2007 agreement (May 10th Agreement) negotiated by some in Congress and the Bush Administration was intended to secure votes for the four free trade agreements (FTAs) with Colombia, Panama, Peru, and South Korea, but it did not reflect an agreement on a new trade policy as the Majority contends. We were not part of the negotiations of these new provisions. We continue to harbor misgivings over several aspects of these changes, including in the areas of labor, the environment, and intellectual property. The May 10th Agreement, however, failed—as only a vote on Peru was allowed by Democrat congressional leaders during the 110th Congress—and the other three FTAs had to wait for more than four years before a vote was secured. The Bush administration and the governments of Colombia, Panama, Peru, and South Korea upheld their ends of the bargain by incorporating the May 10th Agreement changes into each FTA, but the Democrat leadership of Congress refused to honor its part of the May 10th Agreement and allow a vote on any of the three remaining FTAs. The Obama administration continued this pattern of delay for nearly three years.

In the area of labor, the revised Colombia FTA incorporates binding labor obligations predicated upon norms contained in the International Labor Organization Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998) (ILO Declaration). Over the years, we have expressed serious concerns that by incorporating binding dispute resolution for obligations which rely upon amorphous and ever-evolving standards set by an international organization, our labor chapters potentially expose the United States to risk of sanction—especially if these standards were to be construed expansively in the context of dispute resolution. Unfortunately, we believe that recent actions by the Obama administration are compounding this risk.

Labor provisions in our existing trade agreements are being interpreted by the Obama administration in a manner which appears to be increasingly divorced from any nexus to trade. Expansive interpretations of the labor obligations contained in trade agreements, and the blurring of their nexus to trade, risk setting precedents which could result in unintended consequences for the United States in the context of future labor-related disputes.

The purpose of trade agreements is to foster increased growth in the economy of the United States and those of our trading partners, which in turn, helps raise the standards of living for U.S. and foreign workers. Assessing trade sanctions for labor violations is counterproductive as it impedes economic growth in the United

States and the partner country, thereby punishing the very workers it purports to assist.

Rather than seeking to punish countries and their workers for labor protections deemed to be inadequate, the United States should be encouraging the development of capacity-building and technical assistance programs that more effectively improve labor conditions on the ground in poor developing countries. We should work to ensure that the labor provisions in the Colombia FTA, and any substantive labor obligations in future trade agreements: (1) are clear and narrowly tailored so as not to expose the United States to the risk of retaliatory sanctions; (2) are not used as a means to change U.S. labor law indirectly by potentially binding the United States to international standards that exceed current U.S. law; (3) allow flexibility for the United States and our trading partners to adopt and change labor laws as needed; (4) are closely linked to trade; (5) actually help workers both in the United States and abroad; and (6) do not unduly impede U.S. businesses operating in markets abroad.

The Committee report asserts that the intellectual property rights (IPR) provisions in the Colombia FTA were revised under the May 10th Agreement to "balance the need for access to medicines with patent protections for pharmaceutical products". We do not believe that is what occurred. On the contrary, these new provisions impede the development of new treatments and cures, while putting an important, world-leading, and job-creating U.S. industry at a disadvantage.

First, the Colombia FTA makes patent linkage optional. Linkage requires a country, before it approves a generic medicine for sale, to ensure that the brand-name medicine is no longer under patent. Without linkage, governments can help facilitate patent infringement. Linkage doesn't hinder access to medicines and is simply about protecting basic patent rights. The changes to the Colombia FTA replace this simple enforcement procedure with a complex one.

Second, in certain circumstances, the changes shorten the period of data exclusivity for innovative medicines, authorizing a shorter period than we require here in the United States. This change is not only unfair to U.S. innovators but devalues the incentive for launching new drugs in developing countries. In developing countries, it is often difficult to enforce patent rights. But data protection is effective and relatively easy to administer. It often provides the only real protection biopharmaceutical companies have when they invest significant resources to launch new products. You take away the protection and you take away the incentive to launch.

Finally, the template no longer requires countries to add time to patent terms for pharmaceuticals to make up for undue delays in marketing approval or patent grant. The United States requires patent restoration, so why not require the same abroad? Critics argue that patent terms are long enough as they are. But without patent term restoration, we actually move IPR protection in the other direction. Without patent term restoration, the effective patent term could actually shrink significantly.

Some argue that strong intellectual property rights protection result in some countries having poor health care. We strongly disagree. In many of these poor countries, IPR protection for pharma-

ceuticals and medical devices is weak at best. On top of that, the vast majority of drugs on the World Health Organization's (WHO) essential medicines list are not protected by patent. The fact is that without IPR protection, there would be few medicines for anyone to access.

Poor infrastructure, high taxes and tariffs, ineffective health care systems, and misplaced government funding priorities are far more acute problems when it comes to access to medicine. To cite one example, until 2005, India did not grant product patents for pharmaceuticals. Yet India's access to medicines was woeful. WHO statistics indicate that only 20 percent of India's population had access to unpatented essential medicines from 2000–2007. Access remains a challenge in India today, despite the fact that more than 95 percent of the medicines available in India are not covered by patents. As we continue to strive to achieve the appropriate balance between innovation and access to medicines, we hope that the Obama and future administrations will take these factors into consideration.

Finally, we would note our extreme disappointment in President Obama's unprecedented delay in sending the Colombia FTA to Congress for our consideration. For far too long, U.S. workers, innovators, and farmers have been barred from taking advantage of this trade agreement. While the United States delayed, others countries entered into trade agreements with Colombia that gave their workers better access to its growing market. We hope the Finance Committee will continue working together to ensure that future agreements are considered expeditiously.

ADDITIONAL VIEWS OF SENATOR CHUCK GRASSLEY

The Majority has stated that, "On May 10, 2007, the Bush Administration and the bipartisan leadership of the U.S. Senate Committee on Finance and the U.S. House of Representatives Committee on Ways and Means reached an agreement on trade policy." However, as Ranking Member of the Finance Committee during that time period, I strongly disagree with the Majority's statement that the agreement was an agreement "on trade policy." The Majority's terminology implies the terms of the agreement reached on May 10, 2007 with President Bush are somehow now the blueprint for future trade agreements. This is not the case. The May 10th agreement was made out of necessity by President Bush as he attempted to gain support from the democratically-controlled Congress for approving the South Korea, Panama, Peru, and Colombia trade agreements. As I expressed at the time, I have reservations about many of the provisions included in the May 10th agreement, including the terms regarding labor, environment, and intellectual property. I continue to have reservations about the May 10th provisions. Most, if not all, of the members on our side do not see the May 10th provisions as part of a blueprint for future trade agreements. Those provisions were part of a bargain between President Bush and Democrat leaders in Congress, for those specific free trade agreements at the time, not an "agreement on trade policy" as the Majority suggests.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

SECTION 13031 OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) * * *

(b) LIMITATIONS ON FEES.—(1)(A) Except as provided in subsection (a)(5)(B) of this section, no fee may be charged under subsection (a) of this section for customs services provided in connection with—

[(i) the arrival of any passenger whose journey—

[(I) originated in—

[(aa) Canada,

[(bb) Mexico,

⟦(cc) a territory or possession of the United States, or

⟦(dd) any adjacent island (within the meaning of section 101(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(5))), or

⟦(II) originated in the United States and was limited to—

⟦(aa) Canada,

⟦(bb) Mexico,

⟦(cc) territories and possessions of the United States, and

⟦[dd) such adjacent islands;]

(i) the arrival of any passenger whose journey—

(I) originated in a territory or possession of the United States; or

(II) originated in the United States and was limited to territories and possessions of the United States;

* * * * * * *

(20) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 203 of the United States-Colombia Trade Promotion Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

* * * * * * *

(j) EFFECTIVE DATES.—(1) * * *

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(3)(A) * * *

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(C)(i) Notwithstanding subparagraph (A), fees may be charged under paragraphs (9) and (10) of subsection (a) during the period beginning on August 3, 2021, and ending on September 30, 2021.

(ii) Notwithstanding subparagraph (B)(i), fees may be charged under paragraphs (1) through (8) of subsection (a) during the period beginning on December 9, 2020, and ending on August 31, 2021.

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TARIFF ACT OF 1930

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TITLE IV— ADMINISTRATIVE PROVISIONS

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Part III—Ascertainment, Collection, and Recovery of Duties

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SEC. 508. RECORDKEEPING.

(a) * * *

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(j) CERTIFICATION OF ORIGIN FOR GOODS EXPORTED UNDER THE UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT.—

(1) Definitions—In this subsection:

(A) RECORDS AND SUPPORTING DOCUMENTS.—the term "records and supporting documents" means, with respect to an exported good under paragraph (2), records and documents related to the origin of the good, including—

(i) the purchase, cost, and value of, and payment for, the good;

(ii) the purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) the production of the good in the form in which it was exported.

(B) CTPA CERTIFICATION OF ORIGIN.—The term "CTPA certification of origin" means the certification established under article 4.15 of the United States-Colombia Trade Promotion Agreement that a good qualifies as an originating good under such Agreement.

(2) EXPORTS TO COLOMBIA.—Any person who completes and issues a CTPA certification of origin for a good exported from the United States shall make, keep, and, pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection all records and supporting documents related to the origin of the good (including the certification or copies thereof).

(3) RETENTION PERIOD.—The person who issues a CTPA certification of origin shall keep the records and supporting documents relating to that certification of origin for a period of at least 5 years after the date on which the certification is issued.

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SEC. 514. PROTEST AGAINST DECISIONS OF THE CUSTOMS SERVICE.

(a) * * *

* * * * * * *

(k) DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER THE UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT.—If U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement of the Department of Homeland Security finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin provided for in section 203 of the United States-Colombia Trade Promotion Agreement Implementation Act, U.S. Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the United States-Colombia Trade Promotion Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until U.S. Cus-

toms and Border Protection determines that representations of that person are in conformity with such section 203.

* * * * * * *

SEC. 520. REFUNDS AND ERRORS.

(a) * * *

* * * * * * *

(d) GOODS QUALIFYING UNDER FREE TRADE AGREEMENT RULES OF ORIGIN.—Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act, section 202 of the United States-Chile Free Trade Agreement Implementation Act, section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, section 202 of the United States-Oman Free Trade Agreement Implementation Act, [or] section 203 of the United States-Peru Trade Promotion Agreement Implementation Act [for which], *or section 203 of the United States-Colombia Trade Promotion Agreement Implementation Act for which* no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—

(1) * * *

* * * * * * *

PART V—ENFORCEMENT PROVISIONS

* * * * * * *

SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.

(a) * * *

* * * * * * *

(c) MAXIMUM PENALTIES.—

(1) * * *

* * * * * * *

(12) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT.—An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 203 of the United States-Colombia Trade Promotion Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing with respect to that good.

* * * * * * *

(k) FALSE CERTIFICATIONS OF ORIGIN UNDER THE UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT.—

(1) IN GENERAL.—Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a CTPA certification of origin (as defined in section 508 of this Act) that a good exported from the United States qualifies as an originating good under the rules of origin provided for in section 203 of the United States-Colombia Trade Promotion Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of this subsection.

(2) PROMPT AND VOLUNTARY DISCLOSURE OF INCORRECT INFORMATION.—No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a CTPA certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

(3) EXCEPTION.—A person shall not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a CTPA certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

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TRADE ACT OF 1974

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TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

CHAPTER 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

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SEC 202. INVESTIGATIONS, DETERMINATIONS, AND RCOMMENDATIONS BY COMMISSION.

(a) PETITIONS AND ADJUSTMENT PLANS.—

(1) * * *

* * * * * * *

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 shall apply with respect to information received by the Commission in the course of investigations conducted under this chapter, part 1 of title III of the North American Free Trade Agreement Implementation Act, title II of the United States-Jordan Free Trade Area Implementation Act, title III of the United States-Chile Free Trade Agreement Implementation Act, title III of the United States-Singapore Free Trade Agreement Implementation Act, title III of the United

States-Australia Free Trade Agreement Implementation Act, title III of the United States-Morocco Free Trade Agreement Implementation Act, title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, title III of the United States-Bahrain Free Trade Agreement Implementation Act, title III of the United States-Oman Free Trade Agreement Implementation Act, [and] title III of the United States-Peru Trade Promotion Agreement Implementation Act, *and title III of the United States-Colombia Trade Promotion Agreement Implementation Act*. The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

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TRADE AGREEMENTS ACT OF 1979

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TITLE III—GOVERNMENT PROCUREMENT

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SEC. 308. DEFINITIONS.

As used in this title—

(1) * * *

* * * * * * *

(4) ELIGIBLE PRODUCTS.—

(A) IN GENERAL.—The term "eligible product" means, with respect to any foreign country or instrumentality that is—

(i) * * *

* * * * * * *

* * * * * * *

(ix) a party to the United States-Colombia Trade Promotion Agreement, a product or service of that country or instrumentality which is covered under that agreement for procurement by the United States.

* * * * * * *

ANDEAN TRADE PREFERENCE ACT

TITLE II—TRADE PREFERENCE FOR THE ANDEAN REGION

* * * * * * *

SEC. 204. ELIGIBLE ARTICLES.

(a) * * *

(b) EXCEPTIONS AND SPECIAL RULES.—

(1) * * *

* * * * * * *

(3) APPAREL ARTICLES AND CERTAIN TEXTILE ARTICLES.—

(A) * * *

(B) COVERED ARTICLES.—The apparel articles referred to in subparagraph (A) are the following:

(i) * * *

* * * * * * *

(iii) APPAREL ARTICLES ASSEMBLED IN 1 OR MORE ATPDEA BENEFICIARY COUNTRIES FROM REGIONAL FABRICS OR REGIONAL COMPONENTS.—(I) * * *

(II) The preferential treatment referred to in subclause (I) shall be extended in the 1-year period beginning October 1, 2002, and in each of the [8 succeeding 1-year periods] *10 succeeding 1-year periods*, to imports of apparel articles in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

(III) For purposes of subclause (II), the term "applicable percentage" means—

(aa) * * *

(bb) for the 1-year period beginning October 1, 2007 【and for the succeeding 3-year period】 *and for the succeeding 5-year period,* the percentage determined under item (aa) for the 1-year period beginning October 1, 2006.

* * * * * * *

(v) CERTAIN OTHER APPAREL ARTICLES.—

(I) * * *

(II) LIMITATION.—During the 1-year period beginning on October 1, 2003, and during each of the 【7 succeeding 1-year periods】 *9 succeeding 1-year periods,* apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under this paragraph only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligi-

ble under this clause during the preceding 1-year period.

* * * * * * *

(E) BILATERAL EMERGENCY ACTIONS.—

(i) * * *

(ii) RULES RELATING TO BILATERAL EMERGENCY ACTION.—For purposes of applying bilateral emergency action under this subparagraph—

(I) * * *

(II) the term "transition period" in section 4 of the Annex shall mean the period ending [February 12, 2011] *July 31, 2013*; and

* * * * * * *

SEC. 208. TERMINATION OF PREFERENTIAL TREATMENT.

(a) IN GENERAL.—No duty-free treatment or other preferential treatment extended to beneficiary countries under this title shall—

(1) remain in effect—

(A) with respect to Colombia after [February 12, 2011] *July 31, 2013*; and

* * * * * * *

(2) remain in effect with respect to Ecuador after June 30, 2009, except that duty-free treatment and other preferential treatment under this title shall remain in effect with respect to Ecuador during the period beginning on July 1, 2009, and ending on [February 12, 2011] *July 31, 2013,* unless the President reviews the criteria set forth in section 203, and on or before June 30, 2009, reports to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives pursuant to subsection (b) that—

(A) * * *

* * * * * * *