

ANNEX II

Schedule of Colombia

Sector: Certain Sectors

Obligations Concerned: Market Access (Article 11.4)

Description: **Cross-Border Trade in Services**

Colombia reserves the right to adopt or maintain any measure in the following sectors:

- (a) investigation and security services;
- (b) research and development services;
- (c) the establishment of exclusive areas for services incidental to energy distribution in order to ensure universal service;
- (d) distribution, 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;
- (e) primary and secondary education services, and, with respect to higher education, requirements relating to the specific type of legal entity that may supply such services;
- (f) environmental services established or maintained for a public purpose;
- (g) health related and social services, and professional services related to health;
- (h) libraries, archives and museums;
- (i) sporting and other recreational services;
- (j) the number of concessions and the total number of operations for road transportation passenger services; 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.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3)

Description: **Investment**

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

For purposes of this entry:

- (a) **border region** means a zone of two (2) kilometers in width, parallel to the national border line;
- (b) **national coast** means a zone of two (2) kilometers in width, parallel to the line of the highest tide; and
- (c) **insular territory** means islands, islets, keys, headlands, and shoals that are part of the territory of Colombia.

Sector: All Sectors

Obligations Concerned: Most Favored Nation Treatment (Articles 10.4 and 11.3)

Description: **Investment and Cross-Border Trade in 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.

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.

Sector: Social Services

Obligations Concerned: Market Access (Article 11.4)
National Treatment (Articles 10.3 and 11.2)
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)

Description: **Investment and Cross-Border Trade in Services**

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, social welfare, public training and education, health, and child care.

For greater certainty, the social security system (*Sistema de Seguridad Social Integral*) of 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 Riesgos Profesionales*), and severance pay (*Régimen de Cesantía y Auxilio de Cesantía*).

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)

Description: **Investment and Cross-Border Trade in Services**

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 *Constitución Política de Colombia*. 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.

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)

Description: **Investment and Cross-Border Trade in Services**

For 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; or
- (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.

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

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

Colombia may adopt or maintain any measure that accords a person of another Party treatment equivalent to that accorded by that other Party to Colombian persons in the audiovisual, publishing, or music sector.

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

Sector: Jewelry Design
Performing Arts
Music
Visual Arts
Publishing

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

Description: **Investment and Cross-Border Trade in Services**

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 achievement by the recipient of a given level or percentage of domestic creative content.

For greater certainty, this entry does not apply to advertising and performance requirements shall in all cases be consistent with the WTO Agreement on Trade-Related Investment Measures.

² As defined in the footnote to the previous entry.

Sector: Handicraft Industries

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

Description: **Investment and Cross-Border Trade in Services**

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.

For greater certainty, performance requirements shall in all cases be consistent with the WTO Agreement on Trade-Related Investment Measures.

Sector: Audiovisual Services
Advertising

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

Description: **Investment and Cross-Border Trade in Services**

Cinematographic Works

- (a) Colombia reserves the right to adopt or maintain any measure requiring that 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 a percentage, Colombia shall take into account national cinematographic production conditions, the existing exhibition infrastructure in the country, and attendance averages.

Cinematographic Works over Free-to-Air Television

- (b) Colombia reserves the right to adopt or maintain any measure requiring that 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 consist of Colombian cinematographic works. In establishing such a 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 as described in the entry on free-to-air television and audio-visual production services on pages 20 and 21, paragraph 5, of Annex I.

Community Television¹

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

¹ As defined in Acuerdo 006 de 1999.

Multichannel Free-to-Air Commercial Television

- (d) Colombia reserves the right to impose the minimum programming requirements appearing in the entry on free-to-air television and audio-visual production services on pages 20 and 21, paragraph 5, of Annex I on multichannel 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 newspapers, daily newspapers, and subscription services with headquarters outside Colombia, be produced and created in Colombia. Any such measure shall not apply to: (i) the advertisement in cinemas and exhibition rooms of upcoming movies; and, (ii) any media where the programming or content originates outside Colombia or to the rebroadcast or retransmission of such programming within Colombia.

Sector: Traditional Expressions

Obligations Concerned: National Treatment (Articles 10.3 and 11.2)

Description: **Investment and Cross-Border Trade in Services**

Colombia reserves the right to adopt or maintain any measure according 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 measure shall not be inconsistent with Chapter Sixteen (Intellectual Property Rights).

Sector: Interactive Audio and Video Services

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

Description: **Investment and Cross-Border Trade in Services**

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 programming through interactive audio and/or video services is not unreasonably denied to Colombian consumers.

2. Colombia shall publish in advance any measure that it proposes to adopt addressing the unreasonable denial of access to Colombian consumers of Colombian audiovisual content through interactive audio and/or video services and shall provide interested persons a reasonable opportunity to comment on the proposed measure. 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 finding 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 interactive audio and video services sector.

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)

Description: **Cross-Border Trade in Services**

Colombia reserves the right to adopt or maintain any measure that would allow a professional, other than an accountant or travel agent, 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 a professional conducts his or her primary practice is the territory or regional level of government within which the professional was licensed to practice and actually practiced most frequently in the preceding 12-month period.

Sector: Road and RiverTransport

Obligations Concerned: Most Favored Nation Treatment (Article 11.3)

Description: **Cross-Border Trade in Services**

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 river transport services.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3)

Description: **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;
- (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.

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 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

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

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 a tribunal established under paragraph 2 determines in its decision or award, 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.