

ANNEX II

Schedule of Colombia

1. Sector: **Certain Sectors**

Obligations Concerned: Market Access (Article 11.4)

Cross-Border Services

Colombia reserves the right to adopt or maintain any measure that impose limitations on

Description:

- investigation and security services and research and development services;
- the establishment of exclusive areas for services incidental to energy distribution in order to ensure universal service;
- distribution services - wholesale and retail services in sectors in which the government establishes a monopoly, pursuant to Article 336 of the Constitución Política de Colombia, with revenue to be dedicated for public or social services. As of the date of signing of this Agreement, Colombia has in place monopolies only with respect to liquor and games of chance;
- primary and secondary education services, and the requirement of a specific type of legal entity for higher education services;
- environmental services established or maintained for a public purpose;
- health related and social services, and professional services related with health;
- libraries, archives and museums;
- sporting and other recreational services;
- the number of concessions and the total number of service operations for road transportation passenger services, for passenger and freight rail transportation services, pipeline transport, services auxiliary to all modes of transport and other transport services;

For greater certainty, no measure shall be inconsistent with Colombia's obligations under Article XVI of GATS.

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2. Sector: **All Sectors**

Obligations Concerned: National Treatment (Article 10.3)

Investment

Description: Colombia reserves the right to adopt or maintain any measure related to ownership of real property by foreigners in the border regions⁽¹⁾, national coasts⁽²⁾, or the insular territory.

⁽¹⁾ Border region is a zone of two (2) kilometers in width, parallel to the border line

⁽²⁾ National coast is an area of two (2) kilometers in width, parallel to the line of the highest tide.

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3. Sector: All Sectors
Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

Investment and Cross Border Services

Colombia reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Description: Colombia reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

- a) aviation;
- b) fisheries;
- c) maritime matters, including salvage.

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4. Sector: **Social Services**

Obligations Concerned: National Treatment (Article 10.3 and 11.2)
Most-Favored-Nation Treatment (Article 10.4 and 11.3)
Market Access (Article 11.4)
Local Presence (Article 11.5)
Performance Requirements (Article 10.9)
Senior Management and Board of Directors (Article 10.10)

Investment and Cross Border Services

Description: Colombia reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: social readaptation, income security or insurance, social security⁽¹⁾, social welfare, public training and education, health and child care.

⁽¹⁾ For greater certainty, the social security system (Sistema de Seguridad Social Integral) in Colombia is currently comprised of the following mandatory systems: pensions (Sistema General de Pensiones), health insurance (Sistema General de Seguridad Social en Salud), workers compensation (Sistema General de Riegos Profesionales) and severance pay (Régimen de Cesantía y Auxilio de Cesantía).

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5. Sector: **Issues related to minorities and ethnic groups**

Obligations Concerned: National Treatment (Articles 10.3 and 11.2)
Market Access (Article 11.4)
Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
Local Presence (Article 11.5)
Performance Requirements (Article 10.9)
Senior Management and Board of Directors (Article 10.10)

Investment and Cross Border Services

Description: Colombia reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities and ethnic groups including with respect to the communal lands held by ethnic groups in accordance with Art. 63 of the Constitution. The ethnic groups in Colombia are: indigenous and ROM (gypsy) people, afro-Colombian communities and the raizal community of the Archipelago of San Andres, Providencia and Santa Catalina.

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6. Sector: **Cultural industries and activities**
Obligations Concerned: National Treatment (Articles 10.3 and 11.2)
Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

Investment and Cross Border Services

For the purposes of this entry, the term “cultural industries and activities” means:

- (a) Publication, distribution, or sale of books, magazines, periodical publications, or printed or electronic newspapers, excluding the printing and typesetting of any of the foregoing;
- (b) Production, distribution, sale or display of recordings of movies or videos;
- (c) Production, distribution, sale or display of music recordings in audio or video format;
- (d) Production and presentation of performing arts;
- (e) Production and exhibition of visual arts;
- (f) Production, distribution, or sale of printed music scores, or scores readable by machines;
- (g) Design, production, distribution and sale of handicrafts;
- (h) Radiobroadcasts aimed at the public in general, as well as all radio, television, and cable television-related activities, satellite programming services, and broadcasting networks; or

Description:

Colombia reserves the right to adopt or maintain any measure giving preferential treatment to persons of other countries pursuant to any agreement between Colombia and such other countries containing specific commitments regarding cultural cooperation or co-production by cultural industries or activities.

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For greater certainty, articles 10.3, 10.4 or chapter 11 do not apply to “government support”² for the promotion of cultural industries or activities.

Colombia may adopt or maintain any measure that affords a person of another Party the treatment that is afforded to Colombian persons in the audiovisual, publishing, and music sectors by that other Party.

² For purposes of this entry “government support” means tax incentives, incentives on mandatory contributions, government grants, government supported loans, guaranties, trusts, or insurance provided by government, irrespective of whether a private entity is wholly or partially responsible for its management. However, a measure is not covered by this entry to the extent that it is inconsistent with Article 22.3 (Taxation).

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7. Sector:
Jewelry design
Performing arts
Music
Visual arts
Publishing

Obligations Concerned: National Treatment (Article 11.2)
Performance Requirements (Article 10.9)

Investment and Cross Border Services

Description: Colombia reserves the right to adopt or maintain any measure conditioning the receipt or continued receipt of government support² for the development and production of jewelry design, performing arts, music, visual arts, and publishing on the recipient achieving a given level or percentage of domestic creative content.

For greater certainty, this entry does not apply to advertising.

² As defined in the footnote to the previous entry.

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8. Sector: **Handicraft industries**

Obligations Concerned: National Treatment (Article 11.2)
Performance Requirements (Article 10.9)

Investment and Cross Border Services

Description: Colombia reserves the right to adopt or maintain any measure relating to the design, distribution, retailing, or exhibition of handicrafts that are identified as handicrafts of Colombia.

Performance requirements shall in all cases be consistent with the WTO Agreement on Trade-Related Investment Measures.

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9. Sector: **Audiovisual**
Advertising

Obligations Concerned: National Treatment (Article 11.2)
Performance Requirements (Article 10.9)

Investment and Cross Border Services

Cinematographic Works

- (a) Colombia reserves the right to adopt or maintain any measure whereby a specified percentage (not to exceed 15 per cent) of the total cinematographic works shown on an annual basis in cinemas or exhibition rooms in Colombia consist of Colombian cinematographic works. In establishing such percentage, Colombia shall take into account factors including the national cinematographic conditions of production, the existing exhibition infrastructure in the country and attendance averages.

Cinematographic Works over Free-to-Air Television

Description:

- (b) Colombia reserves the right to adopt or maintain any measure whereby a specified percentage (not to exceed 10 per cent) of the total cinematographic works shown on an annual basis on free-to-air television channels consists of Colombian cinematographic works. In establishing such percentage, Colombia shall take into account the availability of national cinematographic works for free-to-air television. Such works will count towards the domestic content requirements applied to the channel in paragraph 5 of Entry 20 of Annex I.

Community Television¹

- (c) Colombia reserves the right to adopt or maintain any measure whereby a specified portion of weekly programming for community television (not to exceed 56 hours per week) consists of national programming produced by the community television operator.

Multichannelled Free-to-Air Commercial Television

¹ As defined in Acuerdo 006 de 1999.

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- (d) Colombia reserves the right to impose the minimum programming requirements appearing in Entry 25 of Annex I on multichannelled free-to-air commercial television, except that such requirements may not be imposed on more than two channels or 25 per cent of the total number of channels (whichever is greater) made available by an individual service provider.

Advertising

- (e) Colombia reserves the right to adopt or maintain any measure requiring that a specific percentage (not to exceed 20 per cent) of total advertising orders placed annually with media services companies established in Colombia, other than periodicals, journals, and subscription services with headquarters outside Colombia, be produced and created in Colombia. Any such measure shall not apply to: (i) the advertising of upcoming movies in cinemas or exhibition rooms; and, (ii) any media where the programming or content originates outside Colombia or to the rebroadcast or to the retransmission of such programming within Colombia.

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10. Sector: **Traditional expressions**

Obligations Concerned: National Treatment (Articles 10.3 and 11.2)

Investment and Cross-Border Services

Description: Colombia reserves the right to adopt or maintain any measure according to rights or preferences to local communities with respect to the support and development of expressions relating to intangible cultural patrimony declared pursuant to Resolución No. 0168 de 2005.

Any such measures shall not be inconsistent with Chapter Sixteen (Intellectual Property Rights).

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11. Sector: **Interactive audio and/or video services**

Obligations Concerned: National Treatment (Article 11.2)
Performance Requirements (Article 10.9)

Investment and Cross-Border Services

Description:

1. Subject to paragraphs 2 and 3, Colombia reserves the right to adopt or maintain measures to ensure that, upon a finding by the Government of Colombia that Colombian audiovisual content is not readily available to Colombian consumers, access to Colombian audiovisual content programming through interactive audio and/or video services is not unreasonably denied to Colombian consumers.

2. Colombia shall publish in advance any measures that it proposes to adopt addressing the unreasonable denial of access to Colombian audiovisual content through interactive audio and/or video services and shall provide interested persons a reasonable opportunity to comment. At least 90 days before any proposed measure is adopted, Colombia shall notify the other Parties of the proposed measure. The notification shall provide information with respect to the proposed measure, including information that forms the basis for the Government of Colombia's determination that Colombian audiovisual content is not readily available to Colombian consumers and a description of the proposed measure. Such measures must be consistent with Colombia's obligations under the GATS.

3. A Party may request consultations with Colombia regarding the proposed measure. Colombia shall begin consultations with the requesting Party within 30 days of the receipt of the request. Colombia may exercise its right under paragraph 1 only if, as a result of these consultations: (i) the requesting Party agrees that Colombian audiovisual content is not readily available to Colombian consumers and that the proposed measure is based on objective criteria and has the least trade restrictive impact possible; (ii) Colombia agrees that the measure would be applied only to a service supplied in Colombia by a company established in Colombia; and (iii) the requesting Party and Colombia agree on trade-liberalizing compensation in the same sector affected by the measure.

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12. Sector: **Professional services excluding accountants and travel agents**

**Obligations
Concerned:** National Treatment (Article 11.2)
Local Presence (Article 11.5)
Market Access (Article 11.4)

Cross Border Services

Description:

Colombia reserves the right to adopt or maintain any measure that would allow a professional who is a national of the United States to practice only to the extent that the regional jurisdiction of the United States in which that professional conducts his or her primary practice affords treatment consistent with the obligations referenced in this entry to a Colombian national who otherwise satisfies the relevant authorization, licensing or certification requirements to practice that profession. Notwithstanding the preceding sentence, Colombia shall permit such professionals who were practicing in its territory prior to the date of entry into force of this Agreement in accordance with Colombian law to continue practicing in accordance with the existing law.

For purposes of this entry, the regional jurisdiction of the United States in which that professional conducts his or her primary practice is the territory or a regional level of government within which the professional was licensed to practice and actually practiced most frequently in the preceding 12 – month period.

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13. Sector: **Road and fluvial transport**

**Obligations
Concerned:** Most Favored Nation Treatment (Article 11.3)

Cross Border Services

Description: Colombia reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement signed after the date of entry into force of this Agreement involving road and fluvial transport services.

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14. Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3)

Investment

1. Colombia reserves the right to adopt any measure for reasons of public order pursuant to Article 100 of the *Constitución Política de Colombia (1991)*, provided that Colombia promptly provides written notice to each other Party that it has adopted the measure and that the measure:

(a) is applied in accordance with the procedural requirements set out in the *Constitución Política de Colombia (1991)* and its implementing legislation, such as the requirements set out in Articles 213, 214, and 215 of the *Constitución Política de Colombia (1991)* and in *Ley 137 de 1994*;

(b) is adopted or maintained only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society;

Description:

(c) is not applied in an arbitrary or unjustifiable manner;

(d) does not constitute a disguised restriction on investment; and

(e) is necessary and proportional to the objective it seeks to achieve.

2. Without prejudice to any claim that may be submitted to arbitration pursuant to Article 10.16.1, a claimant may submit to arbitration under Section B of Chapter 10 a claim that:

(a) Colombia has adopted a measure for which it has provided notice pursuant to paragraph 1; and

(b) the claimant or, as the case may be, an enterprise of Colombia that is a juridical person that the claimant owns or controls directly or indirectly, has incurred loss or damage by reason of, or arising out of, the measure.

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In the event of such a claim, Section B shall apply, *mutatis mutandis*, and all references in Section B to a breach, or to an alleged breach, of an obligation under Section A shall be understood to refer to the measure, which would constitute a breach of an obligation under Section A but for this entry. However, no award may be made in favor of the claimant if Colombia establishes to the satisfaction of the tribunal that the measure satisfies all the conditions listed in subparagraphs (a) through (e) of paragraph 1.

3. (a) Following receipt of the notice referred to in paragraph 1, a Party may request in writing the establishment of an arbitral panel to consider whether the measure referred to in paragraph 1 satisfies all of the conditions listed in subparagraphs (a) through (e) of that paragraph. The Party shall deliver the request to the other Parties. An arbitral panel shall be established upon delivery of the request.
- (b) Any other Party may join the arbitral panel proceedings as a complaining Party on delivery of written notice to the other Parties.² The notice shall be delivered at the earliest possible time, and in any event no later than seven days after the date of the request referred to in subparagraph (a).
- (c) Unless otherwise agreed by the disputing Parties, only the dispute settlement provisions of Chapter 21 (Dispute Settlement) referred to in this subparagraph shall apply to the panel proceedings:
 - (i) the panel shall be selected and perform its functions in a manner consistent with the provisions of Chapter 21 (Dispute Settlement) and the Model Rules of Procedure, except that Article 21.10.4 through 21.10.6 shall not apply;
 - (ii) in lieu of Article 21.10.4, the terms of reference shall be:

“To examine, in light of the relevant provisions of Colombia’s Annex II entry on public order, the

² For greater certainty, this subparagraph is without prejudice to Article 21.2.2 (Dispute Settlement)

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matter referenced in the panel request and to make a determination as to whether the measure referred to in paragraph 1 of Colombia's entry satisfies all the conditions listed in subparagraphs (a) through (e) of that paragraph, and to deliver the written reports referred to in paragraph 3(c)(iii) of Colombia's entry and Article 21.14."

and Colombia shall bear the burden of proof; and

- (iii) the dispute settlement provisions of Articles 21.11 through 21.14 shall apply, *mutatis mutandis*, except that in lieu of Article 21.13.3, the panel shall, within 75 days after the last panelist is selected, present to the disputing Parties an initial report containing its determination.
- (d) If the panel established under subparagraph (a) determines in its final report that the measure does not satisfy all the conditions listed in paragraph 1(a) through (e), a Party may provide to Colombia a written request to enter into consultations with a view to developing mutually acceptable compensation to the extent that the measure would have been inconsistent with Article 10.3 but for this entry.
- (e) Promptly after receiving a request under subparagraph (d), Colombia shall enter into consultations with the Party.
- (f) If within 30 days of the Party's request for consultations under subparagraph (d) Colombia and the Party are unable to agree on compensation, the Party may provide Colombia written notice of its intent to suspend the application of benefits of equivalent effect. Such notice shall specify the level of benefits that the Party intends to suspend.
- (g) The Party may suspend the application of benefits of equivalent effect specified in its notice to Colombia under subparagraph (d) not sooner than 30 days after providing such notice. Such suspension shall terminate upon termination of the measure referred to in paragraph 1.