

AGREEMENT BETWEEN  
JAPAN AND THE REPUBLIC OF COLOMBIA  
FOR THE LIBERALIZATION,  
PROMOTION AND PROTECTION OF INVESTMENT



AGREEMENT BETWEEN  
JAPAN AND THE REPUBLIC OF COLOMBIA  
FOR THE LIBERALIZATION,  
PROMOTION AND PROTECTION OF INVESTMENT

Japan and the Republic of Colombia (hereinafter referred to as "the Contracting Parties");

Desiring to further promote investment in order to strengthen the economic relationship between the Contracting Parties;

Intending to further create stable, equitable, favorable and transparent conditions for greater investment by investors of one Contracting Party in the Area of the other Contracting Party;

Recognizing the growing importance of the progressive liberalization of investment for stimulating initiative of investors and for promoting prosperity and mutually favorable business activity in the Contracting Parties;

Recognizing that these objectives and the promotion of sustainable development can be achieved without relaxing health, safety and environmental measures of general application;

Recognizing the importance of the cooperative relationship between labor and management in promoting investment between the Contracting Parties;

Wishing that this Agreement will contribute to the strengthening of international cooperation with respect to the development of international rules on foreign investment; and

Believing that this Agreement marks the beginning of new economic partnership between the Contracting Parties;

Have agreed as follows:

CHAPTER I  
Definitions

Article 1  
Definitions

For the purposes of this Agreement:

- (a) the term "investments" means every kind of asset owned or controlled, directly or indirectly, by an investor, which has the characteristics of an investment, including:

Note 1: The characteristics of an investment include the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.

Note 2: Each Contracting Party recognizes that some claims to money that:

- (i) are immediately due and result solely from export and import contracts for the sale of goods or services other than such contracts based on orders habitually secured; or
- (ii) result from credit granted in relation with the contracts referred to in subparagraph (i), maturity date of which is less than twelve (12) months;

do not have the characteristics of an investment.

Note 3: Investments do not include orders or judgments entered in a judicial or administrative action.

- (i) an enterprise and a branch of an enterprise;
- (ii) shares, stocks or other forms of equity participation in an enterprise;
- (iii) bonds, debentures, loans and other forms of debt, except for those of or to a Contracting Party or any state enterprise thereof;
- (iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;

- (v) claims to money and to any performance under contract having a financial value;
- (vi) intellectual property rights, including copy rights and related rights, patent rights, plant breeder's rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, trade names, indications of source or geographical indications and undisclosed information;
- (vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorizations and permits, including those for the exploration and exploitation of natural resources;
- (viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges; and
- (ix) amounts and rights derived from investments, such as profit, interest, capital gains, dividends, royalties and fees;

A change in the form in which assets are invested does not affect their character as investments. For greater certainty, this provision shall apply only where the assets still fall within the definition contained in this subparagraph.

- (b) the term "investor of a Contracting Party" means a Contracting Party or a state enterprise thereof, or a national or an enterprise of a Contracting Party, that seeks to make, is making or has made investments in the Area of the other Contracting Party;

Note 1: It is understood that an investor of a Contracting Party "seeks to make investments" in the Area of the other Contracting Party only when the investor has taken concrete steps necessary to make investments, such as when the investor has duly filed an application for a permit or license which authorizes the investor to establish investments or has obtained the financing necessary to make investments.

Note 2: This Agreement shall not apply to investments of natural persons who are nationals of both Contracting Parties unless such natural persons have at the time of the investment and ever since been domiciled outside the Area of the Contracting Party in which they made such investments.

- (c) an enterprise is:
  - (i) "owned" by an investor if more than fifty (50) percent of the equity interest in it is owned by the investor; and
  - (ii) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions;
- (d) the term "enterprise of a Contracting Party" means any legal person or any other entity:
  - (i) duly constituted or organized under the applicable laws and regulations of that Contracting Party, whether or not for profit, and whether private or government-owned or -controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, organization or company; and
  - (ii) carrying out substantial business activities in the Area of the Contracting Party;
- (e) the term "investment activities" means the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments;
- (f) the term "Area" means:
  - (i) with respect to Japan, the territory of Japan, and the exclusive economic zone and the continental shelf with respect to which Japan exercises sovereign rights or jurisdiction in accordance with international law; and

- (ii) with respect to the Republic of Colombia, its continental and insular territory, which comprises the archipelago of San Andres, Providencia and Santa Catalina, the Island of Malpelo, and all the other islands, islets, keys, headlands and shoals that belong to it, as well as airspace and maritime areas and the other elements over which it exercises sovereignty or sovereign rights or jurisdiction in accordance with its domestic law and international law, including applicable international treaties;

Note 1: The term "Area" refers to the geographical scope of application of this Agreement.

Note 2: Nothing under this subparagraph shall affect the rights and obligations of the Contracting Parties under international law.

- (g) the term "the WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994;
- (h) the term "disputing investor" means an investor of a Contracting Party who is a party to an investment dispute with the other Contracting Party;
- (i) the term "disputing Party" means a Contracting Party that is a party to an investment dispute with an investor of the other Contracting party;
- (j) the term "disputing parties" means the disputing investor and the disputing Party;
- (k) the term "financial services" means financial services as defined in subparagraph 5(a) of the Annex on Financial Services to the GATS;
- (l) the term "freely usable currency" means freely usable currency as defined under the Articles of Agreement of the International Monetary Fund;
- (m) the term "GATS" means General Agreement on Trade in Services in Annex 1B to the WTO Agreement;
- (n) the term "the ICSID" means the International Centre for Settlement of Investment Disputes, established by the ICSID Convention;

- (o) the term "the ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;
- (p) the term "the ICSID Additional Facility Rules" means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;
- (q) the term "national" means a natural person having the nationality of a Contracting Party in accordance with its applicable laws and regulations;
- (r) the term "the New York Convention" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on June 10, 1958;
- (s) the term "the Secretary-General" means the Secretary-General of the ICSID;
- (t) the term "Tribunal" means an arbitral tribunal established under Article 28 or Article 37;
- (u) the term "the TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement; and
- (v) the term "the UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law adopted by the United Nations Commission on International Trade Law on April 28, 1976.

## CHAPTER II Investment

### Article 2 National Treatment

1. Each Contracting Party shall in its Area accord to investors of the other Contracting Party and to their investments treatment no less favorable than the treatment it accords in like circumstances to its own investors and to their investments with respect to investment activities.



2. Each Contracting Party shall in its Area accord to investors of the other Contracting Party treatment no less favorable than the treatment which it accords in like circumstances to its own investors with respect to access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defense of such investors' rights.

Article 3  
Most Favored Nation Treatment

1. Each Contracting Party shall in its Area accord to investors of the other Contracting Party and to their investments treatment no less favorable than the treatment it accords in like circumstances to investors of a non-Contracting Party and to their investments with respect to investment activities.

Note: It is understood that the treatment referred to in paragraph 1 does not include treatment accorded to investors of a non-Contracting Party and their investments by provisions concerning the settlement of investment disputes such as the mechanism set out in Chapter III and Chapter IV, that are provided for in other international agreements between a Contracting Party and a non-Contracting Party.

2. Each Contracting Party shall in its Area accord to investors of the other Contracting Party treatment no less favorable than the treatment which it accords in like circumstances to investors of a non-Contracting Party with respect to access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defense of such investors' rights.

Article 4  
Minimum Standard of Treatment

1. Each Contracting Party shall in its Area accord to investments of investors of the other Contracting Party treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, a change of the regulation of a Contracting Party does not constitute by itself a violation of paragraph 1.

Note 1: Paragraphs 1 and 2 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Contracting Party. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

Note 2: A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of paragraphs 1 and 2.

Note 3: "Fair and equitable treatment" includes the obligation of the Contracting Parties to guarantee access to the courts of justice and administrative tribunals and not to deny justice in criminal, civil or administrative procedures, in accordance with the principle of due process of law.

3. Each Contracting Party shall observe any obligation deriving from a written agreement concluded between its central government or agencies thereof and an investor of the other Contracting Party with regard to specific investments by the investor, which the investor could have relied on at the time of establishment, acquisition or expansion of such investments.

#### Article 5 Performance Requirements

1. Neither Contracting Party shall impose or enforce, in connection with investment activities in its Area of an investor of the other Contracting Party or of a non-Contracting Party, any of the following requirements:

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;

- (c) to purchase, use or accord a preference to goods produced in its Area, or to purchase goods from natural or legal persons or any other entity in its Area;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor;
- (e) to restrict sales of goods or services in its Area that investments of that investor produce or provide by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer technology, a production process or other proprietary knowledge to a natural or legal person or any other entity in its Area, except when the requirement:
  - (i) is imposed or enforced by a court, administrative tribunal or competent authority to remedy an alleged violation of competition laws; or
  - (ii) concerns the transfer or use of intellectual property rights or disclosure of proprietary information which is undertaken in a manner not inconsistent with the TRIPS Agreement;
- (g) to locate the headquarters of that investor for a specific region or the world market in its Area; or
- (h) to supply one or more of the goods that the investor produces or the services that the investor provides to a specific region or the world market, exclusively from its Area.

2. Neither Contracting Party may condition the receipt or continued receipt of an advantage, in connection with investment activities in its Area of an investor of the other Contracting Party or of a non-Contracting Party, on the compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced in its Area, or to purchase goods from natural or legal persons or any other entity in its Area;

- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor; or
- (d) to restrict sales of goods or services in its Area that investments of that investor produce or provide by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3. Nothing in paragraph 2 shall be construed to prevent a Contracting Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities in its Area of an investor of the other Contracting Party or of a non-Contracting Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities or carry out research and development, in its Area.

4. Paragraphs 1 and 2 shall not apply to any requirement other than those requirements set out in those paragraphs.

5. The provisions of:

- (a) subparagraphs 1(a), (b) and (c) and 2(a) and (b) shall not apply to qualification requirements for goods or services with respect to export promotion programs and foreign aid programs; and
- (b) subparagraphs 2(a) and (b) shall not apply to the requirements imposed by an importing Contracting Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

6. Provided that such measures are not applied in an arbitrary or unjustifiable manner and provided that such measures do not constitute a disguised restriction on international trade or investment activities, nothing in subparagraphs 1(b), (c) and (f) and 2(a) and (b) shall be construed to prevent a Contracting Party from adopting or maintaining measures, including environmental measures:

- (a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;
- (b) necessary to protect human, animal or plant life or health; or

- (c) related to the conservation of living or non-living exhaustible natural resources.

Article 6  
Non-Conforming Measures

1. Paragraph 1 of Article 2, paragraph 1 of Article 3, Article 5 and Article 10 shall not apply to:

- (a) any existing non-conforming measure that is maintained by the central government of a Contracting Party, as set out in its Schedule in Annex I;
- (b) any existing non-conforming measure that is maintained by a local government of a Contracting Party;
- (c) the continuation or prompt renewal of any non-conforming measure mentioned in subparagraphs (a) and (b); or
- (d) an amendment or modification to any non-conforming measure referred to in subparagraphs (a) and (b) to the extent that the amendment or modification does not decrease the conformity of the measure as it existed immediately before the amendment or modification, with paragraph 1 of Article 2, paragraph 1 of Article 3, Article 5 and Article 10.

2. Paragraph 1 of Article 2, paragraph 1 of Article 3, Article 5 and Article 10 shall not apply to any measures that a Contracting Party adopts or maintains, with respect to sectors, sub sectors or activities, as set out in its Schedule in Annex II.

3. Neither Contracting Party shall, under any measure adopted after the date of entry into force of this Agreement with respect to sectors, sub-sectors or activities as set out in its Schedule in Annex II, require an investor of the other Contracting Party, by reason of its nationality, to sell or otherwise dispose of investments existing at the time the measure becomes effective.

4. In cases where a Contracting Party makes an amendment or a modification to any existing non-conforming measure set out in its Schedule in Annex I after the date of entry into force of this Agreement, the Contracting Party shall, to the extent possible, notify the other Contracting Party of such amendment or modification.

5. In the case where a Contracting Party adopts any measure after the date of entry into force of this Agreement, with respect to sectors, sub-sectors or activities as set out in its Schedule in Annex II, the Contracting Party shall, to the extent possible, notify the other Contracting Party of such measure.

6. Each Contracting Party recognizes the importance of reviewing from time to time the reservations specified in its Schedules in Annexes I and II with a view to the reduction or elimination of those reservations.

7. Paragraph 1 of Article 2, paragraph 1 of Article 3 and Article 5 shall not apply to any measure covered by the exceptions to or derogations from obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in Articles 3 through 5 of the TRIPS Agreement.

8. Paragraph 1 of Article 2, paragraph 1 of Article 3 and Article 5 shall not apply to any measure that a Contracting Party adopts or maintains with respect to government procurement.

#### Article 7 Transparency

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements which are in force and pertain to or affect investment activities.

2. Each Contracting Party shall, upon request by the other Contracting Party, promptly respond to specific questions and provide that other Contracting Party with information on matters set out in paragraph 1.

3. Nothing in paragraphs 1 and 2 shall be construed to require either Contracting Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice privacy or legitimate commercial interests. For the purposes of this paragraph, confidential information includes confidential business information or information which is privileged or otherwise protected from disclosure under the applicable laws of a Contracting Party.

4. Upon the entry into force of this Agreement, each Contracting Party shall endeavor to prepare, to the extent possible, information regarding measures referred to in subparagraph 1(b) of Article 6 which are taken by prefectures in the case of Japan or by departments in the case of the Republic of Colombia, which shall be forwarded to the other Contracting Party.

Note: The information under this paragraph is made solely for the purpose of transparency, and shall not be construed to affect any rights or obligations of a Contracting Party under this Agreement.

5. To the extent of its possibilities, each Contracting Party shall, in accordance with its laws and regulations, provide a reasonable opportunity for comments by the public before the adoption, amendment or repeal of regulations of general application that affect any matter covered by this Agreement.

#### Article 8 Measures against Corruption

Each Contracting Party shall ensure that measures and efforts are undertaken to prevent and combat corruption regarding matters covered by this Agreement in accordance with its laws and regulations.

#### Article 9 Entry, Sojourn and Residence

Each Contracting Party shall, in accordance with its applicable laws and regulations, give due consideration to applications for the entry, sojourn and residence of a natural person having the nationality of the other Contracting Party who wishes to enter the territory of the former Contracting Party and to remain therein for the purpose of investment activities.

#### Article 10 Senior Management and Boards of Directors

1. Neither Contracting Party may require that an enterprise of that Contracting Party considered as investments of an investor of the other Contracting Party appoint to senior management positions natural persons of any particular nationality.

2. A Contracting Party may require that a majority of the boards of directors or any committee thereof, of an enterprise of that Contracting Party considered as investments of an investor of the other Contracting Party, be of a particular nationality or resident in the former Contracting Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investments.

Article 11  
Expropriation and Compensation

1. Neither Contracting Party may expropriate or nationalize investments in its Area of investors of the other Contracting Party or take any measure equivalent to expropriation or nationalization (hereinafter referred to as "expropriation"), except, for a public purpose, in accordance with due process of law and Article 4, in a non discriminatory manner, and upon payment of a prompt, adequate and effective compensation pursuant to paragraphs 2 through 4.

Note: In the case of the Republic of Colombia, the term "public purpose", being used in this paragraph, is a term used in international agreements and may be expressed in the domestic law of the Republic of Colombia using terms such as "public purpose" or "social interest".

2. Compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is the earlier. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be paid without delay and shall include interest at a commercial rate established on a market basis, accrued from the date of expropriation to the date of payment. It shall be effectively realizable and freely transferable and shall be freely convertible into the currency of the Contracting Party of the investors concerned, and into freely usable currencies at the market exchange rate prevailing on the date of expropriation.



4. Without prejudice to and consistent with the provisions of Chapter IV, the investors affected by expropriation shall have a right of access to the courts of justice or administrative tribunals or agencies of the Contracting Party making the expropriation to seek a prompt review of the investors' case and the amount of compensation in accordance with the principles set out in this Article.

5. The provisions of this Article do not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

6. For greater certainty, nothing in this Agreement shall be construed to impose an obligation on a Contracting Party to privatize any investments which it owns or controls or to prevent a Contracting Party from designating a monopoly, provided that, if a Contracting Party adopts or maintains a measure to privatize such investments or a measure to designate a monopoly, this Agreement shall apply to such measure.

Note: For greater certainty, Article 11 shall be interpreted in accordance with Annex III.

#### Article 12 Treatment in case of Strife

1. Each Contracting Party shall accord to investors of the other Contracting Party that have suffered loss or damage relating to their investments in the Area of the former Contracting Party due to armed conflict, revolution, insurrection, civil disturbance or any other similar event in the Area of that former Contracting Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favorable than that which it accords to its own investors or to investors of a non-Contracting Party, whichever is more favorable to the investors of the other Contracting Party.

2. Any payment as a means of settlement referred to in paragraph 1 shall be effectively realizable, freely transferable and freely convertible at the market exchange rate prevailing at the time of payment into the currency of the Contracting Party of the investors concerned and freely usable currencies.

3. Paragraph 1 does not apply to measures related to subsidies including grants.

Article 13  
Subrogation

1. If a Contracting Party or its designated agency makes a payment to any investor of that Contracting Party under an indemnity, guarantee or insurance contract, pertaining to investments of such investor in the Area of the other Contracting Party, the latter Contracting Party shall recognize the assignment to the former Contracting Party or its designated agency of any right or claim of such investor on account of which such payment is made and shall recognize the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as the original right or claim of the investor. As regards payment to be made to that former Contracting Party or its designated agency by virtue of such assignment of right or claim and the assignment of such payment, Articles 11, 12 and 14 shall apply *mutatis mutandis*.

2. This Article does not recognize the right of claim under Chapter IV of a Contracting Party or its designated agency solely based on the fact that either has made a payment based on an indemnity, guarantee or insurance contract against commercial risk.

Article 14  
Transfers

1. Each Contracting Party shall ensure that all transfers relating to investments in its Area of an investor of the other Contracting Party may be freely made into and out of its Area without delay. Such transfers shall include, in particular, though not exclusively:

- (a) the initial capital and additional amounts to maintain or increase investments;
- (b) profits, interest, capital gains, dividends, royalties, fees and other current incomes accruing from investments;
- (c) payments made under a contract including loan payments in connection with investments;
- (d) proceeds of the total or partial sale or liquidation of investments;
- (e) earnings and remuneration of personnel engaged from the other Contracting Party who work in connection with investments in the Area of the former Contracting Party;

- (f) payments made in accordance with Articles 11 and 12; and
- (g) payments arising out of the settlement of a dispute under Chapter IV.

2. Each Contracting Party shall further ensure that such transfers may be made without delay in freely usable currencies at the market exchange rate prevailing on the date of each transfer.

3. Notwithstanding paragraphs 1 and 2, a Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good-faith application of its laws and regulations relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities or derivatives;
- (c) ensuring compliance with orders or judgments in judicial or administrative proceedings;
- (d) criminal or penal offences; or
- (e) reports or record keeping of transfers of currency or other monetary instruments required in accordance with applicable laws and regulations.

#### Article 15 General and Security Exceptions

1. Subject to the requirement that such measures are not applied by a Contracting Party in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Contracting Party, or a disguised restriction on investments of investors of that other Contracting Party in the Area of the former Contracting Party, nothing in this Agreement other than Article 12 shall be construed to prevent that former Contracting Party from adopting or enforcing measures, including those to protect the environment:

- (a) necessary to protect human, animal or plant life or health;

- (b) necessary to protect public morals or to maintain public order;

Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (c) necessary to secure compliance with the laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contract;
  - (ii) the protection of the privacy of the individual in relation to the processing and dissemination of personal data and the protection of confidentiality of personal records and accounts; or
  - (iii) safety; or
- (d) imposed for the protection of national treasures of artistic, historic, archaeological or cultural value.

2. Nothing in this Agreement other than Article 12 shall be construed:

- (a) to require a Contracting Party to furnish or to allow access to any information whose disclosure would be contrary to its essential security interests;
- (b) to prevent a Contracting Party from taking any action which it considers necessary for the protection of its essential security interests:
  - (i) relating to guns traffic, ammunitions and war implements and the traffic and transaction of other goods, materials, services and technology as is carried on directly or indirectly for the purpose of supplying a military or security base;
  - (ii) taken in time of war, or armed conflict, or other emergency in that Contracting Party or in international relations; or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons; or

(c) to prevent a Contracting Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

3. In cases where a Contracting Party takes any measure, pursuant to paragraph 1, that does not conform with the obligations under this Agreement other than Article 12, that Contracting Party shall endeavor to, as soon as possible, notify the measure to the other Contracting Party.

#### Article 16 Temporary Safeguard Measures

1. A Contracting Party may adopt or maintain measures not conforming with its obligations under paragraph 1 of Article 2 relating to cross-border capital transactions and Article 14:

- (a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or
- (b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

2. Measures referred to in paragraph 1:

- (a) shall be consistent with the Articles of Agreement of the International Monetary Fund, so long as the Contracting Party taking the measures is a party to the said Articles;
- (b) shall not exceed those necessary to deal with the circumstances set out in paragraph 1;
- (c) shall be temporary and shall be eliminated as soon as conditions permit;
- (d) shall be promptly notified to the other Contracting Party; and

(e) shall avoid unnecessary damages to the commercial, economic and financial interests of the other Contracting Party.

3. Nothing in this Agreement shall be regarded as altering the rights enjoyed and obligations undertaken by a Contracting Party as a party to the Articles of Agreement of the International Monetary Fund.

#### Article 17 Prudential Measures

1. Notwithstanding any other provisions of this Agreement, a Contracting Party shall not be prevented from taking measures relating to financial services sector for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or measures to ensure the integrity and stability of its financial system.

2. In cases where a Contracting Party takes any measure, pursuant to paragraph 1, that does not conform with the obligations under this Agreement, that Contracting Party shall not use such measure as a means of avoiding its obligations under this Agreement.

#### Article 18 Intellectual Property Rights

1. The Contracting Parties, aiming at further promoting investment activities, shall promote adequate, effective and non-discriminatory protection of intellectual property rights in accordance with this Agreement, the TRIPS Agreement and other international agreements to which the Contracting Parties are parties.

2. Nothing in this Agreement shall be construed to derogate from the rights and obligations of a Contracting Party under international agreements in respect of protection of intellectual property rights to which the Contracting Parties are parties.

3. Nothing in this Agreement shall be construed to oblige either Contracting Party to extend to investors of the other Contracting Party and their investments treatment accorded to investors of a non-Contracting Party and their investments by virtue of international agreements in respect of protection of intellectual property rights, to which the former Contracting Party is a party.

Note: For greater certainty, nothing in this Agreement shall derogate from the obligations of the Contracting Parties to accord most favored nation treatment in respect of protection of intellectual property rights under international agreements in force for the Contracting Parties, where such obligation is specifically provided for in such international agreements and applicable.

Article 19  
Taxation

1. Nothing in this Agreement shall apply to taxation measures except as expressly provided for in this Agreement.
2. Nothing in this Agreement shall affect the rights and obligations of either Contracting Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.
3. Paragraphs 1 and 3 of Article 7 and Article 11 shall apply to taxation measures. Non-discriminatory treatment with regard to access to the courts of justice and administrative tribunals shall also apply to taxation measures.
4. Chapter IV shall apply to disputes regarding taxation measures to the extent covered by paragraph 3.
5. (a) No investor may invoke Article 11 as the basis for an investment dispute under Chapter IV, where it has been determined pursuant to subparagraph (b) that the taxation measure in question is not an expropriation.  
  
(b) The investor shall refer the issue, at the time that it delivers the notice of intent under paragraph 3 of Article 27, to the competent authorities of both Contracting Parties to determine whether such measure is not an expropriation. If the competent authorities of both Contracting Parties do not consider the issue or, having considered it, fail to determine, within a period of one hundred and eighty (180) days of such referral, that the measure is not an expropriation, the investor may submit its claim to arbitration under Article 27.

- (c) For the purposes of subparagraph (b), the term "competent authorities" means:
  - (i) with respect to Japan, the Minister of Finance or his or her authorized representatives, who shall consider the issue in consultation with the Minister for Foreign Affairs or his or her authorized representatives; and
  - (ii) with respect to the Republic of Colombia, the Minister of Finance and Public Credit, or his or her authorized representatives.

Article 20  
Joint Committee

1. The Contracting Parties shall establish a Joint Committee (hereinafter referred to as "the Committee") with a view to accomplishing the objectives of this Agreement.
2. Each Contracting Party shall designate a contact point to facilitate communications between the Contracting Parties on any matter relating to this Article. The contact points are:
  - (a) with respect to Japan, Ministry of Foreign Affairs or the entity in lieu of or replacing the aforementioned; and
  - (b) with respect to the Republic of Colombia, the Ministry of Trade, Industry and Tourism or the entity in lieu of or replacing the aforementioned.
3. The functions of the Committee shall be:
  - (a) to discuss and review the implementation and operation of this Agreement;
  - (b) to share information on and to promote cooperation in investment-related matters within the scope of this Agreement, which relate to improvement of investment environment;
  - (c) to make appropriate recommendations by consensus to the Contracting Parties for the more effective functioning or the attainment of the objectives of this Agreement; and
  - (d) to discuss any other investment-related matters concerning this Agreement.



4. The Committee shall meet within twelve (12) months after the entry into force of this agreement and then it shall meet as agreed by the Contracting Parties.

5. The Committee may establish sub-committees and delegate specific tasks to such sub-committees.

6. The Committee and the sub-committees established pursuant to paragraph 5 shall determine their own rules of procedures to carry out their functions.

7. The Committee and the sub-committees established pursuant to paragraph 5 shall be composed of representatives of the Contracting Parties. The Committee and the sub-committees, upon mutual consent of the Contracting Parties, may hold joint meetings with the private sectors on matters related to the improvement of investment environment in the Area of the Contracting Parties.

8. The sub-committees established pursuant to paragraph 5 shall meet upon the request of either Contracting Party.

Article 21  
Measures on Health, Safety, Environment  
and Labor

1. Each Contracting Party recognizes that it is inappropriate to encourage investment activities of investors of the other Contracting Party and of a non-Contracting Party by relaxing its domestic health, safety or environmental measures or by lowering its labor standards. Accordingly, each Contracting Party should not waive or otherwise derogate from such measures or standards as an encouragement for the establishment, acquisition or expansion in its Area of investments by investors of the other Contracting Party and of a non-Contracting Party.

2. Each Contracting Party may adopt, maintain or enforce any measure that it considers appropriate to ensure that investment activities in its Area are undertaken in a manner not incompatible with its environmental law, provided that such measure is consistent with this Agreement.

Article 22  
Denial of Benefits

A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of that other Contracting Party and to its investments if the enterprise is owned or controlled by an investor of a non-Contracting Party and the denying Contracting Party:

- (a) does not maintain diplomatic relations with the non-Contracting Party; or
- (b) adopts or maintains measures with respect to the non-Contracting Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its investments.

Article 23  
Special Formalities  
and Information Requirements

1. Nothing in Article 2 shall be construed to prevent a Contracting Party from adopting or maintaining a measure that prescribes special formalities in connection with investment activities of investors of the other Contracting Party in its Area, such as a requirement that investors be residents of the Contracting Party or that investments be legally constituted under the laws or regulations of the Contracting Party, provided that such formalities do not materially impair the protections afforded by the Contracting Party to investors of the other Contracting Party and to their investments pursuant to this Agreement.

2. Notwithstanding Articles 2 and 3, a Contracting Party may require an investor of the other Contracting Party or its investments to provide routine information concerning those investments solely for informational and statistical purposes. The Contracting Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or its investments. Nothing in this paragraph shall be construed to prevent a Contracting Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

CHAPTER III  
Settlement of Disputes  
between the Contracting Parties

Article 24  
Settlement of Disputes  
between the Contracting Parties

1. Disputes arising between the Contracting Parties with respect to the interpretation or application of this Agreement shall be settled, as far as possible, through consultations. Such consultations shall be requested in writing by either Contracting Party.
2. Any dispute between the Contracting Parties as to the interpretation or application of this Agreement, not satisfactorily settled through consultations within sixty (60) days after the request for consultation referred to in paragraph 1, shall be referred for decision to an arbitration board.
3. An arbitration board referred to in paragraph 2 shall be established for each dispute. Such arbitration board shall be composed of three arbitrators, with each Contracting Party appointing one arbitrator within a period of thirty (30) days from the date of receipt by either Contracting Party from the other Contracting Party of request for arbitration through diplomatic channels, and the third arbitrator to be agreed upon as President by the two arbitrators so chosen within a further period of thirty (30) days, provided that the third arbitrator shall not be a national of either Contracting Party nor be affiliated with either of the Contracting Parties, nor have dealt with the dispute.
4. If the necessary appointments referred to in paragraph 3 have not been made within the periods referred to in that paragraph, either Contracting Party may, unless otherwise agreed, request the President of the International Court of Justice to make such appointments. If the President of the International Court of Justice is prevented from performing the above mentioned duty or is a national of either Contracting Party, the Vice-President shall be requested to make the necessary appointments. If the Vice-President is prevented from performing the above-mentioned duty or is a national of either Contracting Party, the necessary appointments shall be made by the most senior judge who is not a national of either Contracting Party.

5. The arbitration board shall determine its own procedural rules. The arbitration board shall decide the dispute in accordance with this Agreement and the rules and principles of international law applicable to the subject matter. The arbitration board shall reach its decisions by a majority of votes. Such decisions shall be final and binding. Unless otherwise agreed, the decision shall be rendered within six months following the appointment of the President of the arbitration board in accordance with paragraphs 3 and 4.

6. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the President of the arbitration board in discharging his or her duties and the remaining costs of the arbitration board shall be borne equally by the Contracting Parties. The fees and expenses of the arbitrators may not exceed the limits established from time to time in the ICSID and effective at the time of the establishment of the arbitration board.

#### Article 25 Limitation of Claims

1. With regard to disputes relating to financial services, paragraphs 2 through 6 of Article 24 only applies to disputes regarding matters that affect the operation, management, maintenance, use, enjoyment and sale or other disposal of investments or the investments of investors of a Contracting Party already established, acquired or expanded in the Area of the other Contracting Party in accordance with its laws and regulations.

2. With regard to disputes relating to activities or services that are part of a public retirement plan or social security system established by the laws and regulations of either Contracting Party, paragraphs 2 through 6 of Article 24 only applies to disputes regarding matters that affect the operation, management, maintenance, use, enjoyment and sale or other disposal of investments or the investments of investors of a Contracting Party already established, acquired or expanded in the Area of the other Contracting Party in accordance with its laws and regulations.

CHAPTER IV  
Settlement of Investment Disputes between  
a Contracting Party and an Investor of  
the other Contracting Party

Article 26  
Consultations and Negotiations

1. In the event of an investment dispute, the disputing parties shall, as far as possible, settle the dispute amicably through consultations and negotiations which may include the use of non-binding and third-party procedures. The proceeding for consultations and negotiations shall begin with a request in writing delivered to the competent authority of the disputing Party set out in Article 41. The request shall be accompanied by a brief summary of the factual and legal basis of the investment dispute sufficient to present the problem clearly. Such request shall be delivered to the disputing Party before the submission of the "notice of intent" to the disputing Party referred to in paragraph 3 of Article 27.

2. Consultations and negotiations shall be carried out at least during six months.

3. As one of the non-binding and third-party procedures referred to in paragraph 1, the disputing parties may agree to submit the investment dispute to conciliation procedure under the ICSID Convention or under the ICSID Additional Facility Rules.

Article 27  
Submission of a Claim to Arbitration

1. With regard to the submission of a claim to arbitration by a disputing investor, the disputing Party may require, subject to its laws and regulations, that local administrative remedies shall be exhausted in advance. Procedure for such remedies shall in no case exceed six months from the date of receipt of the written notification from the disputing investor requesting the commencement of the procedure by the disputing Party and shall not prevent the disputing investor from requesting consultations and negotiations referred to in Article 26.

2. In the event that an investment dispute cannot be settled through consultations and negotiations within the period of time set out in paragraph 5:

- (a) the disputing investor, on its own behalf, may submit to arbitration under this Chapter a claim:

- (i) that the disputing Party has breached an obligation under Chapter II other than paragraphs 2 and 4 of Article 7, Articles 8, 9 and 20; and
  - (ii) that the disputing investor has incurred loss or damage by reason of, or arising out of, that breach; and
- (b) the disputing investor, on behalf of an enterprise of the disputing Party that is a juridical person that the disputing investor owns or controls directly or indirectly, may submit to arbitration under this Chapter a claim:
  - (i) that the disputing Party has breached an obligation under Chapter II other than paragraphs 2 and 4 of Article 7, Articles 8, 9 and 20; and
  - (ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,

provided that the local administrative remedies have been exhausted in accordance with paragraph 1, as may be required by the disputing Party pursuant to that paragraph.

3. The disputing investor who intends to submit the investment dispute to arbitration pursuant to paragraph 2 shall give to the disputing Party written notice of intent to do so at least forty-five (45) days before the submission. The notice of intent shall specify:

- (a) the name and address of the disputing investor and, in the case of subparagraph 2(b), the name, address and place of incorporation of the enterprise;
- (b) the specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the investment dispute sufficient to present the problem clearly, including the obligations under this Agreement alleged to have been breached;
- (c) arbitration set forth in paragraph 5 which the disputing investor will choose; and
- (d) the relief sought and the approximate amount of damages claimed.

4. In cases where the disputing investor is a national or an enterprise of a Contracting Party, that disputing investor must deliver evidence establishing that it is a national or an enterprise of a Contracting Party with the notice of intent referred to in paragraph 3.

5. If the investment dispute cannot be settled within seven months and fifteen days from the date on which the disputing investor requested the disputing Party in writing for consultations and negotiations referred to in Article 26, the disputing investor may submit a claim referred to in paragraph 2 to one of the following arbitrations:

- (a) arbitration under the ICSID Convention, provided that both Contracting Parties are parties to the ICSID Convention;
- (b) arbitration under the ICSID Additional Facility Rules, provided that either Contracting Party, but not both, is a party to the ICSID Convention;
- (c) arbitration under the UNCITRAL Arbitration Rules; and
- (d) if agreed with the disputing Party, any arbitration in accordance with other arbitration rules, including under an *ad hoc* arbitration institution.

6. A claim shall be deemed submitted to arbitration under this Chapter, when the disputing investor's notice of arbitration or request for arbitration (hereinafter collectively referred to in this Chapter as "notice of arbitration"):

- (a) referred to in paragraph (1) of Article 36 of the ICSID Convention is received by the Secretary-General;
- (b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;
- (c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, is received by the disputing Party; or
- (d) under any other arbitration institution or arbitral rules chosen under subparagraph 5(d), is received by the disputing Party, unless otherwise specified by such institution or in such rules.

7. The arbitration rules applicable under paragraph 5, which are in effect on the date the claim is submitted to arbitration, shall govern the arbitration under this Chapter except to the extent modified or supplemented by this Chapter.

8. The disputing investor shall provide with the notice of arbitration:

- (a) the name of the arbitrator that the disputing investor appoints; or
- (b) the disputing investor's written consent for the Secretary-General to appoint the disputing investor's arbitrator.

Article 28  
Consent to Arbitration

1. Each Contracting Party hereby consents to the submission of investment disputes by a disputing investor to arbitration set forth in paragraph 5 of Article 27 chosen by the disputing investor, except for disputes with regard to paragraph 3 of Article 4.

2. For investment disputes with regard to paragraph 3 of Article 4:

- (a) necessary consent for the submission to the arbitration will be given by the competent authority of the disputing Party set out in Article 41; and
- (b) in cases where the written agreement referred to in paragraph 3 of Article 4 stipulates a dispute settlement procedure, such procedure shall prevail over this Chapter.

3. The consent given by paragraph 1 and the submission by a disputing investor of an investment dispute to arbitration shall satisfy the requirements of:

- (a) Chapter II of the ICSID Convention or the ICSID Additional Facility Rules, for written consent of the parties to a dispute; and
- (b) Article II of the New York Convention, for an agreement in writing.



Article 29  
Conditions and Limitations  
to the Consent and to the Claims

1. An investor of a Contracting Party whose investments were not established, acquired or expanded in accordance with the laws and regulations of the other Contracting Party which are not inconsistent with this Agreement shall not resort to the dispute settlement under this Chapter to settle an investment dispute with respect to such investments.

2. With regard to investment disputes with respect to investments or investment activities of a disputing investor relating to financial services, this Chapter only applies to claims regarding investments already established, acquired or expanded in the Area of the disputing Party in accordance with its laws and regulations, as well as the investment activities associated with such investments.

3. With regard to investment disputes with respect to investments or investment activities of a disputing investor relating to activities or services that are part of a public retirement plan or social security system established by the laws and regulations of the disputing Party, this Chapter only applies to claims regarding investments already established, acquired or expanded in the Area of the disputing Party in accordance with its laws and regulations, as well as the investment activities associated with such investments.

4. No investment dispute may be submitted to arbitration set forth in paragraph 5 of Article 27, if more than three years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, the knowledge of the breach alleged under paragraph 2 of Article 27 and knowledge that the disputing investor, in the case of subparagraph 2(a) of Article 27, or the enterprise, in the case of subparagraph 2(b) of Article 27, had incurred loss or damage.

5. No claim may be submitted to arbitration under this Chapter unless:

- (a) the disputing investor consents in writing to arbitration in accordance with the procedures set out in this Chapter; and

- (b) the notice of arbitration is accompanied:
  - (i) for claims submitted to arbitration under subparagraph 2(a) of Article 27, by disputing investor's written waiver; or
  - (ii) for claims submitted to arbitration under subparagraph 2(b) of Article 27, by the disputing investor's and the enterprise's written waiver;

of any right to initiate before any administrative tribunal or court under the law of either Contracting Party or other dispute settlement procedures, any proceedings with respect to any measure of the disputing Party alleged to constitute a breach referred to in paragraph 2 of Article 27.

6. Notwithstanding subparagraph 5(b), the disputing investor, for claims submitted under subparagraph 2(a) of Article 27, and the disputing investor or the enterprise, for claims submitted under subparagraph 2(b) of Article 27, may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of monetary damages before a judicial or administrative tribunal of the disputing Party.

7. The consent and waiver required by this Article shall be delivered to the disputing Party.

8. Where the disputing Party has deprived the disputing investor of the control of an enterprise, a waiver from the enterprise under subparagraph 5(b)(ii) shall not be required.

9. Once the disputing investor has submitted an investment dispute to administrative tribunal or court of the disputing Party or to any of the arbitration under paragraph 5 of Article 27, that election shall be definitive and the disputing investor may not submit thereafter the same dispute to the other arbitrations set forth in paragraph 5 of Article 27.

10. Neither Contracting Party shall give diplomatic protection, or bring an international claim, in respect of an investment dispute which the other Contracting Party and an investor of the former Contracting Party have consented to submit or submitted to arbitration set forth in paragraph 5 of Article 27, unless that other Contracting Party has failed to abide by and comply with the award rendered in such investment dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the investment dispute.

Article 30  
Establishment of a Tribunal

1. Unless the disputing parties agree otherwise, a Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. If the disputing investor or the disputing Party fails to appoint an arbitrator or arbitrators within seventy-five (75) days from the date on which the investment dispute was submitted to arbitration under this Chapter, the Secretary-General may be requested by either of the disputing parties to appoint the arbitrator or arbitrators not yet appointed from the ICSID Panel of Arbitrators subject to the requirements of this Article. The Secretary-General should make such appointment in its discretion and, to the extent practicable, after having heard the disputing parties.

3. Unless the disputing parties agree otherwise, the presiding arbitrator shall not be a national of either Contracting Party, nor have his or her usual place of residence in the territory of either Contracting Party, nor be affiliated with either of the disputing parties, nor have dealt with the investment dispute in any capacity.

4. In appointing the arbitrators, the disputing parties consider that arbitrators of a Tribunal should have expertise and competence in the fields of international public law, the law on foreign investment or the subject-matters of the investment dispute arisen between the disputing parties.

5. For the purposes of paragraph 2, each of the disputing parties may indicate up to three nationalities, the appointment of arbitrators of which is unacceptable to it. In this event, the Secretary-General may be requested not to appoint as arbitrator any person whose nationality is indicated by either of the disputing parties.

6. The disputing parties may agree on the fees to be paid to the arbitrators. If the disputing parties do not reach an agreement on the fees to be paid to the arbitrators before the establishment of the Tribunal, the fees and expenses established from time to time in the ICSID and effective at the time of the establishment of the Tribunal shall apply.

#### Article 31 Governing Law

The Tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

Note: In accordance with international law and where relevant and appropriate, a Tribunal may take into consideration the law of the disputing Party. However, a Tribunal does not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of the disputing Party.

#### Article 32 Transparency in Arbitral Proceedings for the other Contracting Party

The disputing Party shall provide the other Contracting Party with:

- (a) written notice of the investment dispute submitted to the arbitration no later than thirty (30) days after the date of the submission; and
- (b) copies of all pleadings filed in the arbitration upon request of and at the expenses of the other Contracting Party.

#### Article 33 Place of Arbitration

The arbitration shall be held in a country agreed by the disputing parties. If the disputing parties fail to reach an agreement, the Tribunal shall determine the place in a country that is a party to the New York Convention.

Article 34  
Preliminary Questions

Before ruling on the merits, the Tribunal shall address and decide as a preliminary question any objection to jurisdiction and admissibility by the disputing Party. When deciding on any objection of the disputing Party, the Tribunal may, if warranted, award to the prevailing disputing party reasonable costs including attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the Tribunal shall consider whether the claim was frivolous or whether the objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

Article 35  
Interim Measures of Protection

A Tribunal may order an interim measure of protection to preserve the rights of a disputing party or to facilitate the conduct of arbitral proceedings, including an order to preserve evidence in the possession or control of a disputing party. The Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in paragraph 2 of Article 27.

Article 36  
Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety and other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 37  
Consolidation of Multiple Claims

1. Where two or more claims have been submitted separately to arbitration under paragraph 2 of Article 27, and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the terms set forth in paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General to establish a Tribunal under this Article, and shall specify in the request:

- (a) the names and addresses of all the disputing parties sought to be covered by the order;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within sixty (60) days after receiving a request under paragraph 2 that the request is manifestly unfounded, a Tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order otherwise agree, a Tribunal established under this Article shall comprise three arbitrators:

- (a) one arbitrator appointed by agreement of the disputing investors;
- (b) one arbitrator appointed by the disputing Party; and
- (c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of either Contracting Party, nor have his or her usual place of residence in the territory of either Contracting Party, nor be affiliated with either of the disputing parties, nor have dealt with the investment dispute in any capacity.

5. If, within the sixty (60) days after the Secretary-General receives a request made under paragraph 2, the disputing Party fails or the disputing investors fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the disputing Party fails to appoint an arbitrator, the Secretary-General shall appoint a national of the disputing Party, and if the disputing investors fail to appoint an arbitrator, the Secretary-General shall appoint a national of the Contracting Party other than the disputing Party.

6. Where a Tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under paragraph 2 of Article 27 have a question of law or fact in common, and arise out of the same events or circumstances, the Tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims;
- (b) assume jurisdiction over, and hear and determine one or more claims, the determination of which it considers would assist in the resolution of the other claims; or
- (c) instruct one of the Tribunals previously established under Article 30 to assume jurisdiction over and to hear and determine together, all or part of the claims, provided that;
  - (i) that Tribunal, at the request of any disputing investor not previously a disputing party before that Tribunal, shall be reconstituted with its original members except for the arbitrator for the disputing investors who shall be appointed pursuant to subparagraph 4(a) and paragraph 5; and
  - (ii) that Tribunal shall decide whether any prior hearing shall be repeated.

7. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under paragraph 2 of Article 27 but that has not been named in a request made under paragraph 2, may make a written request to the Tribunal established under this Article that it be included in any order made under paragraph 6 and shall specify in the request:

- (a) the name and address of the disputing investor;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

8. A Tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Chapter.

9. As regards the claims over which a Tribunal established under this Article has assumed jurisdiction pursuant to the order referred to in subparagraphs 6(a) and (b), Tribunals established under Article 30 shall not have jurisdiction. As regards the claims over which a Tribunal established under Article 30 has assumed jurisdiction pursuant to the order of the Tribunal established under this Article under subparagraph 6(c), the other Tribunals established under Article 30 shall not have jurisdiction.

10. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a Tribunal established under Article 30 be stayed, unless the latter Tribunal has already suspended its proceedings.

#### Article 38 Draft Awards

In any investment dispute submitted to arbitration under this Chapter, at the request of a disputing party, a Tribunal shall, before rendering a decision or award, submit to the disputing parties a proposed decision or award. Within sixty (60) days after the date of submission of the proposed decision or award, the disputing parties may submit written comments to the Tribunal concerning any aspect of the draft decision or award. The Tribunal shall consider any such comments and render its decision or award within one hundred and five (105) days of the date of submission of the proposed decision or award.

#### Article 39 Awards

1. The award rendered by the Tribunal shall include:
  - (a) a judgment whether or not there has been a breach by the disputing Party of any obligation under this Agreement with respect to the disputing investor and its investments; and
  - (b) one or both of the following remedies, only, if there has been such breach:
    - (i) monetary damages and applicable interest; and
    - (ii) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest, in lieu of restitution.



A Tribunal may also award costs including attorney's fees in accordance with the applicable arbitration rules.

2. Subject to paragraph 1, when a claim under subparagraph 2(b) of Article 27 is submitted:

- (a) an award of restitution of property shall provide that restitution be made to the enterprise; and
- (b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise.

3. A Tribunal may not award punitive damages.

#### Article 40 Finality and Enforcement of the Award

1. The award rendered in accordance with Article 39 shall be final and binding upon the disputing parties in respect of the particular case. The disputing Party shall carry out as soon as possible the provisions of the award and provide in its Area for the enforcement of the award in accordance with its relevant laws and regulations.

2. If the disputing Party fails to abide by or comply with an award, upon a request of the Contracting Party other than the disputing Party, an arbitration board in conformity with Article 24 may be established. The requesting Party may seek in such proceedings:

- (a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
- (b) a recommendation to the disputing Party to abide by or comply with the award.

3. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether the proceedings under paragraph 2 have been taken.

#### Article 41 Services of Documents

Consultations and negotiations referred to in Article 26 shall be requested and the notices and other documents relating to arbitration under this Chapter shall be given to the following competent authorities of the disputing Party:

- (a) in case of Japan, Ministry of Foreign Affairs or the entity in lieu of or replacing the aforementioned; and
- (b) in case of the Republic of Colombia, Directorate of Investment and Services of the Ministry of Trade, Industry and Tourism or the entity in lieu of or replacing the aforementioned.

CHAPTER V  
Final Provisions

Article 42  
Headings

The headings of the Chapters and Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

Article 43  
Application and Entry into Force

1. The Governments of the Contracting Parties shall notify each other, through diplomatic channels, of the completion of their respective internal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day after the latter of the dates of receipt of the notifications. It shall remain in force for a period of ten years after its entry into force and shall continue in force unless terminated as provided for in paragraph 3.

2. This Agreement shall apply to all investments of investors of either Contracting Party established, acquired, or expanded in the Area of the other Contracting Party in accordance with the applicable laws and regulations of that other Contracting Party, regardless of when such investments are established, acquired or expanded.

3. A Contracting Party may, by giving one year's advance notice in writing to the other Contracting Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.

4. In respect of investments established, acquired, or expanded prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the said date.

5. This Agreement shall not apply to claims arising out of events which occurred, or any situation that ceased to exist, or to claims which had been settled, prior to its entry into force.

6. The Annexes and Notes to this Agreement shall form an integral part of this Agreement.

Article 44  
Amendments

1. The Contracting Parties may agree on any amendment to this Agreement.

2. Any amendment shall be approved by the Contracting Parties in accordance with their respective internal procedures and shall enter into force on such date as the Contracting Parties may agree, and shall thereafter constitute an integral part of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at Tokyo, on this twelfth day of September in 2011, in the Japanese, Spanish and English languages, all texts being equally authentic. In case of any divergency, the English text shall prevail.

FOR JAPAN:

玄葉光一郎

FOR THE REPUBLIC OF COLOMBIA:

Díaz-Granados

Annex I  
Reservations for Measures referred to  
in paragraph 1 of Article 6

1. The Schedule of a Contracting Party sets out, pursuant to paragraph 1 of Article 6, the reservations taken by that Contracting Party with respect to existing measures that do not conform with obligations imposed by:

- (a) Article 2 (National Treatment);
- (b) Article 3 (Most Favored Nation Treatment);
- (c) Article 5 (Performance Requirements); or
- (d) Article 10 (Senior Management and Boards of Directors).

2. Each reservation sets out the following elements:

- (a) "Sector" refers to the general sector in which the reservation is taken;
- (b) "Sub-Sector" refers to the specific sector in which the reservation is taken;
- (c) "Industry Classification" refers, where applicable, and only for transparency purposes, to the activity covered by the reservation according to domestic or international industry classification codes;
- (d) "Type of Reservation" specifies the obligations referred to in paragraph 1 for which the reservation is taken;
- (e) "Measures" identifies the existing laws, regulations or other measures for which the reservation is taken. 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
- (f) "Description" sets out, with regard to the obligations referred to in paragraph 1, the non-conforming aspects of the existing measures for which the reservation is taken.

3. In the interpretation of a reservation, all elements of the reservation shall be considered. A reservation shall be interpreted in the light of the relevant provisions of this Agreement against which the reservation is taken. The "Measures" element shall prevail over all other elements.

4. For the purposes of this Annex,

- (a) the term "JSIC" means Japan Standard Industrial Classification set out by the Ministry of Internal Affairs and Communications, and revised on November 6, 2007;
- (b) the term "CPC" means the Provisional Central Product Classification (Statistical paper Series M, No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991); and
- (c) the term "ISIC" means the International Standard Industrial Classification of All Economic Activities adopted, at its seventh session on August 27, 1948 and revised on May 22, 1989, by the Economic and Social Council of the United Nations.

Section 1  
Schedule of Japan

1 Sector: Finance

Sub-Sector: Banking

Industry Classification: JSIC 622 Banks, except central bank

JSIC 631 Financial institutions for small-businesses

Type of Reservation: National Treatment (Article 2)

Measures: Deposit Insurance Law (Law No. 34 of 1971), Article 2

Description: The deposit insurance system only covers financial institutions which have their head offices within the jurisdiction of Japan. The deposit insurance system does not cover deposits taken by branches of foreign banks.

2 Sector: Heat Supply

Sub-Sector:

Industry JSIC 3511 Heat Supply  
Classification:

Type of National Treatment (Article 2)  
Reservation:

Measures: Foreign Exchange and Foreign Trade  
Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct  
Investment (Cabinet Order No. 261 of  
1980), Article 3

Description: The prior notification requirement  
under the Foreign Exchange and  
Foreign Trade Law applies to foreign  
investors who intend to make  
investments in heat supply industry  
in Japan.

3 Sector: Information and Communications

Sub-Sector: Telecommunications

Industry Classification: JSIC 3700 Head offices primarily engaged in managerial operations

JSIC 3711 Regional telecommunications, except wire broadcast telephones

JSIC 3731 Services incidental to telecommunications

Type of Reservation: National Treatment (Article 2)

Senior Management and Boards of Directors (Article 10)

Measures: Law Concerning Nippon Telegraph and Telephone Corporation (Law No. 85 of 1984), Articles 6 and 10

Description: 1. Nippon Telegraph and Telephone Corporation may not enter the name and address in its register of shareholders if the aggregate of the ratio of the voting rights directly and/or indirectly held by the persons set forth in subparagraphs (a) through (c) reaches or exceeds one third:

- (a) a natural person who does not have Japanese nationality;
- (b) a foreign government or its representative; and
- (c) a foreign legal person or a foreign entity.

2. Any natural person who does not have Japanese nationality may not assume the office of director or auditor of Nippon Telegraph and Telephone Corporation, Nippon Telegraph and Telephone East Corporation and Nippon Telegraph and Telephone West Corporation.



4 Sector: Information and Communications

Sub-Sector: Telecommunications and Internet Based Services

Industry Classification: JSIC 3711 Regional telecommunications, except wire broadcast telephones

JSIC 3712 Long-distance telecommunications

JSIC 3719 Miscellaneous fixed telecommunications

JSIC 3721 Mobile telecommunications

JSIC 401 Internet based services

Note: The activities covered by the reservation under JSIC 3711, 3712, 3719, 3721 or 401 are limited to the activities which are subject to the registration obligation under Article 9 of the Telecommunications Business Law (Law No. 86 of 1984).

Type of Reservation: National Treatment (Article 2)

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in telecommunications business and internet based services in Japan.

5    Sector:                    Manufacturing

      Sub-Sector:                Drugs and Medicines Manufacturing

      Industry                    JSIC 1653            Biological preparations  
Classification:

      Type of                        National Treatment (Article 2)  
Reservation:

      Measures:                    Foreign Exchange and Foreign Trade  
    Law (Law No. 228 of 1949), Article 27

    Cabinet Order on Foreign Direct  
    Investment (Cabinet Order No. 261 of  
    1980), Article 3

      Description:                 The prior notification requirement  
    under the Foreign Exchange and  
    Foreign Trade Law applies to foreign  
    investors who intend to make  
    investments in biological  
    preparations manufacturing industry  
    in Japan. For greater certainty,  
    "biological preparations  
    manufacturing industry" deals with  
    economic activities in an  
    establishment which mainly produces  
    vaccine, serum, toxoid, antitoxin and  
    some preparations similar to the  
    aforementioned products, or blood  
    products.

6	Sector:	Manufacturing	
	Sub-Sector:	Leather and Leather Products Manufacturing	
	Industry Classification:	JSIC 1189	Textile apparel and accessories, n.e.c.
		JSIC 1694	Gelatine and adhesives
		JSIC 192	Rubber and plastic footwear and its findings
		JSIC 2011	Leather tanning and finishing
		JSIC 2021	Mechanical leather products, except gloves and mittens
		JSIC 2031	Cut stock and findings for boots and shoes
		JSIC 2041	Leather footwear
		JSIC 2051	Leather gloves and mittens
		JSIC 2061	Baggage
		JSIC 207	Handbags and small leather cases
		JSIC 2081	Fur skins
		JSIC 2099	Miscellaneous leather products
		JSIC 3253	Sporting and athletic goods

Note 1: The activities covered by the reservation under JSIC 1189 or 3253 are limited to the activities related to leather and leather products manufacturing.

Note 2: The activities covered by the reservation under JSIC 1694 are limited to the activities related to animal glue (nikawa) and gelatine manufacturing.

Type of  
Reservation:

National Treatment (Article 2)

Measures:

Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description:

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in leather and leather products manufacturing industry in Japan.

7 Sector: Matters Related to the Nationality of  
a Ship

Sub-Sector:

Industry  
Classification:

Type of  
Reservation: National Treatment (Article 2)  
Senior Management and Boards of  
Directors (Article 10)

Measures: Ship Law (Law No. 46 of 1899),  
Article 1

Description: The Japanese nationality shall be  
given to a ship whose owner is a  
Japanese national, or a company  
established under Japanese law, of  
which all the representatives and not  
less than two-thirds of the  
executives administering the affairs  
are Japanese nationals.

8 Sector: Mining

Sub-Sector:

Industry Classification: JSIC 05 Mining and quarrying of stone and gravel

Type of Reservation: National Treatment (Article 2)

Measures: Mining Law (Law No. 289 of 1950), Chapters 2 and 3

Description: Only a Japanese national or a Japanese legal person may have mining rights or mining lease rights.

9 Sector: Oil Industry

Sub-Sector:

Industry Classification:	JSIC 053	Crude petroleum and natural gas production
	JSIC 1711	Petroleum refining
	JSIC 1721	Lubricating oils and greases (not made in petroleum refineries)
	JSIC 1741	Paving materials
	JSIC 1799	Miscellaneous petroleum and coal products
	JSIC 4711	Ordinary warehousing
	JSIC 4721	Refrigerated warehousing
	JSIC 5331	Petroleum
	JSIC 6051	Petrol stations (gasoline service stations)
	JSIC 6052	Fuel stores, except gasoline service stations
	JSIC 9299	Miscellaneous business services, n.e.c.

Note 1: The activities covered by the reservation under JSIC 1741, 1799, 4711, 4721 or 6052 are limited to the activities related to oil industry.

Note 2: The activities covered by the reservation under JSIC 9299 are limited to the activities related to liquefied petroleum gas industry.

Type of Reservation: National Treatment (Article 2)

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in oil industry in Japan. All organic chemicals such as ethylene, ethylene glycol and polycarbonates are outside the scope of the oil industry. Therefore, prior notification under the Foreign Exchange and Foreign Trade Law is not required for the investment in the manufacture of these products.



10 Sector: Agriculture, Forestry and Fisheries, and Related Services (except Fisheries within the Territorial Sea, Internal Waters, Exclusive Economic Zone and Continental Shelf provided for in the reservation No. 8 in the Schedule of Japan in Annex II)

Sub-Sector:

Industry Classification:	JSIC 01	Agriculture
	JSIC 02	Forestry
	JSIC 03	Fisheries, except aquaculture
	JSIC 04	Aquaculture
	JSIC 6324	Agricultural cooperatives
	JSIC 6325	Fishery and fishery processing cooperatives
	JSIC 871	Agriculture, forestry and fisheries cooperative associations, n.e.c.

Type of Reservation: National Treatment (Article 2)

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in agriculture, forestry and fisheries, and related services (except fisheries within the territorial sea, internal waters, exclusive economic zone and continental shelf provided for in the reservation No. 8 in the Schedule of Japan of Annex II) in Japan.

11 Sector: Security Guard Services

Sub-Sector:

Industry JSIC 9231 Guard services  
Classification:

Type of Reservation: National Treatment (Article 2)

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in security guard services in Japan.

12 Sector: Transport

Sub-Sector: Air Transport

Industry Classification: JSIC 4600 Head offices primarily engaged in managerial operations

JSIC 4611 Air transport

Type of Reservation: National Treatment (Article 2)

Most Favored Nation Treatment (Article 3)

Senior Management and Boards of Directors (Article 10)

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Civil Aeronautics Law (Law No. 231 of 1952), Chapters 7 and 8

Description: 1. The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in air transport business in Japan.

2. Permission of the Minister of Land, Infrastructure, Transport and Tourism for conducting air transport business as a Japanese air carrier is not granted to the following natural persons or entities applying for the permission:

(a) a natural person who does not have Japanese nationality;

(b) a foreign country, or a foreign public entity or its equivalent;

- (c) a legal person or other entity constituted under the laws of any foreign country; and
- (d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c).

In the event an air carrier falls into a natural person or an entity referred to in subparagraphs (a) through (d), the permission will lose its effect. The conditions for the permission also apply to companies, such as holding companies, which have substantial control over the air carriers.

3. A Japanese air carrier or a company having substantial control over such air carrier, such as a holding company, may reject the request from a natural person or an entity set forth in subparagraphs 2(a) through (c), who owns equity investments in such air carrier or company, to enter its name and address in the register of shareholders, in the event such air carrier or company falls into a legal person referred to in subparagraph 2(d) by accepting such request.

4. Foreign air carriers are required to obtain permission of the Minister of Land, Infrastructure, Transport and Tourism to conduct international air transport business.

5. Permission of the Minister of Land, Infrastructure, Transport and Tourism is required for the use of foreign aircraft for air transport of passengers or cargoes to and from Japan for remuneration.

6. A foreign aircraft may not be used for a flight between points within Japan.

13 Sector: Transport

Sub-Sector: Air Transport

Industry Classification: JSIC 4600 Head offices primarily engaged in managerial operations

JSIC 4621 Aircraft service, except air transport

Type of Reservation: National Treatment (Article 2)

Senior Management and Boards of Directors (Article 10)

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Civil Aeronautics Law (Law No. 231 of 1952), Chapters 7 and 8

Description: 1. The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in aerial work business in Japan.

2. Permission of the Minister of Land, Infrastructure, Transport and Tourism for conducting aerial work business is not granted to the following natural persons or entities applying for the permission:

(a) a natural person who does not have Japanese nationality;

(b) a foreign country, or a foreign public entity or its equivalent;

(c) a legal person or other entity constituted under the laws of any foreign country; and

- (d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c).

In the event a person conducting aerial work business falls into a natural person or an entity referred to in subparagraphs (a) through (d), the permission will lose its effect. The conditions for the permission also apply to companies, such as holding companies, which have substantial control over the person conducting aerial work business.

3. A foreign aircraft may not be used for a flight between points within Japan.

14 Sector: Transport

Sub-Sector: Air Transport (Registration of Aircraft in the National Register)

Industry Classification:

Type of Reservation: National Treatment (Article 2)  
Senior Management and Boards of Directors (Article 10)

Measures: Civil Aeronautics Law (Law No. 231 of 1952), Chapter 2

Description: 1. An aircraft owned by any of the following natural persons or entities may not be registered in the national register:

- (a) a natural person who does not have Japanese nationality;
- (b) a foreign country, or a foreign public entity or its equivalent;
- (c) a legal person or other entity constituted under the laws of any foreign country; and
- (d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c).

2. A foreign aircraft may not be registered in the national register.



15 Sector: Transport

Sub-Sector: Freight Forwarding Business  
(excluding freight forwarding  
business using air transportation)

Industry Classification: JSIC 4441 Collect-and-deliver  
freight transport

JSIC 4821 Deliver freight  
transport, except  
collect-and-deliver  
freight transport

Type of Reservation: National Treatment (Article 2)

Most Favored Nation Treatment  
(Article 3)

Senior Management and Boards of  
Directors (Article 10)

Measures: Freight Forwarding Business Law (Law  
No. 82 of 1989), Chapters 2 through 4

Enforcement Regulation of Freight  
Forwarding Business Law (Ministerial  
Ordinance of the Ministry of  
Transport No. 20 of 1990)

Description: The following natural persons or  
entities are required to be  
registered with, or to obtain  
permission or approval of, the  
Minister of Land, Infrastructure,  
Transport and Tourism for conducting  
freight forwarding business using  
international shipping. Such  
registration shall be made, or such  
permission or approval shall be  
granted, on the basis of reciprocity:

- (a) a natural person who does not  
have Japanese nationality;
- (b) a foreign country, or a foreign  
public entity or its equivalent;
- (c) a legal person or other entity  
constituted under the laws of  
any foreign country; and

- (d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c).

16 Sector: Transport

Sub-Sector: Freight Forwarding Business (only freight forwarding business using air transportation)

Industry Classification: JSIC 4441 Collect-and-deliver freight transport

JSIC 4821 Deliver freight transport, except collect-and-deliver freight transport

Type of Reservation: National Treatment (Article 2)

Most Favored Nation Treatment (Article 3)

Senior Management and Boards of Directors (Article 10)

Measures: Freight Forwarding Business Law (Law No. 82 of 1989), Chapters 2 through 4

Enforcement Regulation of Freight Forwarding Business Law (Ministerial Ordinance of the Ministry of Transport No. 20 of 1990)

Description: 1. The following natural persons or entities may not conduct freight forwarding business using air transportation between points within Japan:

- (a) a natural person who does not have Japanese nationality;
- (b) a foreign country, or foreign public entity or its equivalent;
- (c) a legal person or other entity constituted under the laws of any foreign country; and

- (d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c).

2. The natural persons or entities referred to in subparagraphs 1(a) through (d) are required to be registered with, or to obtain permission or approval of, the Minister of Land, Infrastructure, Transport and Tourism for conducting freight forwarding business using international air transportation. Such registration shall be made, or such permission or approval shall be granted, on the basis of reciprocity.

17 Sector: Transport

Sub-Sector: Railway Transport

Industry Classification: JSIC 421 Railway transport  
 JSIC 4851 Railway facilities services

Type of Reservation: National Treatment (Article 2)

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27  
 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in railway transport industry in Japan. The manufacture of vehicles, parts and components for the railway transport industry is not included in railway transport industry. Therefore, prior notification under the Foreign Exchange and Foreign Trade Law is not required for the investments in the manufacture of these products.

18 Sector: Transport

Sub-Sector: Road Passenger Transport

Industry Classification: JSIC 4311 Common omnibus operators

Type of Reservation: National Treatment (Article 2)

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in omnibus industry in Japan. The manufacture of vehicles, parts and components for omnibus industry is not included in omnibus industry. Therefore, prior notification under the Foreign Exchange and Foreign Trade Law is not required for the investments in the manufacture of these products.

19 Sector: Transport

Sub-Sector: Water Transport

Industry Classification: JSIC 452 Coastwise transport  
 JSIC 453 Inland water transport  
 JSIC 4542 Coastwise ship leasing

Type of Reservation: National Treatment (Article 2)

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27  
 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in water transport industry in Japan. For greater certainty, "water transport industry" refers to oceangoing/seagoing transport, coastwise transport (i.e. maritime transport between ports within Japan), inland water transport and ship leasing industry. However, oceangoing/seagoing transport industry and ship leasing industry excluding coastwise ship leasing industry are exempted from the prior notification requirement.

20 Sector: Transport

Sub-Sector: Water Transport

Industry  
Classification:

Type of  
Reservation: National Treatment (Article 2)  
Most Favored Nation Treatment  
(Article 3)

Measures: Ship Law (Law No. 46 of 1899),  
Article 3

Description: Unless otherwise specified in laws  
and regulations of Japan, or  
international agreements to which  
Japan is a party, ships not flying  
the Japanese flag are prohibited from  
entering Japanese ports which are not  
open to foreign commerce and from  
carrying cargoes or passengers  
between Japanese ports.



21 Sector: Water Supply and Waterworks

Sub-Sector:

Industry Classification: JSIC 3611 Water for end users,  
except industrial users

Type of Reservation: National Treatment (Article 2)

Measures: Foreign Exchange and Foreign Trade  
Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct  
Investment (Cabinet Order No. 261 of  
1980), Article 3

Description: The prior notification requirement  
under the Foreign Exchange and  
Foreign Trade Law applies to foreign  
investors who intend to make  
investments in water supply and  
waterworks industry in Japan.



2    Sector:                    All Sectors

      Sub-Sector:

      Industry  
      Classification:

      Type of                    National Treatment (Article 2)  
      Reservation:

      Measures:                Decreto 2080 de 2000, Art. 26 and 27

      Description:              Foreign investors may make portfolio  
                                  investments in securities in Colombia  
                                  only through a foreign capital  
                                  investment fund (*fondo de inversión  
                                  de capital extranjero*).

3 Sector: All Sectors

Sub-Sector:

Industry  
Classification:

Type of  
Reservation: National Treatment (Article 2)  
Senior Management and Boards of  
Directors (Article 10)

Measures: As set out in the Description  
element, including Articles 3, 11 of  
*Ley 226 de 1995*.

Description: Colombia, when selling or disposing  
of its equity interests in, or the  
assets of, an existing state  
enterprise or an existing  
governmental entity, may prohibit or  
impose limitations on the ownership  
of such interests or assets, and on  
the ability of owners of such  
interests or assets to control any  
resulting enterprise, by investors of  
Japan or of a non-Contracting Party  
or their investments. With respect to  
such a sale or other disposition,  
Colombia may adopt or maintain any  
measure relating to the nationality  
of senior management or members of  
the board of directors.

Relevant existing legislation  
concerning this non-conforming  
measure includes *Ley 226 de 1995*. In  
this respect, if Colombia 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:

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;  
associations of employees and former employees of the enterprise;  
employee unions;  
federations and confederations of trade unions;  
employee funds ("fondos de empleados");  
pension and severance funds; and  
cooperative entities<sup>1</sup>

However, once such interest has been transferred or sold, Colombia does not reserve the right to control any subsequent transfer or other disposal of such interest.

For purposes of this reservation:

any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality requirements described in this reservation shall be deemed to be an existing measure; and  
"state enterprise" means an enterprise owned or controlled through ownership interests by Colombia and includes an enterprise established after the date of entry into force of this Agreement solely for the purposes of selling or disposing of equity interests in, or the assets of, an existing state enterprise or governmental entity.

---

<sup>1</sup> 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".

4 Sector: Fishing and Services Related to Fishing

Sub-Sector: Other Business Services  
Fishing, aquaculture and service activities incidental to fishing

Industry Classification: CPC 882 Services incidental to fishing  
ISIC 0501 Fishing

Type of Reservation: National Treatment (Article 2)  
Most Favored Nation Treatment (Article 3)

Measures: Decreto 2256 de 1991, Art. 27, 28 and 67  
Acuerdo 005 de 2003, Sección II and VII

Description: A foreign flagged vessel may obtain a permit and engage in commercial fishing and related activities in Colombian territorial waters only in association with a Colombian enterprise that owns a permit. In this case, 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.

5 Sector: Private Security and Surveillance Services

Sub-Sector: Other Business Services

Industry Classification: CPC 873 Investigation and security

Type of Reservation: National Treatment (Article 2)

Measures: *Decreto 356 de 1994*, Art. 8, 12, 23 and 25

Description: Partners or members of private security and surveillance services 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.

6 Sector: Journalism

Sub-Sector: News agency services

Industry Classification: CPC 6921 news agency services to newspapers and periodicals

Type of Reservation: Senior Management and Board of Directors (Article 10)

Measures: Ley 29 de 1944, Art. 13

Description: The director or general manager of a newspaper published in Colombia that focuses on Colombian politics must be a Colombian national.



7 Sector: Domiciliary Public Services

Sub-Sector:

Industry  
Classification:

Type of Reservation: National Treatment (Article 2)

Measures: *Ley 142 de 1994*, Artículos 1, 17, 18, 19 and 23

*Código de comercio*, Art. 471 and 472

Description: 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.

For the purposes of this reservation 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 include commercial mobile telephone services.

8 Sector: Cinematography

Sub-Sector:

Industry  
Classification:

Type of Reservation: Performance Requirements (Article 5)

Measures: Ley 814 de 2003, Art. 5, 14, 15, 18 y 19

Description: 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.

9 Sector: Radio Broadcasting Services

Sub-Sector:

Industry  
Classification:

Type of Reservation: Senior Management and Board of Directors (Article 10)

Measures: Ley 80 de 1993, Art. 35  
Decreto 1447 de 1995, Art. 7, 9 y 18

Description: The directors of informative or journalist programs must be a Colombian national.

- 10 Sector: Free-to-air Television  
Audio-Visual Production Services
- Sub-Sector:
- Industry  
Classification:
- Type of Reservation: National Treatment (Article 2)  
Performance Requirements (Article 5)
- 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: Foreign equity in any enterprise  
holding a free-to-air television  
concession is limited to 40 percent.
- National Television  
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 60 per cent for  
Saturdays, Sundays, and holidays  
between 19:00 hours and 22:30  
hours

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.

11 Sector: Subscription Television  
Audio-visual Production Services

Sub-Sector:

Industry  
Classification:

Type of Reservation: Performance Requirements (Article 5)

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: Enterprises that supply subscription television services 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 of the schedule of Colombia 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 6.1 (d).

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.

12 Sector: Waste-Related Services

Sub-Sector:

Industry  
Classification:

Type of  
Reservation: National Treatment (Article 2)

Measures: Decreto 2080 de 2000, Art. 6

Description: Foreign investment is not permitted  
in activities related to the  
processing, disposition, and disposal  
of toxic, hazardous or radioactive  
waste not produced in Colombia.



13 Sector: Transport services

Sub-Sector: Maritime Transportation  
Fluvial Transportation

Industry Classification: CPC 72 Water transport services

Type of Reservation: Performance Requirements (Article 5)  
Senior Management and Board of Directors (Article 10)

Measures: Decreto 804 de 2001, Art. 2 and 4 numeral 4  
Código de Comercio, Art. 1455  
Decreto Ley 2324 de 1984, Art. 99, 101 and 124  
Ley 658 de 2001, Art. 11  
Decreto 1597 de 1998, Art. 23

Description: In Colombian flag vessels and foreign-flagged vessels (except those relating to fishing) that operate in Colombian jurisdictional waters for a period of time longer than six months, continuous or discontinuous, from the date of the issuing of the respective permit, the captain, officials and at least 80 per cent of the rest of the crew must be Colombians.

14 Sector: Transport

Sub-Sector: Specialty Air Services

Industry  
Classification:

Type of  
Reservation: National Treatment (Article 2)  
Most Favored Nation Treatment  
(Article 3)  
Performance Requirements (Article 5)

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

Description: 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.

All specialty air services companies  
established in Colombia as an agency  
or branch shall employ Colombian  
workers in a proportion of no less  
than 90 per cent for its operation in  
Colombia. This percentage shall not  
apply to foreign workers from  
countries that accord reciprocity to  
Colombian workers. The aeronautic  
authority may allow, under justified  
reasons and for the necessary time,  
the no application of the workforce  
limitation mentioned.

15 Sector: Finance

Sub-Sector: Financial Services. Banking and other financial services (excluding insurance)

Industry Classification:

Type of Reservation: National Treatment (Article 2)

Measures: *Decreto 2419 de 1999, Art. 1 (en concordancia con la Ley 270 de 1996, Art. 203*

*Decreto 1065 de 1999, Art. 16).*

Description: The sums of money subject to court or police order, including *cauciones*<sup>2</sup>, and funds consigned under leases must be deposited in the *Banco Agrario de Colombia. S.A.*, which may derive a competitive advantage with respect to its overall operations from all or some portion of that exclusive right.

---

<sup>2</sup> A *caución*, under Colombian law, is a deposit of money made under court order - for example, by a civil defendant in return for the court lifting an injunction won by the plaintiff against certain assets of the defendant.

16 Sector: Finance

Sub-Sector: Financial Services. Banking and other financial services (excluding insurance)

Industry Classification:

Type of Reservation: National Treatment (Article 2)

Measures: Estatuto Orgánico del Sistema Financiero

Description: Colombia may grant advantages or exclusive rights to the following financial entities:

- *Fondo para el Financiamiento del Sector Agropecuario (FINAGRO);*
- *Banco Agrario de Colombia;*
- *Fondo Nacional de Garantías;*
- *Financiera Eléctrica Nacional (FEN);*
- *Financiera de Desarrollo Territorial (FINDETER);*
- *Fiduciaria La Previsora;*
- *Instituto Colombiano de Crédito Educativo y Estudios Técnicos en el Exterior (ICETEX);*
- *Banco de Comercio Exterior (BANCOLDEX);*
- *Fondo Financiero de Proyectos de Desarrollo (FONADE).*

The advantages or exclusive rights may include, but are not limited to, the following:<sup>3</sup>

- exemption from certain taxation;
- exemption from registration and periodic reporting requirements for the issuance of securities; and
- purchase by the government of Colombia, through any public entity of Colombia, of obligations issued by the entities listed above.

---

<sup>3</sup> For greater certainty, and notwithstanding the location of this non-conforming measure within Annex I, the Parties understand that the advantages or exclusive rights that a Party may grant to the specified entities are not limited only to the cited examples.

Annex II  
Reservations for Measures referred to  
in paragraph 2 of Article 6

1. The Schedule of a Contracting Party sets out, pursuant to paragraph 2 of Article 6, the reservations taken by that Contracting Party with respect to specific sectors, sub-sectors or activities for which it may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

- (a) Article 2 (National Treatment);
- (b) Article 3 (Most Favored Nation Treatment);
- (c) Article 5 (Performance Requirements); or
- (d) Article 10 (Senior Management and Boards of Directors).

2. Each reservation sets out the following elements:

- (a) "Sector" refers to the general sector in which the reservation is taken;
- (b) "Sub-Sector" refers to the specific sector in which the reservation is taken;
- (c) "Industry Classification" refers, where applicable, and only for transparency purposes, to the activity covered by the reservation according to domestic or international industry classification codes;
- (d) "Type of Reservation" specifies the obligations referred to in paragraph 1 for which the reservation is taken;
- (e) "Description" sets out the scope of the sector, sub-sector or activities covered by the reservation; and
- (f) "Existing Measures" identifies, for transparency purposes, existing measures that apply to the sector, sub-sector or activities covered by the reservation.

3. In the interpretation of a reservation, all elements of the reservation shall be considered. The "Description" element shall prevail over all other elements.

4. For the purposes of this Annex, the term "JSIC" means Japan Standard Industrial Classification set out by the Ministry of Internal Affairs and Communications, and revised on November 6, 2007.

Section 1  
Schedule of Japan

1 Sector: All Sectors

Sub-Sector:

Industry  
Classification:

Type of  
Reservation: National Treatment (Article 2)  
Senior Management and Boards of  
Directors (Article 10)

Description: When transferring or disposing of its  
equity interests in, or the assets  
of, a state enterprise or a  
governmental entity, Japan reserves  
the right to:

- (a) prohibit or impose limitations  
on the ownership of such  
interests or assets by investors  
of the Republic of Colombia or  
their investments;
- (b) impose limitations on the  
ability of investors of the  
Republic of Colombia or their  
investments as owners of such  
interests or assets to control  
any resulting enterprise; or
- (c) adopt or maintain any measure  
relating to the nationality of  
executives, managers or members  
of the board of directors of any  
resulting enterprise.

Existing  
Measures:

2    Sector:                    All Sectors

      Sub-Sector:

      Industry  
      Classification:

      Type of                    National Treatment (Article 2)  
      Reservation:

                                  Senior Management and Boards of  
                                  Directors (Article 10)

      Description:              In the event where the supply of  
                                  telegraph services, postal services  
                                  and betting and gambling services,  
                                  manufacture of tobacco products,  
                                  manufacture of Bank of Japan notes,  
                                  minting and sale of coinage in Japan,  
                                  which are restricted to designated  
                                  enterprises or governmental entities,  
                                  are liberalized to those other than  
                                  the designated enterprises or  
                                  governmental entities, or in the  
                                  event where such designated  
                                  enterprises or governmental entities  
                                  no longer operate on a non-commercial  
                                  basis, Japan reserves the right to  
                                  adopt or maintain any measure  
                                  relating to those activities.

      Existing  
      Measures:



3 Sector: All Sectors

Sub-Sector:

Industry  
Classification:

Type of  
Reservation: Most Favored Nation Treatment  
(Article 3)

Description: 1. Japan reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral agreement in force on, or signed prior to, the date of entry into force of this Agreement.

2. Japan reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral agreement, other than the agreement referred to in paragraph 1, involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters including salvage.

Existing  
Measures:

4 Sector: All Sectors

Sub-Sector:

Industry  
Classification:

Type of  
Reservation: National Treatment (Article 2)  
Most Favored Nation Treatment  
(Article 3)

Description: National Treatment and Most Favored  
Nation Treatment may not be accorded  
to investors of the Republic of  
Colombia and their investments with  
respect to subsidies.

Existing  
Measures:

5    Sector:                    Aerospace Industry

      Sub-Sector:             Aircraft Industry

                                  Space Industry

Industry  
Classification:

Type of  
Reservation:                National Treatment (Article 2)

                                  Performance Requirements (Article 5)

                                  Senior Management and Boards of  
                                  Directors (Article 10)

Description:                Japan reserves the right to adopt or  
                                  maintain any measure relating to  
                                  investment in aircraft industry and  
                                  space industry.

Existing  
Measures:                    Foreign Exchange and Foreign Trade  
                                  Law (Law No. 228 of 1949), Articles  
                                  27 and 30

                                  Cabinet Order on Foreign Direct  
                                  Investment (Cabinet Order No. 261 of  
                                  1980), Articles 3 and 5

6 Sector: Arms and Explosives Industry

Sub-Sector: Arms Industry

Explosives Manufacturing Industry

Industry  
Classification:

Type of  
Reservation: National Treatment (Article 2)

Performance Requirements (Article 5)

Senior Management and Boards of  
Directors (Article 10)

Description: Japan reserves the right to adopt or  
maintain any measure relating to  
investment in arms industry and  
explosives manufacturing industry.

Existing  
Measures: Foreign Exchange and Foreign Trade  
Law (Law No. 228 of 1949), Articles  
27 and 30

Cabinet Order on Foreign Direct  
Investment (Cabinet Order No. 261 of  
1980), Articles 3 and 5

7 Sector: Energy

Sub-Sector: Electricity Utility Industry  
Gas Utility Industry  
Nuclear Energy Industry

Industry  
Classification:

Type of  
Reservation: National Treatment (Article 2)  
Performance Requirements (Article 5)  
Senior Management and Boards of  
Directors (Article 10)

Description: Japan reserves the right to adopt or  
maintain any measure relating to  
investment in the energy industry  
listed in the "Sub-Sector" element.

Existing  
Measures: Foreign Exchange and Foreign Trade  
Law (Law No. 228 of 1949), Articles  
27 and 30  
Cabinet Order on Foreign Direct  
Investment (Cabinet Order No. 261 of  
1980), Articles 3 and 5

8 Sector: Fisheries

Sub-Sector: Fisheries within the Territorial Sea, Internal Waters, Exclusive Economic Zone and Continental Shelf

Industry Classification:

JSIC 031	Marine fisheries
JSIC 032	Inland water fisheries
JSIC 041	Marine aquaculture
JSIC 042	Inland water aquaculture
JSIC 8093	Recreational fishing guide business

Type of Reservation:

National Treatment (Article 2)

Most Favored Nation Treatment (Article 3)

Performance Requirements (Article 5)

Senior Management and Boards of Directors (Article 10)

Description:

Japan reserves the right to adopt or maintain any measure relating to investment in fisheries in the territorial sea, internal waters, exclusive economic zone and continental shelf of Japan.

For the purposes of this reservation, the term "fisheries" means the work of taking and cultivation of aquatic resources, including the following fisheries related activities:

- (a) investigation of aquatic resources without taking such resources;
- (b) luring of aquatic resources;
- (c) preservation and processing of fish catches;
- (d) transportation of fish catches and fish products; and

(e) provision of supplies to other vessels used for fisheries.

Existing  
Measures:

Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Law for Regulation of Fishing Operation by Foreign Nationals (Law No. 60 of 1967), Articles 3, 4 and 6

Law concerning the Exercise of Sovereign Rights concerning Fisheries in the Exclusive Economic Zones (Law No. 76 of 1996), Articles 4, 5, 7, 8, 9, 10, 11, 12 and 14

9 Sector: Information and Communications

Sub-Sector: Broadcasting Industry

Industry Classification: JSIC 380 Establishments engaged in administrative or ancillary economic activities

JSIC 381 Public broadcasting, except cablecasting

JSIC 382 Private-sector broadcasting, except cablecasting

JSIC 383 Cablecasting

Type of Reservation: National Treatment (Article 2)

Performance Requirements (Article 5)

Senior Management and Boards of Directors (Article 10)

Description: Japan reserves the right to adopt or maintain any measure relating to investment in broadcasting industry.

Existing Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Radio Law (Law No. 131 of 1950), Article 5

Broadcast Law (Law No. 132 of 1950), Articles 93, 116, 125, 159 and 161



10 Sector: Land Transaction

Sub-Sector:

Industry  
Classification:

Type of  
Reservation: National Treatment (Article 2)  
Most Favored Nation Treatment  
(Article 3)

Description: With respect to the acquisition or  
lease of land properties in Japan,  
prohibitions or restrictions may be  
imposed by Cabinet Order on foreign  
nationals or legal persons, where  
Japanese nationals or legal persons  
are placed under identical or similar  
prohibitions or restrictions in the  
foreign country.

Existing  
Measures: Alien Land Law (Law No. 42 of 1925),  
Article 1

11 Sector: Public Law Enforcement and  
Correctional Services and Social  
Services

Sub-Sector:

Industry  
Classification:

Type of  
Reservation: National Treatment (Article 2)  
Most Favored Nation Treatment  
(Article 3)  
Performance Requirements (Article 5)  
Senior Management and Boards of  
Directors (Article 10)

Description: Japan reserves the right to adopt or  
maintain any measure relating to  
investments in public law enforcement  
and correctional services, and in  
social services such as income  
security or insurance, social  
security or insurance, social  
welfare, primary and secondary  
education, public training, health  
and child care.

Existing  
Measures:

Section 2  
Schedule of Colombia

- 1    Sector:                    All Sectors
- Sub-Sector:
- Industry  
      Classification:
- Type of                    National Treatment (Article 2)  
      Reservation:
- Description:              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 reservation:
- (a)   border region means a zone of  
              two kilometres in width,  
              parallel to the national border  
              line;
  - (b)   national coast means a zone of  
              two kilometres 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.
- Existing  
      Measures:

2 Sector: All Sectors

Sub-Sector:

Industry  
Classification:

Type of  
Reservation: Most Favored Nation Treatment  
(Article 3)

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 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; and
- (c) maritime matters, including salvage.

Existing  
Measures:

3 Sector: Social Services

Sub-Sector:

Industry  
Classification:

Type of  
Reservation: National Treatment (Article 2)  
Most Favored Nation Treatment  
(Article 3)  
Performance Requirements (Article 5)  
Senior Management and Board of  
Directors (Article 10)

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 re-adaptation, 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*).

Existing  
Measures:

4 Sector: Issues Related to Minorities and Ethnic Groups

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Article 2)

Most Favored Nation Treatment (Article 3)

Performance Requirements (Article 5)

Senior Management and Board of Directors (Article 10)

Description: Colombia reserves the right to adopt or maintain any measure according to 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.

Existing Measures:

5 Sector: Cultural Industries and Activities

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Article 2)  
Most Favored Nation Treatment (Article 3)

Description: For the purposes of this reservation, 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.

- (i) design and creation of advertising contents

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 2 and 3 do not apply to "government support"<sup>1</sup> 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.

Existing  
Measures:

---

<sup>1</sup> 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.



6 Sector: Jewelry Design  
Performing Arts  
Music  
Visual Arts  
Audiovisuals  
Publishing

Sub-Sector:

Industry  
Classification:

Type of Reservation: Performance Requirements (Article 5)

Description: Colombia reserves the right to adopt or maintain any measure conditioning the receipt or continued receipt of government support<sup>2</sup> 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 reservation does not apply to advertising and performance requirements shall in all cases be consistent with the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement.

Existing  
Measures:

---

<sup>2</sup> As defined in the footnote to the previous entry.

7 Sector: Handicraft Industries

Sub-Sector:

Industry  
Classification:

Type of  
Reservation: Performance Requirements (Article 5)

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.

For greater certainty, performance requirements shall in all cases be consistent with the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement.

Existing  
Measures:

8 Sector: Information and Communications

Sub-Sector: Audiovisual Services  
Advertising

Industry  
Classification:

Type of Reservation: Performance Requirements (Article 5)

Description: 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 audiovisual production services of the schedule of Colombia in Annex I.

Community Television<sup>3</sup>

(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.

---

<sup>3</sup> 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 of the schedule of Colombia in 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.

Existing  
Measures:

9 Sector: Traditional Expressions

Sub-Sector:

Industry  
Classification:

Type of  
Reservation: National Treatment (Article 2)

Description: 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 heritage declared pursuant to *Resolución No. 0168 de 2005*.

This intangible cultural heritage includes but is not limited to:

- (a) Languages and oral expressions;
- (b) Musical, dancing and sound expressions;
- (c) Ritual, scenic and ceremonial expressions, festive acts and traditional plays;
- (d) Knowledge, capabilities and techniques relating to the elaboration of objects, designs and corporal painting;
- (e) Social applications, knowledge and practices of the human being, nature and the universe;
- (f) Knowledge and practice relating to traditional juridical systems; and
- (g) Knowledge, practice and techniques relating to gastronomy.

Existing  
Measures:

10 Sector: Interactive Audio and Video Services

Sub-Sector:

Industry  
Classification:

Type of  
Reservation: Performance Requirements (Article 5)

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 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. Japan may request consultations with Colombia regarding the proposed measure. Colombia shall begin consultations with Japan 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) Japan 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) Japan and Colombia agree on trade-liberalizing compensation in the interactive audio and/or video services sector.

Existing  
Measures:



11 Sector: Finance

Sub-Sector: Financial Services

Industry  
Classification:

Type of  
Reservation: Most Favored Nation Treatment  
(Article 3)

Description: Colombia reserves the right to adopt  
or maintain any measure that accords  
treatment inconsistent with most-  
favored-nation treatment under any  
bilateral or multilateral  
international agreement in effect or  
signed before the date of entry into  
force of this Agreement.

In accordance with the prior  
paragraph, Colombia reserves the  
right to adopt or maintain any  
measure that accords treatment  
inconsistent with most-favored-nation  
treatment, for the purpose of  
complying with the Cartagena  
Agreement and judicial decisions of  
the Andean Community.

Existing  
Measures:

Annex III  
referred to in Article 11

1. The Contracting Parties confirm their shared understanding that paragraph 1 of Article 11 addresses the following two situations:

- (a) the first situation is direct expropriation, where investments are nationalized or otherwise directly expropriated through formal transfer of title or outright seizure; and
- (b) the second situation is indirect expropriation, where a measure or a series of measures of a Contracting Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

2. The determination of whether a government measure or a series of government measures of a Contracting Party, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

- (a) the economic impact of the government measure or series of government measures, although the fact that such measure or series of such measures has an adverse effect on the economic value of investments, standing alone, does not establish that an indirect expropriation has occurred;
- (b) the extent to which the government measure or series of government measures interferes with distinct and reasonable expectations arising out of investments;
- (c) the character of the government measure or series of government measures, including whether such measure is non-discriminatory; and
- (d) the objectives of the government measure or series of government measures including whether such measure is taken for legitimate public objectives.

3. Except in such circumstances as when a measure or a series of measures is so severe in the light of their purpose that they cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory measures of a Contracting Party that are designed and applied to protect legitimate public welfare objectives in accordance with paragraph 1 of Article 15 do not constitute indirect expropriation.