

ANNEX I

Schedule of Colombia

Sector: All Sectors

Obligations Concerned: Local Presence (Article 11.5)

Level of Government: Central

Measures: *Código de Comercio*, Art. 469, 471 y 474 de 1971

Description: Cross-Border Trade in Services

A juridical person organized under the laws of another country, and with its principal domicile in another country, must establish as a branch or other juridical form in Colombia in order to develop a concession obtained from the Colombian State.

Sector:	All Sectors
Obligations Concerned:	National Treatment (Article 10.3)
Level of Government:	Central
Measures:	Decreto 2080 de 2000, Art. 26 y 27
Description:	<u>Investment</u> A foreign investor may make portfolio investments in securities in Colombia only through a foreign capital investment fund (<i>fondo de inversión de capital extranjero</i>).

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Ley 226 de 1995, Art. 3 y 11

Description: Investment

If the Colombian State decides to sell all or part of its interest in an enterprise to a person other than a Colombian state enterprise or other Colombian government entity, it shall first offer such interest exclusively, and under the conditions established in article 11 of *Ley 226 de 1995*, to:

- (a) current, pensioned, and former employees (other than former employees terminated for just cause) of the enterprise and of other enterprises owned or controlled by the enterprise;
- (b) associations of employees and former employees of the enterprise;
- (c) employee unions;
- (d) federations and confederations of trade unions;
- (e) employee funds ("*fondos de empleados*");
- (f) pension and severance funds; and
- (g) cooperative entities¹

Colombia does not reserve the right to control any subsequent transfer or other disposal of such interest.

¹ For greater certainty, *Ley 454 de 1998* establishes the type of cooperative entities existing in Colombia. There are "cooperativas de ahorro y crédito", "cooperativas financieras" and "cooperativas multiactivas o integrales".

Sector:	All Sectors
Obligations Concerned:	Local Presence (Article 11.5)
Level of Government:	Central
Measures:	Ley 915 de 2004, Art. 5
Description:	<u>Cross-Border Trade in Services</u> Only a person with its main office in the free port of San Andrés, Providencia, and Santa Catalina may supply services in that region. For greater certainty, this measure does not affect the cross-supply of services as defined in Article 11.14.1 (a) and (b).

Sector: Accounting Services

Obligations Concerned: National Treatment (Article 11.2)
Local Presence (Article 11.5)

Level of Government: Central

Measures: Ley 43 de 1990, Art. 3 Par. 1
Resolución No. 160 de 2004, Art. 2 Parágrafo y Art. 6

Description: Cross-Border Trade in Services

Only persons registered with the *Junta Central de Contadores* may practice as accountants. A foreign national must have been domiciled continuously in Colombia for at least three years prior to the registration request and demonstrate accounting experience carried out in the territory of Colombia for a period of not less than one year. This experience may be acquired while engaging in public accounting studies or thereafter.

For natural persons, the term "domiciled" means being a resident of Colombia and having the intention of remaining in Colombia.

Sector: Research and Development Services

Obligations Concerned: National Treatment (Article 11.2)

Level of Government: Central

Measures: Decreto 309 de 2000, Art. 7

Description: Cross-Border Trade in Services

Any foreign person planning to undertake scientific research on biological diversity in the territory of Colombia must involve at least one Colombian researcher in the research or analysis of the results of such research.

For greater certainty, this measure does not address the rights of any person in relation to the scientific research or analysis.

Sector:	Fishing and Services Related to Fishing
Obligations Concerned:	National Treatment (Articles 10.3 and 11.2) Most Favored Nation Treatment (Article 11.3) Market Access (Article 11.4)
Level of Government:	Central
Measures:	Decreto 2256 de 1991, Art. 27, 28 y 67 Acuerdo 005 de 2003, Sección II y VII
Description:	<u>Investment and Cross-Border Trade in Services</u> Only Colombian nationals may engage in artisanal fishing. A foreign-flagged vessel may engage in fishing and related activities in Colombian territorial waters only in association with a Colombian enterprise that owns a permit. The costs of the permit and fishing license are higher for foreign-flagged vessels than for Colombian-flagged vessels. If the flag of a foreign-flagged vessel is that of a country that is a party to another bilateral agreement with Colombia, the terms of that other bilateral agreement shall determine whether or not the requirement to associate with a Colombian enterprise that owns a permit applies.²

² The Vazquez-Saccio Treaty, signed by Colombia and the United States in September 1972, includes issues related to fishing.

Sector: Services Directly Incidental to the Exploration and Exploitation of Minerals and Hydrocarbons

Obligations Concerned: Local Presence (Article 11.5)

Level of Government: Central

Measures: Ley 685 de 2001, Art. 19 y 20
Decreto legislativo 1056 de 1953, Art. 10
Código de Comercio, Art. 471 y 474 de 1971

Description: Cross-Border Trade in Services

To supply services directly related to the exploration and exploitation of minerals and hydrocarbons in Colombia, a juridical person organized under the laws of a foreign country must establish a branch, affiliate company, or subsidiary in Colombia.

The previous paragraph does not apply to service suppliers engaged in those services for less than one year.

Sector:	Private Security and Surveillance Services
Obligations Concerned:	National Treatment (Articles 10.3 and 11.2) Market Access (Article 11.4) Local Presence (Article 11.5)
Level of Government:	Central
Measures:	Decreto 356 de 1994, Art. 8, 12, 23 y 25
Description:	<u>Investment and Cross-Border Trade in Services</u> Only an enterprise organized under Colombian law as a limited liability company or a private security and surveillance services cooperative³ may provide private security and surveillance services in Colombia. Partners or members of such enterprises must be Colombian nationals. Enterprises established prior to February 11, 1994 with foreign members or foreign capital may not increase the participation of foreign members. Cooperatives organized before that date may retain their juridical form.

³ Article 23 defines a “private security and surveillance services cooperative” as an employee-owned and employee-run non-profit associative enterprise created to provide private security and surveillance services, for remuneration.

Sector:	Journalism
Obligations Concerned:	Senior Management and Board of Directors (Article 10.10)
Level of Government:	Central
Measures:	Ley 29 de 1944, Art. 13
Description:	<u>Investment</u> The director or general manager of a newspaper published in Colombia that focuses on Colombian politics must be a Colombian national.

Sector:	Travel and Tourism Services
Obligations Concerned:	National Treatment (Article 11.2) Local Presence (Article 11.5)
Level of Government:	Central
Measures:	Ley 32 de 1990, Art. 5 Decreto 502 de 1997, Art. 1-7
Description:	<u>Cross-Border Trade in Services</u> Foreign nationals must be domiciled in Colombia to provide travel and tourism agent services within the territory of Colombia. For greater certainty, this entry does not apply to tour guide services, nor does it affect the cross-border supply of services as defined in Article 11.14.1 (a) and (b).

Sector:	Notary and Registrar Services
Obligations Concerned:	National Treatment (Article 11.2) Market Access (Article 11.4)
Level of Government:	Central
Measures:	Decreto ley 960 de 1970, Art. 123, 124, 126, 127 y 132 Decreto ley 1250 de 1970, Art. 60
Description:	<u>Cross-Border Trade in Services</u> Only Colombian nationals may be notaries and/or registrars. The approval of new notaries is subject to an economic needs test that takes into account the population of the proposed area of service, the necessity of the services, and the availability of communication facilities, among other factors.

Sector: Domiciliary Public Services

Obligations Concerned: National Treatment (Article 10.3)
Market Access (Article 11.4)
Local Presence (Article 11.5)

Level of Government: Central

Measures: Ley 142 de 1994, Art. 1, 17, 18, 19 y 23
Código de Comercio, Art. 471 y 472

Description: Investment and Cross-Border Trade in Services

A domiciliary public service enterprise, must be organized under the *Empresas de Servicios Públicos* or ESP regime, must be domiciled in Colombia and organized under Colombian law as a share company (*sociedad por acciones*). The requirement of being organized as a share company does not apply to a decentralized entity that takes the form of a commercial and industrial enterprise of the State.

For purposes of this entry, domiciliary public services include the provision of water, sewage, refuse disposal, electric power, combustible gas distribution, and basic public-switched telephone services (PSTN) and any activities supplemental thereto. Activities supplemental to basic public-switched telephone services means long-distance public telephone and fixed wireless local loop telephone services in rural areas, but does not mean commercial mobile telephone services.

An enterprise in which a locally organized community holds a controlling interest shall be given a preference over enterprises with otherwise equivalent bids in the granting of a concession or license for the provision of domiciliary public services to that community.

Upon request of a Party anytime after two years of the entry into force of this Agreement, Colombia shall consult with that Party to consider whether:

- (a) any part of this measure shall be modified; or
- (b) any sector may be deleted from this measure.

If, as a result of consultations under this paragraph, the Parties agree that this non-conforming measure should be modified, then, on approval by the Parties and in accordance with Article 23.2 (Amendments), the Annex shall be modified.

Sector:	Electrical Power
Obligations Concerned:	Market Access (Article 11.4)
Level of Government:	Central
Measures:	Ley 143 de 1994, Art. 74
Description:	<u>Cross-Border Trade in Services</u> Only enterprises organized under Colombian law before July 12, 1994, may engage in marketing (<i>comercialización</i>) and transmission of electrical power or engage in more than one of the following activities at the same time: generation, distribution, or transmission of electrical power.

Sector:	Customs Services
Obligations Concerned:	Local Presence (Article 11.5)
Level of Government:	Central
Measures:	Decreto 2685 de 1999, Art. 74 y 76
Description:	<u>Cross-Border Trade in Services</u>

In order to perform the following customs services, a person must be domiciled in Colombia or have a domiciled representative legally responsible for their activities in Colombia: customs intermediation, intermediation for postal services (“*intermediación para servicios postales*”) and *mensajería especializada*⁴ (including express delivery), deposit of merchandise, transportation of merchandise under the customs control, or international cargo services, or to act as Permanent Customs Users (“*Usuarios Aduaneros Permanentes*”) or Highly Exporting Users (“*Usuarios Altamente Exportadores*”).

⁴ “*Servicio de mensajería especializada*” means the class of postal services that is supplied independently of the official postal networks for national and international mail, and that requires the application and adoption of special procedures for the receipt, collection, and personal delivery of mail and other postal objects transported by land and air within or from the territory of Colombia.

Sector: Postal and *Mensajería Especializada* Services

Obligations Concerned: Local Presence (Article 11.5)

Level of Government: Central

Measures: Decreto 229 de 1995, Art. 14 y Art. 17 numeral 2

Description: Cross-Border Trade in Services

Only juridical persons organized under Colombian law may supply postal services and “*mensajería especializada*” (as defined in the footnote to the previous entry) in Colombia.

Sector:	Telecommunication Services
Obligations Concerned:	National Treatment (Article 11.2) Local Presence (Article 11.5)
Level of Government:	Central
Measures:	Ley 671 de 2001 Decreto 1616 de 2003, Art. 13 y 16 Decreto 2542 de 1997, Art. 2 Decreto 2926 de 2005, Art. 2
Description:	<u>Cross-Border Trade in Services</u> Only enterprises organized under Colombian law may receive concessions for the supply of telecommunications services within Colombia. Until July 31, 2007, concessions for the routing of long distance international traffic shall be granted only to facilities-based suppliers. Colombia may grant licenses to enterprises to provide long distance basic switched telecommunications services on less favorable terms, with respect only to payment and duration, than those provided to <i>Colombia Telecomunicaciones S.A. E.S.P.</i> under article 2 of Decreto 2542 de 1997, articles 13 and 16 of Decreto 1616 de 2003 and Decreto 2926 de 2005.

Sector:	Cinematography
Obligations Concerned:	National Treatment (Article 11.2) Performance Requirements (Article 10.9)
Level of Government:	Central
Measures:	Ley 814 de 2003, Art. 5, 14, 15, 18 y 19
Description:	<u>Investment and Cross Border Trade in Services</u> The exhibition and distribution of foreign films is subject to the Cinematographic Development Fee, which is set at 8.5 per cent of the monthly net income derived from such exhibition and distribution. The fee applied to an exhibitor is reduced to 2.25 percent, when a foreign movie is exhibited together with a Colombian short film. Until 2013, the fee applied to a distributor is reduced to 5.5 percent if, during the preceding year, the percentage of Colombian full-length films it distributed to cinemas and other exhibitors equaled or exceeded the target percentage set by the government.

Sector:	Radio Broadcasting Services
Obligations Concerned:	National Treatment (Article 11.2)Local Presence (Article 11.5) Market Access (Article 11.4)
Level of Government:	Central
Measures:	Ley 80 de 1993, Art. 35 Decreto 1447 de 1995, Art. 7, 9 y 18
Description:	<u>Cross-Border Trade in Services</u> A concession to supply radio broadcasting services may be granted only to Colombian nationals or to juridical persons organized under Colombian law. The number of concessions to provide radio broadcasting services is subject to an economic needs test that applies criteria set forth by law.

Sector:	Free-to-air Television Audio-Visual Production Services
Obligations Concerned:	National Treatment (Articles 10.3 and 11.2) Market Access (Article 11.4) Local Presence (Article 11.5) Performance Requirements (Article 10.9)
Level of Government:	Central
Measures:	Ley 014 de 1991, Art. 37 Ley 680 de 2001, Art. 1 y 4 Ley 335 de 1996, Art. 13 y 24 Ley 182 de 1995, Art. 37 numeral 3, Art. 47 y Art. 48 Acuerdo 002 de 1995, Art. 10 parágrafo Acuerdo 023 de 1997, Art. 8 Parágrafo Acuerdo 024 de 1997, Art. 6 y 9 Acuerdo 020 de 1997, Art. 3 y 4
Description:	<u>Investment and Cross-Border Trade in Services</u> Only Colombian nationals or juridical persons organized under Colombian law may be granted concessions to provide free-to-air television services. To hold a concession for a privately operated national television channel that provides free-to-air television services, a juridical person must be organized as a corporation (“<i>sociedad anónima</i>”). The number of concessions to provide free-to-air national and local for-profit television services is subject to an economic needs test in accordance with the criteria set forth by law. Foreign equity in any enterprise holding a free-to-air television concession is limited to 40 percent. <u>National Television</u> Suppliers (operators and/or persons granted the right to use programming slots) of free-to-air national television services must broadcast nationally produced programming on each channel as follows: (a) a minimum of 70 per cent between 19:00 hours and 22:30 hours,

- (b) a minimum of 50 per cent between 22:30 hours and 24:00 hours,
- (c) a minimum of 50 per cent between 10:00 hours and 19:00 hours,
- (d) a minimum of 50 per cent for Saturdays, Sundays, and holidays during the hours described in subparagraphs 1, 2, and 3 until January 31, 2009, after which date the minimum for those days and hours will be reduced to 30 per cent.

Regional and Local Television

Regional television may be supplied only by state-owned entities.

Suppliers of regional and local free-to-air television services must broadcast a minimum of 50 percent nationally produced programming on each channel.

Sector: Subscription Television
Audio-visual Production Services

Obligations Concerned: Market Access (Article 11.4)
Local Presence (Article 11.5)
Performance Requirements (Article 10.9)

Level of Government: Central

Measures: Ley 680 de 2001, Art. 4 y 11
Ley 182 de 1995, Art. 42
Acuerdo 014 de 1997, Art.14, 16 y 30
Ley 335 de 1996, Art. 8
Acuerdo 032 de 1998, Art. 7 y 9

Description: Investment and Cross-Border Trade in Services

Only juridical persons organized under Colombian law may supply subscription television services. Such juridical persons must make available to subscribers, at no additional cost, those free-to-air Colombian national, regional, and municipal television channels available in the authorized area of coverage. The transmission of regional and municipal channels will be subject to the technical capacity of the subscription television operator.

Suppliers of satellite subscription television only have the obligation of including in their basic programming the transmission of the public interest channels of the Colombian State. When rebroadcasting free-to-air programming subject to a domestic content quota, a subscription television provider may not modify the content of the original signal.

Subscription television not including satellite

The concessionaire of subscription television that transmits commercials different from those of origin must comply with the minimum percentages of nationally produced programming required of suppliers of free-to-air national television services as described in the entry on free-to-air television and audio-visual production services on pages 20 and 21 of this Annex. Colombia interprets Article 16 of *Acuerdo 014 de 1997* as not requiring subscription television suppliers to comply with minimum percentages of nationally produced programming when commercials are inserted into programming outside the territory of

Colombia. Colombia will continue to apply this interpretation, subject to Article 11.6.1 (c).

There will be no restrictions on the number of subscription television concessions at the zonal, municipal, and district level once the current concessions at those levels expire and in no case after 31 October 2011.

Suppliers of cable television services must produce and broadcast in Colombia a minimum of one hour of programming each day between 18:00 hours and 24:00 hours.

Sector: Community Television

Obligations Concerned: Local Presence (Article 11.5)
Market Access (Article 11.4)

Level of Government: Central

Measures: Ley 182 de 1995, Art. 37 numeral 4
Acuerdo 006 de 1999, Art. 3 y 4

Description: Cross-Border Trade in Services

Community television services may only be supplied by communities organized and legally constituted under Colombian law as foundations, cooperatives, associations, or corporations governed by civil law.

For greater certainty, such services are restricted with respect to area of coverage and number and type of channels; may be offered to no more than 6000 associates, or community members; and must be offered under the modality of a closed network local access channels.

Sector:	Waste-Related Services
Obligations Concerned:	National Treatment (Article 10.3)
Level of Government:	Central
Measures:	Decreto 2080 de 2000, Art. 6
Description:	<u>Investment</u> Foreign investment is not permitted in activities related to the processing, disposition, and disposal of toxic, hazardous, or radioactive waste not produced in Colombia.

Sector:	Transportation
Obligations Concerned:	Local Presence (Article 11.5)
Level of Government:	Central
Measures:	Ley 336 de 1996, Art. 9 y 10 Decreto 149 de 1999, Art. 5
Description:	<u>Cross-Border Trade in Services</u> Suppliers of public transportation services within the territory of Colombia must be enterprises organized under Colombian law and domiciled in Colombia. Only foreign enterprises with an agent or representative domiciled in Colombia and legally responsible for its activities in Colombia may supply multimodal transportation of cargo within and from the territory of Colombia.

Sector:	Maritime and Fluvial Transportation
Obligations Concerned:	National Treatment (Article 11.2) Local Presence (Article 11.5)
Level of Government:	Central
Measures:	Decreto 804 de 2001, Art. 2 y 4 Inciso 4 <i>Código de Comercio de 1971</i> , Art. 1455 Decreto 2324 de 1984, Art. 124 Ley 658 de 2001, Art. 11 Decreto 1597 de 1998, Art. 23
Description:	<u>Cross-Border Trade in Services</u> Only enterprises organized under Colombian law using Colombian flag vessels may supply maritime and fluvial transport services between two points within the territory of Colombia (cabotage). All foreign-flagged vessels entering a Colombian port must have a representative legally responsible for their activities in Colombia and domiciled in Colombia. Pilotage on Colombian territorial seas and rivers may only be performed by Colombian nationals.

Sector:	Port Services
Obligations Concerned:	National Treatment (Article 11.2) Local Presence (Article 11.5) Market Access (Article 11.4)
Level of Government:	Central
Measures:	Ley 1 de 1991, Art. 5.20 y Art. 6 Decreto 1423 de 1989, Art. 38
Description:	<u>Cross-Border Trade in Services</u> The holder of a concession to supply port services must be organized under Colombian law as a corporation (<i>sociedad anónima</i>) whose corporate objective is the construction, maintenance, and administration of ports. For greater certainty, measures relating to the landside aspects of port activities are subject to the application of Article 22.2 (Essential Security). Only Colombian flag vessels may supply port services in Colombian waters. However, in exceptional cases, the <i>Dirección General Marítima</i> may authorize supply of such services by foreign flag vessels if no Colombian vessel has the capacity to supply such service. The authorization will be issued for six months, but may be extended up to one year.

Sector: Specialty Air Services

Obligations Concerned: Local Presence (Article 11.5)
National Treatment (Article 11.2)

Level of Government: Central

Measures: *Código de Comercio*, Artículos 1795 y 1864

Description: Cross-Border Trade in Services

Only Colombian nationals or juridical persons organized under Colombian law and domiciled in Colombia may supply specialty air services within the territory of Colombia.

Only Colombian nationals or juridical persons organized under Colombian law may own and maintain real and effective control of an airplane registered to supply specialty air services in Colombia.

ANNEX I

Explanatory Notes

1. The Schedule of a Party to this Annex sets out, pursuant to Articles 10.13 (Non-Conforming Measures) and 11.6 (Non-Conforming Measures), a Party's existing measures that are not subject to some or all of the obligations imposed by:
 - (a) Article 10.3 (National Treatment) or 11.2 (National Treatment);
 - (b) Article 10.4 (Most-Favored-Nation Treatment) or 11.3 (Most-Favored-Nation Treatment);
 - (c) Article 11.5 (Local Presence);
 - (d) Article 10.9 (Performance Requirements);
 - (e) Article 10.10 (Senior Management and Boards of Directors); or
 - (f) Article 11.4 (Market Access).
2. Each Schedule entry sets out the following elements:
 - (a) **Sector** refers to the sector for which the entry is made;
 - (b) **Obligations Concerned** specifies the article(s) referred to in paragraph 1 that, pursuant to Articles 10.13.1(a) and 11.6.1(a), do not apply to the non-conforming aspects of the law, regulation, or other measure, as set out in paragraph 3;
 - (c) **Level of Government** indicates the level of government maintaining the scheduled measure(s);
 - (d) **Measures** identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the **Measures** element:
 - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and
 - (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and
 - (e) **Description** sets out commitments, if any, for liberalization on the date of entry into force of the Agreement, and the remaining non-conforming aspects of the measure for which the entry is made.
3. In the interpretation of a Schedule entry, all elements of the entry shall be considered. An entry shall be interpreted in light of the relevant articles of the Chapters against which the entry is made. To the extent that:

- (a) the **Measures** element is qualified by a liberalization commitment from the **Description** element, the **Measures** element as so qualified shall prevail over all other elements; and
 - (b) the **Measures** element is not so qualified, the **Measures** element shall prevail over all other elements, unless any discrepancy between the **Measures** element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the **Measures** element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.
4. In accordance with Article 10.13.1(a) and 11.6.1(a), and subject to Article 10.13.1(c) and 11.6.1(c), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the non-conforming aspects of the law, regulation, or other measure identified in the **Measures** element of that entry.
5. Where a Party maintains a measure that requires that a service provider be a citizen, permanent resident, or resident of its territory as a condition to the provision of a service in its territory, a Schedule entry for that measure taken with respect to Article 11.2 (National Treatment), 11.3 (Most-Favored-Nation Treatment), or 11.5 (Local Presence) shall operate as a Schedule entry with respect to Article 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), or 10.9 (Performance Requirements) to the extent of that measure.
6. Nothing in Article 11.12 (Specific Commitments) shall be construed to prevent Colombia from maintaining the payment for concessions by private suppliers of express delivery services as provided by Article 24(a) and (b) of *Decreto 229 de 1995*, and any amendment thereto, as long as the payment is applied in a manner consistent with Article 10.3 (National Treatment), Article 10.4 (Most-Favored-Nation Treatment), Article 11.2 (National Treatment), and Article 11.3 (Most-Favored-Nation Treatment).

ANNEX I

Schedule of the United States

Sector: Atomic Energy

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: *Atomic Energy Act of 1954*, 42 U.S.C. §§ 2011 *et seq.*

Description: Investment

A license issued by the United States Nuclear Regulatory Commission is required for any person in the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, use, import, or export any nuclear “utilization or production facilities” for commercial or industrial purposes. Such a license may not be issued to any entity known or believed to be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government (42 U.S.C. § 2133(d)). A license issued by the United States Nuclear Regulatory Commission is also required for nuclear “utilization and production facilities,” for use in medical therapy, or for research and development activities. The issuance of such a license to any entity known or believed to be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government is also prohibited (42 U.S.C. § 2134(d)).

Sector:	Business Services
Obligations Concerned:	National Treatment (Article 11.2) Local Presence (Article 11.5)
Level of Government:	Central
Measures:	<i>Export Trading Company Act of 1982</i> , 15 U.S.C. §§ 4011-4021 15 C.F.R. Part 325
Description:	<u>Cross-Border Trade in Services</u> Title III of the <i>Export Trading Company Act of 1982</i> authorizes the Secretary of Commerce to issue “certificates of review” with respect to export conduct. The Act provides for the issuance of a certificate of review where the Secretary determines, and the Attorney General concurs, that the export conduct specified in an application will not have the anticompetitive effects proscribed by the Act. A certificate of review limits the liability under federal and state antitrust laws in engaging in the export conduct certified. Only a “person” as defined by the Act can apply for a certificate of review. “Person” means “an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between such persons.” A foreign national or enterprise may receive the protection provided by a certificate of review by becoming a “member” of a qualified applicant. The regulations define “member” to mean “an entity (U.S. or foreign) that is seeking protection under the certificate with the applicant. A member may be a partner in a partnership or a joint venture; a shareholder of a corporation; or a participant in an association, cooperative, or other form of profit or nonprofit organization or relationship, by contract or other arrangement.”

Sector:	Business Services
Obligations Concerned:	National Treatment (Article 11.2) Local Presence (Article 11.5)
Level of Government:	Central
Measures:	<i>Export Administration Act of 1979, as amended</i>, 50 U.S.C. App. §§ 2401-2420 <i>International Emergency Economic Powers Act</i>, 50 U.S.C. §§ 1701-1706 <i>Export Administration Regulations</i>, 15 C.F.R. Parts 730-774
Description:	<u>Cross-Border Trade in Services</u> With some limited exceptions, exports and re-exports of commodities, software, and technology subject to the Export Administration Regulations require a license from the Bureau of Industry and Security, U.S. Department of Commerce (BIS). Certain activities of U.S. persons, wherever located, also require a license from BIS. An application for a license must be made by a person in the United States. In addition, release of controlled technology to a foreign national in the United States is deemed to be an export to the home country of the foreign national and requires the same written authorization from BIS as an export from the territory of the United States.

Sector:	Mining
Obligations Concerned:	National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)
Level of Government:	Central
Measures:	<i>Mineral Lands Leasing Act of 1920</i> , 30 U.S.C. Chapter 3A 10 U.S.C. § 7435
Description:	<u>Investment</u> Under the Mineral Lands Leasing Act of 1920, aliens and foreign corporations may not acquire rights-of-way for oil or gas pipelines, or pipelines carrying products refined from oil and gas, across on-shore federal lands or acquire leases or interests in certain minerals on on-shore federal lands, such as coal or oil. Non-U.S. citizens may own a 100 percent interest in a domestic corporation that acquires a right-of-way for oil or gas pipelines across on-shore federal lands, or that acquires a lease to develop mineral resources on on-shore federal lands, unless the foreign investor's home country denies similar or like privileges for the mineral or access in question to U.S. citizens or corporations, as compared with the privileges it accords to its own citizens or corporations or to the citizens or corporations of other countries (30 U.S.C. §§ 181, 185(a)). Nationalization is not considered to be denial of similar or like privileges. Foreign citizens, or corporations controlled by them, are restricted from obtaining access to federal leases on Naval Petroleum Reserves if the laws, customs, or regulations of their country deny the privilege of leasing public lands to citizens or corporations of the United States (10 U.S.C. § 7435).

Sector:	All Sectors
Obligations Concerned:	National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)
Level of Government:	Central
Measures:	22 U.S.C. §§ 2194 and 2198(c)
Description:	<u>Investment</u> The Overseas Private Investment Corporation insurance and loan guarantees are not available to certain aliens, foreign enterprises, or foreign-controlled domestic enterprises.

Sector:	Air Transportation
Obligations Concerned:	National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4) Senior Management and Boards of Directors (Article 10.10)
Level of Government:	Central
Measures:	49 U.S.C. Subtitle VII, <i>Aviation Programs</i> 14 C.F.R. Part 297 (foreign freight forwarders); 14 C.F.R. Part 380, Subpart E (registration of foreign (passenger) charter operators)
Description:	<u>Investment</u> Only air carriers that are “citizens of the United States” may operate aircraft in domestic air service (cabotage) and may provide international scheduled and non-scheduled air service as U.S. air carriers. U.S. citizens also have blanket authority to engage in indirect air transportation activities (air freight forwarding and passenger charter activities other than as actual operators of the aircraft). In order to conduct such activities, non-U.S. citizens must obtain authority from the Department of Transportation. Applications for such authority may be rejected for reasons relating to the failure of effective reciprocity, or if the Department of Transportation finds that it is in the public interest to do so. Under 49 U.S.C. § 40102(a)(15), a citizen of the United States means an individual who is a U.S. citizen; a partnership in which each member is a U.S. citizen; or a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, which is under the actual control of U.S. citizens, and in which at least seventy-five percent of the voting interest in the corporation is owned or controlled by U.S. citizens.

Sector: Air Transportation

Obligations Concerned: National Treatment (Articles 10.3 and 11.2)
Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
Local Presence (Article 11.5)
Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Measures: 49 U.S.C. Subtitle VII, *Aviation Programs*

49 U.S.C. § 41703

14 C.F.R. Part 375

Description: Cross-Border Trade in Services

1. Authorization from the Department of Transportation is required for the provision of specialty air services in the territory of the United States.*

Investment

2. “Foreign civil aircraft” require authority from the Department of Transportation to conduct specialty air services in the territory of the United States. In determining whether to grant a particular application, the Department will consider, among other factors, the extent to which the country of the applicant’s nationality accords U.S. civil aircraft operators effective reciprocity. “Foreign civil aircraft” are aircraft of foreign registry or aircraft of U.S. registry that are owned, controlled, or operated by persons who are not citizens or permanent residents of the United States (14 C.F.R. § 375.1). Under 49 U.S.C. § 40102(a)(15), a citizen of the United States means an individual who is a U.S. citizen; a partnership in which each member is a U.S. citizen; or a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, which is under the actual control of U.S. citizens, and in which at least seventy-five percent of the voting interest in the corporation is owned or controlled by U.S. citizens.

*A person of Colombia will be able to obtain such an authorization given Colombia's acceptance of the U.S. definition of specialty air services in Chapter Eleven (Cross-Border Trade in Services).

Sector:	Transportation Services – Customs Brokers
Obligations Concerned:	National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5)
Level of Government:	Central
Measures:	19 U.S.C. § 1641(b)
Description:	<u>Investment and Cross-Border Trade in Services</u>

A customs broker's license is required to conduct customs business on behalf of another person. Only U.S. citizens may obtain such a license. A corporation, association, or partnership established under the law of any state may receive a customs broker's license if at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker's license.

Sector:	All Sectors
Obligations Concerned:	National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)
Level of Government:	Central
Measures:	<i>Securities Act of 1933</i>, 15 U.S.C. §§ 77C(b), 77f, 77g, 77h, 77j, and 77s(a) 17 C.F.R. §§ 230.251 and 230.405 <i>Securities Exchange Act of 1934</i>, 15 U.S.C. §§ 78l, 78m, 78o(d), and 78w(a) 17 C.F.R. § 240.12b-2
Description:	<u>Investment</u> Foreign firms, except for certain Canadian issuers, may not use the small business registration forms under the Securities Act of 1933 to register public offerings of securities or the small business registration forms under the Securities Exchange Act of 1934 to register a class of securities or file annual reports.

Sector:	Communications – Radiocommunications
Obligations Concerned:	National Treatment (Article 10.3)
Level of Government:	Central
Measures:	47 U.S.C. § 310 Foreign Participation Order 12 FCC Rcd 23891 (1997)
Description:	<u>Investment</u> The United States reserves the right to restrict ownership of radio licenses in accordance with the above statutory and regulatory provisions. Radiocommunications consists of all communications by radio, including broadcasting.

Sector:	Professional Services – Patent Attorneys, Patent Agents, and Other Practice before the Patent and Trademark Office
Obligations Concerned:	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
Level of Government:	Central
Measures:	35 U.S.C. Chapter 3 (practice before the U.S. Patent and Trademark Office) 37 C.F.R. Part 10 (representation of others before the U.S. Patent and Trademark Office)
Description:	<u>Cross-Border Trade in Services</u> As a condition to be registered to practice for others before the U.S. Patent and Trademark Office (USPTO): (a) a patent attorney must be a U.S. citizen or an alien lawfully residing in the United States (37 C.F.R. § 10.6(a)); (b) a patent agent must be a U.S. citizen, an alien lawfully residing in the United States, or a non-resident who is registered to practice in a country that permits patent agents registered to practice before the USPTO to practice in that country; the latter is permitted to practice for the limited purpose of presenting and prosecuting patent applications of applicants located in the country in which he or she resides (37 C.F.R. § 10.6(c)); and (c) a practitioner in trademark and non-patent cases must be an attorney licensed in the United States, a “grandfathered” agent, an attorney licensed to practice in a country that accords equivalent treatment to attorneys licensed in the United States, or an agent registered to practice in such a country; the latter two are permitted to practice for the limited purpose of representing parties located in the country in which he or she resides (37 C.F.R. § 10.14(a)-(c)).

Sector:	All Sectors
Obligations Concerned:	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 Boards of Directors (Article 10.10)
Level of Government:	Regional
Measures:	All existing non-conforming measures of all states of the United States, the District of Columbia, and Puerto Rico
Description:	<u>Investment and Cross-Border Trade in Services</u>