MARKET OPENNESS REVIEW OF COLOMBIA

This document consists of a background report prepared by the OECD Secretariat to support the Market Openness Review of Colombia which is currently being undertaken by the OECD Trade Committee as part of the process for Colombia’s accession to the OECD [see the Roadmap for the Accession of Colombia to the OECD Convention [C(2013)110/FINAL]. At the request of the Colombian authorities, and in accordance with paragraph 14 of Colombia’s Accession Roadmap, the Trade Committee agreed to declassify the report in its current version and publish it under the authority of the Secretary General, in order to allow a wider audience to become acquainted with the issues raised in the report.

Publication of this document and the analysis and recommendations contained therein, does not prejudge in any way the results of the ongoing review of Colombia by the Trade Committee as part of its process of accession to the OECD. The review of market openness in Colombia by the Committee is still in progress and the document in its current form may well be further amended as the review advances. A final version of the Market Openness Report will be published after the conclusion of the review process in the Trade Committee.

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<th>Full Form</th>
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<tbody>
<tr>
<td>AEO</td>
<td>Authorised Economic Operator</td>
</tr>
<tr>
<td>AJC</td>
<td>Andean Court of Justice (<em>Tribunal de Justicia de la Comunidad Andina</em>)</td>
</tr>
<tr>
<td>ALTEX</td>
<td>Frequently Exporting User (<em>Usuario Altamente Exportador</em>)</td>
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<tr>
<td>ANALDES</td>
<td>National Exporters Association (<em>Asociación Nacional de Exportadores</em>)</td>
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<tr>
<td>ANDEMOS</td>
<td>Colombian Association of Motor Vehicles (<em>Asociación Colombiana de Vehículos Automotores</em>)</td>
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<tr>
<td>ANDI</td>
<td>Colombia’s National Business Association (<em>Asociación Nacional de Empresarios de Colombia</em>)</td>
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<tr>
<td>ANI</td>
<td>National Infrastructure Agency (<em>Agencia Nacional de Infraestructura</em>)</td>
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<tr>
<td>APBS</td>
<td>Andean Community Price Band System (<em>Sistema Andino de Franjas de Precios</em>)</td>
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<tr>
<td>BIT</td>
<td>Bilateral Investment Treaty</td>
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<td>BPO</td>
<td>Business process outsourcing</td>
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<tr>
<td>BRICS</td>
<td>A country grouping composed of Brazil, Russia, India, China, and South Africa</td>
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<tr>
<td>BRIICS</td>
<td>A country grouping composed of Brazil, Russia, India, Indonesia, China, and South Africa</td>
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<tr>
<td>BSE</td>
<td>Bovine Spongiform Encephalopathy</td>
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<tr>
<td>CAE</td>
<td>Business Support Centers (<em>Centros de Atención Empresarial</em>)</td>
</tr>
<tr>
<td>CAN</td>
<td>Andean Community (<em>Comunidad Andina</em>)</td>
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<tr>
<td>COP</td>
<td>Colombian pesos</td>
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<td>CONPES</td>
<td>National Council on Economic and Social Policy (<em>Consejo Nacional de Política Económica y Social</em>)</td>
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<tr>
<td>CRC</td>
<td>Communications Regulatory Commission (<em>Comisión de Regulación de Comunicaciones</em>)</td>
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<td>DAFP</td>
<td>Administrative Department of the Public Function (<em>Departamento Administrativo de la Función Pública</em>)</td>
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<td>DANE</td>
<td>Colombia’s National Statistics Bureau (<em>Departamento Administrativo Nacional de Estadística</em>)</td>
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<tr>
<td>DIAN</td>
<td>Colombian Customs Authority (<em>Dirección de Impuestos y Aduanas Nacionales</em>)</td>
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<td>DNDA</td>
<td>Colombian National Copyright Office (<em>Dirección Nacional del Derecho de Autor</em>)</td>
</tr>
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<td>DNP</td>
<td>National Planning Department (<em>Departamento Nacional de Planeación</em>)</td>
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<td>DSM</td>
<td>Dispute Settlement Mechanism</td>
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<td>EFTA</td>
<td>European Free Trade Association</td>
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<td>Normative Impact Study (<em>Estudio de Impacto Normativo</em>)</td>
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<td>Acronym</td>
<td>Full Form</td>
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<td>EU</td>
<td>European Union</td>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
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<td>FITAC</td>
<td>Colombian Federation of Logistics Agents <em>(Federación Colombiana de Agentes Logísticos en Comercio Internacional)</em></td>
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<td>FTA</td>
<td>Free Trade Agreements</td>
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<td>GPA</td>
<td>Government Procurement Agreement</td>
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<td>GRAT</td>
<td>Group on Rationalisation and Automatisation of Formalities <em>(Grupo de Racionalización y Automatización de Trámites)</em></td>
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<tr>
<td>GVW</td>
<td>Gross Vehicle Weight</td>
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<td>IADB</td>
<td>Inter-American Development Bank</td>
</tr>
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<td>ICA</td>
<td>Agricultural Institute of Colombia <em>(Instituto Colombiano Agropecuario)</em></td>
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<td>ICONTEC</td>
<td>Colombian Institute for Technical Standards and Certification <em>(Instituto Colombiano de Normas Técnicas y Certificación)</em></td>
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<tr>
<td>ICT</td>
<td>Information and Communication Technologies</td>
</tr>
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<td>INM</td>
<td>National Institute of Metrology <em>(Instituto Nacional de Metrología de Colombia)</em></td>
</tr>
<tr>
<td>INVIMA</td>
<td>National Institute for Drugs and Food Supervision <em>(Instituto Nacional de Vigilancia de Medicamentos y Alimentos)</em></td>
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<tr>
<td>IPPC</td>
<td>International Plant Protection Convention</td>
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<td>IPR</td>
<td>Intellectual Property Rights</td>
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<tr>
<td>LAC</td>
<td>Latin America and the Caribbean</td>
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<td>LPI</td>
<td>Logistics Performance Index</td>
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<tr>
<td>MCIT</td>
<td>Ministry of Trade, Industry and Tourism <em>(Ministerio de Comercio, Industria y Turismo)</em></td>
</tr>
<tr>
<td>MERCOSUR</td>
<td>A trading block composed of Argentina, Brazil, Paraguay and Uruguay</td>
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<tr>
<td>MFN</td>
<td>Most-Favoured Nation</td>
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<tr>
<td>MINTIC</td>
<td>Ministry of Information and Communications Technology <em>(Ministerio de Tecnologías de la Información y las Comunicaciones)</em></td>
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<tr>
<td>MOU</td>
<td>Memorandum of Understanding</td>
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<td>MRA</td>
<td>Mutual Recognition Agreement</td>
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<tr>
<td>MUISCA</td>
<td>Colombian electronic customs system <em>(Modelo Único de Ingresos, Servicio y Control Automatizado)</em></td>
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<td>NDP</td>
<td>National Development Plan <em>(Plan Nacional de Desarrollo)</em></td>
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<tr>
<td>NTC</td>
<td>Colombian Technical Standard <em>(Norma Técnica Colombiana)</em></td>
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<tr>
<td>ONAC</td>
<td>Colombian National Organisation of Accreditation <em>(Organismo Nacional de Acreditación de Colombia)</em></td>
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<tr>
<td>PAN</td>
<td>Annual Standardisation Plan <em>(Plan Anual de Normalización)</em></td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>PEERT</td>
<td>An internal procedure for preparing and issuing technical regulations in the Ministry of Trade, Industry and Tourism (Procedimiento de Elaboración y Expedición de Reglamentos Técnicos)</td>
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<tr>
<td>POLFA</td>
<td>Fiscal and Customs Police (Policia Fiscal y Aduanera)</td>
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<tr>
<td>PROEXPORT</td>
<td>Colombian Trade and Investment Promotion Authority</td>
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<td>RIA</td>
<td>Regulatory Impact Assessment</td>
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<tr>
<td>RKC</td>
<td>Revised Kyoto Convention</td>
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<tr>
<td>RUP</td>
<td>Central Register of Bidders (Registro Único de Proponentes)</td>
</tr>
<tr>
<td>SECOP</td>
<td>Single Procurement Portal (Sistema Electrónico para la Contratación Pública)</td>
</tr>
<tr>
<td>SIC</td>
<td>Superintendency for Industry and Commerce (Superintendencia de Industria y Comercio)</td>
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<tr>
<td>SMEs</td>
<td>Small and medium-sized enterprises</td>
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<tr>
<td>SNCA</td>
<td>National Quality System (Subsistema Nacional de la Calidad)</td>
</tr>
<tr>
<td>SPS</td>
<td>Sanitary and Phytosanitary standards</td>
</tr>
<tr>
<td>STRI</td>
<td>Services Trade Restrictiveness Index</td>
</tr>
<tr>
<td>SUIN</td>
<td>Unique system of normative information (Sistema Único de Información Normativa)</td>
</tr>
<tr>
<td>SUIT</td>
<td>Colombian Single Register for Formalities (Sistema Único de Información de Trámites)</td>
</tr>
<tr>
<td>TBT</td>
<td>Technical Barriers to Trade</td>
</tr>
<tr>
<td>TFI</td>
<td>Trade Facilitation Indicators</td>
</tr>
<tr>
<td>TPP</td>
<td>Trans-pacific Partnership</td>
</tr>
<tr>
<td>TR</td>
<td>Technical Regulation</td>
</tr>
<tr>
<td>TRQs</td>
<td>Tariff Rate Quota</td>
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<td>TRS</td>
<td>Time Release Study</td>
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<tr>
<td>TTIP</td>
<td>Transatlantic Trade and Investment Partnership</td>
</tr>
<tr>
<td>UAP</td>
<td>Permanent Customs User (Usuario Aduanero Permanente)</td>
</tr>
<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
</tr>
<tr>
<td>USTR</td>
<td>Office of the United States Trade Representative</td>
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<tr>
<td>VID</td>
<td>One-stop shop for Payment of Copyright (Ventanilla Única para el pago de Derechos de Autor y Derechos Conexos)</td>
</tr>
<tr>
<td>VUCE</td>
<td>One-stop shop for foreign trade (Ventanilla Única de Comercio Exterior)</td>
</tr>
<tr>
<td>VUR</td>
<td>One-stop shop for Registering Property (Ventanilla Única de Registro)</td>
</tr>
<tr>
<td>WCO</td>
<td>World Customs Organisation</td>
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<td>WTO</td>
<td>World Trade Organization</td>
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EXECUTIVE SUMMARY

Over the past two decades, Colombia has engaged in a series of reforms that have contributed to the modernization of its economy, increasing its attractiveness for domestic and international investors and traders. Reforms have focused in particular on achieving better macroeconomic stability and enhancing the overall business climate, including through improvements in the security situation across the country. An open trade and investment policy has been an important part of the mix: Colombia has signed numerous free trade agreements (FTAs) and bilateral investment treaties (BITs) with its trading partners, reducing its average tariffs and removing many non-tariff barriers to trade. The challenge today is to build on these reforms to further boost the economy’s competitiveness and productivity and its integration into global markets for goods and services.

This review, undertaken in accordance with the OECD Council’s Roadmap for Accession of Colombia [C(2013)110/FINAL], examines a range of trade-related policies in Colombia and suggests possible areas for reform. The scope of the review covers a number of the Trade Committee’s standard market openness issues, including transparency, non-discrimination, trade restrictiveness, customs efficiency, the use of international standards and conformity assessment procedures, and the level of protection of intellectual property rights.

The report underscores Colombia’s important progress in developing a regulatory framework that is more supportive of trade and investment by undertaking important reforms in the policy areas covered in this review. In some areas, reforms are still taking place and the policy framework is only maturing. A number of challenges lie ahead in order to enhance both productivity and competitiveness of the economy, in particular as regards non-discrimination, use of internationally harmonised standards and streamlined conformity assessment procedures, and the improvement of intellectual property protection enforcement. However, Colombia is clearly working towards addressing many of these challenges, aligning its policies with OECD best-practice and introducing new structural reform initiatives, including trade-related policies such as improved regulatory quality and increased international recognition of that quality as well as a range of trade facilitation measures.

In particular, although the non-discrimination principle is generally applied in Colombia’s overall regulatory, trade and investment framework, and there are few national treatment exceptions, some de facto discriminatory market practices may need to be addressed. The Government should also review the effects of regulations in areas such as the national excise tax system for alcohol, regional alcohol monopolies, or taxation and scrappage policies for trucks, to ensure the principle of national treatment is not compromised in practice.

Internationally harmonised standards are increasingly used by regulatory authorities and standard-setting bodies, but those best practices for elaborating and adopting technical regulations and standards are still discretionary and require greater political momentum and support. Colombia has taken steps to streamline conformity assessment procedures and reinforce accreditation practices, but these efforts are still at early stages and have yet to deliver results. Colombia would need to consolidate and reinforce the regulatory framework, as it has already engaged in doing, and make this process independent of the political agenda. It should pursue its efforts in reinforcing laboratory and testing infrastructure and capacity, which remain central challenges for the Colombian standardisation, metrology, certification, and accreditation system and restrict the domestic industry’s capacity to expand globally by meeting requirements and demand for certified products worldwide. It should capitalise on the accession of the
Colombian accreditation agency to the main international accreditation networks to help overcome the cost implications of regulatory divergence for domestic and foreign business alike.

Colombia’s aggressive policy in favour of intellectual property rights (IPR) protection as part of the country’s strategy to improve the investment climate and attract foreign investors has produced a legal framework that is well developed. Enforcement however still remains problematic, with optical disk and digital piracy reaching endemic levels and low detection rates. As a result, IP instruments are not widely used by the domestic industry. With the increasing sophistication of the legal framework, including through changes required under the country’s recent FTAs, the focus should gradually shift towards improved enforcement, institutional capacity-building, and IP promotion. This would imply in particular better coordination among public entities involved in intellectual property protection, greater priority in prosecuting infringements and strengthening the capacity of the judicial system to deal with them. With this approach, and in tandem with robust innovation policy, the laws on the books can more credibly contribute towards greater IP use and to strengthen the contribution of IP to the economy.

Beyond these major challenge areas, the report underscores Colombia’s good efforts and promising outcomes in achieving a high level of transparency, although further reforms may be necessary in order to formalise the consultation processes and increase regulatory predictability. Likewise, it emphasizes the country’s significant advances in improving the overall business climate and pursuing least trade restrictiveness, including by simplifying and automating formalities and introducing new trade facilitation measures. These administrative simplification efforts should be continued, including at the sub-national level, and by increasing the efficiency of border risk management systems. Colombia’s score on the OECD Services Trade Restrictiveness Index (STRI) reveals an open regulatory regime in the three services sectors covered – professional services, telecommunications and transport. Finally, Colombia’s record of compliance with international rulings on trade and investment matters is good. This liberalisation and reform work should continue, bringing with it benefits in the form of reduced costs of trading and doing business.
MARKET OPENNESS REVIEW OF COLOMBIA

1. Over the past two decades Colombia has engaged in a series of reforms that have helped modernize its economy and make it more attractive to foreign investors and traders. Reforms focused in particular on achieving better macroeconomic stability and the overall business climate, including through improved security situation in the country. An open trade and investment policy has been an important part of the mix: Colombia has signed numerous free trade agreements and bilateral investment treaties with its trading partners, reducing its average tariffs and removing many non-tariff barriers to trade (e.g. in government procurement and in the services sectors). The challenge today is to build on these reforms in order to strengthen the country’s capacity to profit from the various commercial agreements it entered and successfully reach world markets. This includes some necessary investments in infrastructure and further structural reform but will also entail a fine-tuning of trade-related policies, including through improved regulatory quality and increasing international recognition of that quality as well as a range of trade facilitation measures.

2. This review looks in detail at a range of trade-related policies, taking as its departure point the OECD Principles of Market Openness [TD/TC/WP(2002)25/FINAL], and suggests possible areas for reform. Aspects covered include the degree of transparency of the regulatory system, the respect of non-discrimination principles, the ability to ensure that domestic regulations are no more burdensome that necessary to achieve their policy objective, customs efficiency, the use of international standards and the effectiveness of conformity assessment procedures, and the level of protection of intellectual property rights.

1. Economic and policy environment

3. With a GDP of USD 598 billion in 2013, Colombia is the fourth largest economy in the Latin America and Caribbean region (LAC). It’s an upper middle income economy, with a per capita income of USD 12,370 in 2013, slightly below the LAC average and at about a one third of the OECD average. While the poverty headcount is still at a high level of 32.7% – driven up by the long-standing internal conflict and large-scale displacement of people, it fell significantly since 2002 (49%). Inequality remains high, with a Gini coefficient of labour income at 0.53 as compared to the OECD average of 0.40, and is higher than that of Chile, Mexico and United States that top the OECD list.3

4. Over the last two decades Colombia has undergone a series of reforms, which helped modernize its economy and achieve impressive growth rates (Figure 1), averaging at 5.4% in the peak years 2004-2008. The 1989-1992 period marked a beginning of a series of reforms that opened the domestic economy to international competition and strengthened macroeconomic management. With the exception of a recession in the aftermath of the Russian and Asian crisis in the late 1990s, the economy has been growing at a healthy rate and showed resilience during the recent crisis of 2008-09. In the second half of 2012 and

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1 GDP is purchasing-power-parity (PPP) adjusted, expressed in current US dollars. Source: World Development Indicators (World Bank).

2 GDP is PPP-adjusted, expressed in current US dollars. The LAC average is USD 14,977 and OECD USD 37,494.

3 For more information see OECD (2013a), pp. 14-16 and pp. 55-87.
beginning 2013 signs of deceleration became visible, in particular in the manufacturing sector affected by strong peso appreciation, but growth is projected to pick up again in 2014 (OECD, 2013a, EUI, 2013).4

Figure 1. GDP growth, annual %

Source: WDI

5. Most recently, the economic policy mix involved prudent macroeconomic management (including via fiscal reforms5 and a newly created wealth fund fuelled by oil royalties), efforts to improve the overall business climate and investors’ confidence and an open trade policy. The country has concluded numerous free trade agreements and bilateral investment treaties in recent years, discussed in detail later, and experienced a substantial increase in FDI inflows. Several structural bottlenecks still prevail, however, including undeveloped transport infrastructure, high informal sector and underemployment, and the need to reform the pension system and enhance the quality of education and healthcare (OECD, 2013a; EIU, 2013).

6. The domestic political scene remains dominated by on-going peace talks between the government and the FARC guerrillas (Fuerzas Armadas Revolucionarias de Colombia). Its successful conclusion would have important implications for country’s development strategy, in particular in regard to rural areas, while a failure could destabilize the economy and may provoke recourse to violence. The peace negotiation process together with economic situation in the country is likely to dominate political priorities this year.

4 This is mainly based on strong investment flows and projected continued commodities boom, together with the effects of the newly announced fiscal plan (Plan de Impulso a la Productividad y el Empleo), monetary interventions by the Central Bank, and a few large public investments in infrastructure under way.

5 These include, among others, the implementation of the 2011 structural fiscal law and a recently approved medium-term fiscal plan, which sets out a framework for deficit and debt reduction until 2025. For more details see OECD, 2013.
1.1 Trade policy developments

7. The recent OECD Economic Survey of Colombia (OECD, 2013a) provides a detailed overview of the country’s macroeconomic situation and priorities for its structural policies agenda, while the OECD Investment Review of Colombia (OECD, 2012a) considers the policy framework of investment. Here we focus on aspects of relevance to the country’s trade policy, including recent trade policy developments and economic trends that may affect the country’s diversification efforts.

8. One of the most important economic trends affecting Colombia’s trade performance has been the continuous appreciation of its currency (Figure 2, Panel B), driven by high commodity prices and the mining boom. As was the case in many other resource-rich economies (Figure 2, Panel A), Colombia’s terms of trade surged, with profound effects on the rest of the domestic economy. In particular, while the mining sector grew (by more than 14% in real terms in 2011), non-mining tradable sectors have seen their competitiveness affected by the dual effect of a stronger exchange rate and higher input prices driven by the mining industry (Figure 1 and 2 in Annex 1). As a result, the productivity of manufacturing and agriculture decreased substantially in 2008-2011, services other than personal services were stagnant, while the oil and mining sector enjoyed productivity gains (Figure 3). This has resulted in a three-tier economic growth in Colombia, with the mining sector leading, non-tradable services also growing, and non-mining tradable sectors falling behind.

9. In particular, bearing in mind that oil and mining are relatively capital intensive and generate limited and mostly high-skilled employment;\(^6\) it may be desirable for the government to boost the productivity of non-mining sectors as part of its strategy to achieve more equitable growth. As services account for 65% of Colombian economy (translating into 2.9% GDP growth every year), there may be untapped potential there. Given that Colombia’s non-mining exports follow nearly perfectly the exchange rate developments (i.e. an appreciation is accompanied with a fall in exports, and \textit{vice versa}), the goal of diversification in goods trade may be even more difficult under the pressure of strong peso (See Figure 3 and 4 in Annex 1).\(^7\)

\(^6\) This is considering direct employment; indirectly mining like other capital-intensive industries may generate employment through the demand they fuel for support services, such as transportation.

\(^7\) Only in the case of Mexico, North Triangle countries and the Andean Community countries did Colombia’s non-mining exports increased while the bilateral exchange rate appreciated. Also, contrary to the general trend, Colombia experienced a bilateral real exchange rate depreciation with Chile, Mercosur and Venezuela, boosting exports (until political tensions with Venezuela reversed the trend).
10. In part to support the diversification efforts, Colombia has concluded numerous free trade agreements (FTAs) and bilateral investment treaties (BITs) in recent years (Table 1 and Table 2). The most
recent trade agreements, with the United States and the European Union, could be particularly important in terms of the effect on Colombian economy, both because these are Colombia’s two largest trading partners and because they cover a wide set of issues and will affect significantly Colombia’s trade regime. For example, many recent FTAs include tariff rate quotas (TRQs) for the agricultural products currently covered by the Andean Community price band (see Box 1), and they are therefore likely to affect the degree to which the price band shields the domestic prices from international price changes. The OECD Agricultural Review that is currently under preparation will look at this interaction, along with other policy factors specifically affecting domestic agricultural prices.  

Table 1. Colombia’s recent Bilateral Investment Treaties (BITs)

<table>
<thead>
<tr>
<th>Country</th>
<th>Current status</th>
<th>Date of signature</th>
<th>Entry into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>In force</td>
<td>22 November 2007</td>
<td>2 July 2012</td>
</tr>
<tr>
<td>India</td>
<td>In force</td>
<td>10 November 2009</td>
<td>2 July 2012</td>
</tr>
<tr>
<td>Japan</td>
<td>Signed</td>
<td>12 September 2012</td>
<td></td>
</tr>
<tr>
<td>Peru</td>
<td>In force</td>
<td>11 December 2007</td>
<td>30 December 2010</td>
</tr>
<tr>
<td>Spain</td>
<td>In force</td>
<td>31 March 2005</td>
<td>22 November 2007</td>
</tr>
<tr>
<td>South Korea*</td>
<td>Signed</td>
<td>6 July 2010</td>
<td>-</td>
</tr>
<tr>
<td>Switzerland</td>
<td>In force</td>
<td>17 May 2006</td>
<td>6 October 2009</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Signed</td>
<td>17 March 2010</td>
<td></td>
</tr>
<tr>
<td>Singapore</td>
<td>Signed</td>
<td>16 July 2013</td>
<td></td>
</tr>
<tr>
<td>Turkey</td>
<td>Under negotiation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>Under negotiation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uruguay</td>
<td>Under negotiation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>Under negotiation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* The investment chapters in the FTA are deeper than the BIT provisions and hence will replace the agreement, which will never come into force.


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8 For further information, please contact Dalila.Cervantes@oecd.org or Silvia.Soescu@oecd.org.
### Table 2. Recent trade agreements concluded by Colombia

<table>
<thead>
<tr>
<th>Country</th>
<th>Current status</th>
<th>Date of signature</th>
<th>Entry into force</th>
<th>Type/Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Latin American Integration Association (LAIA)</td>
<td>In force</td>
<td>12 August 1980</td>
<td>18 March 1981</td>
<td>Partial scope agreement</td>
</tr>
<tr>
<td>Andean Community (CAN) Current members: Bolivia, Colombia, Ecuador, Peru</td>
<td>In force</td>
<td>12 May 1987</td>
<td>25 May 1988</td>
<td>Customs Union</td>
</tr>
<tr>
<td>Mexico*</td>
<td>In force</td>
<td>11 June 1994</td>
<td>1 January 1995</td>
<td>Free Trade and Economic Integration Agreement</td>
</tr>
<tr>
<td>Andean Community-MERCOSUR (ACE 59)</td>
<td>Signed/In force</td>
<td>18 October 2004</td>
<td>-</td>
<td>FTA</td>
</tr>
<tr>
<td>United States*</td>
<td>In force</td>
<td>22 November 2006</td>
<td>15 May 2012</td>
<td>Free Trade and Economic Integration Agreement</td>
</tr>
<tr>
<td>Chile*</td>
<td>In force</td>
<td>27 November 2006</td>
<td>8 May 2009</td>
<td>Free Trade and Economic Integration Agreement</td>
</tr>
<tr>
<td>Central America Northern Triangle* (Guatemala, Salvador and Honduras)</td>
<td>In force</td>
<td>9 August 2007</td>
<td>12 November 2009</td>
<td>FTA</td>
</tr>
<tr>
<td>Vietnam</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Canada*</td>
<td>In force</td>
<td>21 November 2008</td>
<td>15 August 2011</td>
<td>FTA</td>
</tr>
<tr>
<td>EFTA* (Switzerland, Norway, Iceland and Liechtenstein)</td>
<td>Signed/In force</td>
<td>25 November 2008</td>
<td>26 November 2009</td>
<td>FTA</td>
</tr>
<tr>
<td>Venezuela</td>
<td>In force</td>
<td>8 November 2011</td>
<td>19 October 2012</td>
<td>Partial scope agreement</td>
</tr>
<tr>
<td>European Union*</td>
<td>Signed</td>
<td>26 June 2012</td>
<td>-</td>
<td>FTA</td>
</tr>
<tr>
<td>South Korea*</td>
<td>Signed</td>
<td>21 February 2013</td>
<td>-</td>
<td>FTA (Investment chapters in the FTA are deeper than the previously signed BIT, and will replace it.)</td>
</tr>
<tr>
<td>Panama*</td>
<td>Signed</td>
<td>20 September 2013</td>
<td></td>
<td>FTA</td>
</tr>
<tr>
<td>Turkey</td>
<td>Under negotiation</td>
<td></td>
<td></td>
<td>FTA (A separate BIT has been signed.)</td>
</tr>
<tr>
<td>Israel*</td>
<td>Signed</td>
<td>2 October 2013</td>
<td></td>
<td>FTA</td>
</tr>
<tr>
<td>Costa Rica *</td>
<td>Signed</td>
<td>22 May 2013</td>
<td></td>
<td>FTA</td>
</tr>
<tr>
<td>Pacific Alliance Current members: Colombia, Peru, Chile, Mexico*</td>
<td>Signed**</td>
<td>6 June 2012</td>
<td></td>
<td>Free Trade and Economic Integration Framework Agreement</td>
</tr>
<tr>
<td>Japan</td>
<td>Under negotiation</td>
<td></td>
<td></td>
<td>FTA (A separate BIT has been signed.)</td>
</tr>
</tbody>
</table>

* These trade agreements include an investment chapter. Under the FTAs with EFTA countries and the European Union, investment protection is granted solely to pre-establishment, leaving open the possibility for the Parties to regulate post-establishment issues by means of BITs.
** The General Framework for the Alliance has been signed, but not the FTA nor a BIT. These are under negotiation.
11. Colombia is also part of the Andean Community (Communidad Andina, CAN) – a customs union comprising of Bolivia, Colombia, Ecuador and Peru. It dates back to 1969, when the four countries signed the Cartagena Agreement to support further economic integration and improve the standards of living in their countries. Since then, integration has progressed in some areas and the Andean Community law has a direct impact on a few policy areas of relevance to trade in Colombia. These include, among others, the administration of common custom tariffs and the price band on agricultural products (Box 1), transparency provisions for technical regulations (explained further in Section 2), and protection of Intellectual Property Rights (elaborated in Section 6). The Andean Court of Justice (CAJ) also plays an important role through its competence to rule on alleged non-compliance of a CAN member to the Community law, to render binding interpretations of the Community law at the request of national judges, and to nullify the Commission’s Decisions, if they do not comply with Community law. This is relevant to investors as in matters regulated by the Andean law, such as IPR, administrative acts can be appealed in front of the ACJ. The Andean Community law supersedes national law and is directly applicable domestically.

12. While economic integration within CAN has gone through ups and downs, in particular with recent political drifts among its members, there are a few areas where its members enjoy special economic benefits and a few areas where further integration is sought within the forum. For example, Colombia extends national treatment in government procurement to enterprises in other Andean Community members in contracting of services (but not goods), while similar provisions are applied to non-CAN members upon conclusion of relevant agreements. Efforts are also under way to harmonize customs procedures within CAN – notably through introduction of a common customs declaration, as well as to harmonize certification requirements, albeit integration there so far is only limited. The Andean Community also seeks to forge closer links with other trading blocks in the region. In 2005, for example, it entered into a reciprocal association agreement with MERCOSUR, whereby the MERCOSUR members (Argentina, Brazil, Paraguay and Uruguay) were granted associate membership status in CAN, and vice versa. To-date, the record of regional integration within CAN is nevertheless mixed, with lacking regional infrastructure, remaining numerous non-tariff barriers, and political squabbles hampering internal trade flows.

13. The most recent initiative, which gathered a lot of political momentum in the region and attracted attention globally, is the Pacific Alliance (Alianza del Pacífico) – a trading block, formally launched in June 2012 by Chile, Colombia, Mexico and Peru,11 with Costa Rica expected to become the fifth member of the Alliance over the course of 2015 and several observer countries from all over the world12. Overall, there is a lot of enthusiasm about the initiative13, which proclaims as its primary objective facilitating trade and investment (in particular with Asia Pacific) and boosting productivity in the region. The focus seems pragmatic and the goals include, among others, cooperation between the countries’ investment promotion agencies, exchanges of experiences with single windows for trade, and introduction of electronic system

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9 Chile is an associate member since 2006 as is Argentina, Brazil, Paraguay and Uruguay. Mexico is an observer together with Spain, Panama and Sahrawi Arab Democratic Republic.

10 So far, Colombia has a Mutual Recognition Agreement (MRA) signed only with Ecuador, while an agreement on technical regulations on labelling of textiles and shoes is currently considered for all CAN members.

11 For further information, please see: [http://alianzapacifico.net/](http://alianzapacifico.net/) [last accessed on 24 July 2013].

12 By April 2014 Australia, Canada, Costa Rica, Dominican Republic, Ecuador, El Salvador, Finland, France, Germany, Guatemala, Honduras, India, Israel, Italy, Japan, Korea, Morocco, Netherlands, New Zealand, People’s Republic of China, Panama, Paraguay, Portugal, Singapore, Spain, Switzerland, Turkey, United Kingdom, United States and Uruguay.

13 See, for example: “Pacific Alliance: the most exciting thing going on in LatAm these days”, Andres Schipiani, 23 May 2013, *The Financial Times*; or “Latin America cements ‘Pacific Alliance’”, 24 May 2013, Andres Schipiani, *The Financial Times*.
for certifications of origin, along with other trade facilitation measures. Member countries have by now
removed visa requirements for each other’s citizens, are promoting student and professional exchanges,
and have agreed on issuing joint tourist visas for third countries. President Santos currently chairs the
Alliance pro tempore.

14. As a result of these various integration efforts, Colombia’s average tariffs fell over the last two
decades (Table 3) as did the average tariffs faced by Colombian firms abroad (Figure 4). Particularly
important was the recent 2010 tariff reform which reduced the average tariffs applied in Colombia from
12.5% to 8.35%, nearly halving the tariffs applied on intermediate goods, and simplified the overall tariff
structure (5% rate being applied on raw materials and capital goods and 15% on consumer goods). Still,
Colombia’s tariffs remain four times higher than the OECD average (Table 3) and the ratio is even higher
for raw materials and capital goods – seven and eight times, respectively. Moreover, despite the on-going
liberalisation process via numerous free trade agreements, the maximum applied tariff actually rose in
recent years – from 80% in 2006 to 98% in 2011 (WTO, 2012: 48). Still, rates over 20% are applied only
on very few tariff lines (1.4% of all tariff lines in 2011) while there has been a significant increase in the
percentage of duty-free tariff lines – from 3% in 2006 to 47.3% in 2011 (Figure 3 in Annex 1).14

Table 3. Colombia’s simple and trade-weighted statutory tariffs

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Trade</td>
<td>7.17</td>
<td>8.01</td>
<td>6.14</td>
<td>5.52</td>
<td>4.54</td>
<td>4.63</td>
<td>3.72</td>
<td>12.14</td>
<td>12.23</td>
<td>12.45</td>
<td>12.49</td>
<td>12.5</td>
<td>8.35</td>
<td></td>
</tr>
<tr>
<td>Capital goods</td>
<td>5.82</td>
<td>5.11</td>
<td>3.31</td>
<td>2.83</td>
<td>2.13</td>
<td>1.92</td>
<td>1.1</td>
<td>8.86</td>
<td>8.92</td>
<td>8.84</td>
<td>8.78</td>
<td>8.89</td>
<td>5.72</td>
<td></td>
</tr>
<tr>
<td>Weighted average</td>
<td>3.77</td>
<td>3.35</td>
<td>2.8</td>
<td>2.16</td>
<td>1.86</td>
<td>1.38</td>
<td>0.8</td>
<td>8.11</td>
<td>7.26</td>
<td>8.35</td>
<td>8.93</td>
<td>7.29</td>
<td>6.38</td>
<td></td>
</tr>
<tr>
<td>Consumer goods</td>
<td>10.38</td>
<td>11.04</td>
<td>8.98</td>
<td>8.03</td>
<td>7.01</td>
<td>6.94</td>
<td>5.51</td>
<td>16.1</td>
<td>16.24</td>
<td>16.27</td>
<td>16.32</td>
<td>16.31</td>
<td>11.29</td>
<td>6.38</td>
</tr>
<tr>
<td>Weighted average</td>
<td>7.23</td>
<td>6.56</td>
<td>5.61</td>
<td>5.08</td>
<td>4.75</td>
<td>4.49</td>
<td>3.68</td>
<td>17.6</td>
<td>16.8</td>
<td>18.28</td>
<td>19.41</td>
<td>17.46</td>
<td>13.61</td>
<td>6.38</td>
</tr>
<tr>
<td>Intermediate goods</td>
<td>6.44</td>
<td>6.79</td>
<td>5.26</td>
<td>4.5</td>
<td>3.34</td>
<td>3.6</td>
<td>2.78</td>
<td>10.91</td>
<td>11.01</td>
<td>10.99</td>
<td>11.02</td>
<td>11.02</td>
<td>6.49</td>
<td></td>
</tr>
<tr>
<td>Weighted average</td>
<td>4.63</td>
<td>4.39</td>
<td>3.69</td>
<td>2.77</td>
<td>2.47</td>
<td>2.56</td>
<td>1.76</td>
<td>9.5</td>
<td>9.72</td>
<td>9.51</td>
<td>9.54</td>
<td>9.1</td>
<td>6.18</td>
<td></td>
</tr>
<tr>
<td>Weighted average</td>
<td>3.58</td>
<td>3.22</td>
<td>4.63</td>
<td>3.53</td>
<td>2.89</td>
<td>5.8</td>
<td>1.76</td>
<td>11.78</td>
<td>11.77</td>
<td>11.9</td>
<td>12.97</td>
<td>13.75</td>
<td>12.42</td>
<td></td>
</tr>
</tbody>
</table>

Source: UN Trains.

14 This is driven by temporary introduction of duty-free access for raw materials and capital goods in 2011.
Figure 4. Tariffs faced by Colombia, simple and weighted average, world and OECD countries

Source: UN Trains.

15. Colombia has higher tariffs on agricultural products than other products. This is partly because Colombia applies an Andean Community price to some agricultural imports (Box 1). The price band essentially involves an application of a variable duty or a discount, depending on the level of international prices, on top of a basic ad valorem tariff established through the common external tariff policy of the Andean Community. When international prices decrease *ceteris paribus*, import tariffs increase and vice versa. The price band was introduced in the mid-1990s as a way to protect domestic agricultural producers from abrupt price fluctuations, and has not been dismantled since. The top 25 highest tariffs applied by Colombia are all agricultural products, with the exception of motor cars and motorcycles (Table 4).
Table 4. Top 25 tariff rates faced by exporters in Colombia, 2011

<table>
<thead>
<tr>
<th>HS 4 digit products</th>
<th>Product name</th>
<th>Tariff</th>
<th>Share of total imports</th>
</tr>
</thead>
<tbody>
<tr>
<td>0402</td>
<td>Milk and cream, concentrated or sweetened</td>
<td>98.00</td>
<td>0.06</td>
</tr>
<tr>
<td>0404</td>
<td>Whey &amp; milk products nesoi, flavored etc. or not</td>
<td>94.00</td>
<td>0.01</td>
</tr>
<tr>
<td>0201</td>
<td>Meat of bovine animals, fresh or chilled</td>
<td>80.00</td>
<td>0.00</td>
</tr>
<tr>
<td>0202</td>
<td>Meat of bovine animals, frozen</td>
<td>80.00</td>
<td>0.00</td>
</tr>
<tr>
<td>0504</td>
<td>Animal (not fish) guts, bladders, stomachs &amp; parts</td>
<td>70.00</td>
<td>0.01</td>
</tr>
<tr>
<td>1006</td>
<td>Rice</td>
<td>62.50</td>
<td>0.05</td>
</tr>
<tr>
<td>0206</td>
<td>Edible offal of bovine animals, swine, sheep, goat, horse</td>
<td>43.89</td>
<td>0.03</td>
</tr>
<tr>
<td>8703</td>
<td>Motor cars &amp; vehicles for transporting persons</td>
<td>32.78</td>
<td>5.15</td>
</tr>
<tr>
<td>8702</td>
<td>Public-transport type passenger motor vehicles</td>
<td>24.55</td>
<td>0.20</td>
</tr>
<tr>
<td>0210</td>
<td>Meat and edible meat offal, salted, in brine, dried</td>
<td>24.38</td>
<td>0.00</td>
</tr>
<tr>
<td>8706</td>
<td>Chassis fitted with engines, for the motor vehicle</td>
<td>24.09</td>
<td>0.40</td>
</tr>
<tr>
<td>0713</td>
<td>Leguminous vegetables, dried shelled</td>
<td>23.36</td>
<td>0.22</td>
</tr>
<tr>
<td>8711</td>
<td>Motorcycles (incl mopeds) &amp; cycles with aux motor</td>
<td>22.50</td>
<td>0.07</td>
</tr>
<tr>
<td>1601</td>
<td>Sausages, similar prod meat etc food prep of these</td>
<td>20.00</td>
<td>0.00</td>
</tr>
<tr>
<td>1514</td>
<td>Rapeseed, colza or mustard oil etc, not chem mod</td>
<td>20.00</td>
<td>0.04</td>
</tr>
<tr>
<td>1512</td>
<td>Sunflower-seed, safflower or cottonseed oil, not chem mod</td>
<td>20.00</td>
<td>0.12</td>
</tr>
<tr>
<td>1518</td>
<td>Animal/veg fats &amp; oils chem modified, inedbl mxt etc</td>
<td>20.00</td>
<td>0.01</td>
</tr>
<tr>
<td>0405</td>
<td>Butter and other fats and oils derived from milk</td>
<td>20.00</td>
<td>0.00</td>
</tr>
<tr>
<td>1517</td>
<td>Margarine, edible mixtures etc an or veg fat &amp; oil</td>
<td>20.00</td>
<td>0.05</td>
</tr>
<tr>
<td>0207</td>
<td>Meat &amp; ed offal of poultry, fresh, chill or frozen</td>
<td>20.00</td>
<td>0.01</td>
</tr>
<tr>
<td>1507</td>
<td>Soybean oil &amp; its fractions, not chemically modified</td>
<td>20.00</td>
<td>0.58</td>
</tr>
<tr>
<td>1511</td>
<td>Palm oil and its fractions, whether or not refined</td>
<td>20.00</td>
<td>0.26</td>
</tr>
<tr>
<td>1508</td>
<td>Peanut oil &amp; its fractions, not chemically modified</td>
<td>20.00</td>
<td>0.00</td>
</tr>
<tr>
<td>0203</td>
<td>Meat of swine, fresh, chilled or frozen</td>
<td>20.00</td>
<td>0.09</td>
</tr>
<tr>
<td>3505</td>
<td>Dextrins etc, glues based on starches, dextrin etc</td>
<td>20.00</td>
<td>0.03</td>
</tr>
</tbody>
</table>

*Source: UN Trains.*
Box 1. The Andean Community Price Band System (APBS)

The Andean Community’s Price Band System (APBS) was introduced in 1995 to reduce domestic price instability by buffering fluctuations in international prices for 13 selected agricultural products (palm oil, soy oil, white rice, white sugar, brown sugar, yellow corn, white corn, barley, wheat, pork meat, and chicken meat) through the use of a variable import tariff. The system has prevailed despite various waves of liberalization during the last two decades, primarily because of the concerns about the impact of low prices on local producers of certain agricultural products and its social implications.

The APBS relies on the application of a variable levy, whose value depends on the international prices of 13 commodities covered by the price band, on a basic ad valorem tariff (arancel común) established by the Andean Community’s common external tariff policy. The band is established based on 60-month moving average of past real border prices, with the floor and ceiling price based on a formula that incorporates real domestic monthly c.i.f. prices (deflated by U.S CPI) and a fix proportion of the standard deviation of historical prices. The Andean Community reports official spot c.i.f. prices for the 13 commodities every two weeks to apply the price band; the official domestic price of production in the Andean Community constitutes the floor price and hence the minimum import price.

As long as the c.i.f.* price is within the band created by floor and ceiling prices, only the basic ad valorem tariff is applied. When the spot c.i.f. price is below the corresponding floor price, a variable levy is applied on top of the basic tariff, sufficient to raise the import cost to the floor price, which thus becomes the minimum import price. When the spot border price exceeds the ceiling price, the variable levy is not applied and instead a discount applies, again levelling out the impact of price increase.

\[
\text{Extra duty} = \frac{(P_{\text{floor}} - P_{\text{c.i.f}})}{P_{\text{c.i.f}}} \times (1 + \text{Tariff})
\]

\[
\text{Discount} = \frac{(P_{\text{c.i.f}} - P_{\text{ceiling}})}{P_{\text{c.i.f}}} \times (1 + \text{Tariff})
\]

As shown by Figure 5 below, the price band is relatively narrow, with spot prices falling most of the time outside of the band, and resulting in the application of an extra duty or a discount. (See Figure 7 in Annex 1 for all APBS commodities.) For example, spot prices for corn, rice, wheat, and barley remained below the price floor most of the time during 1996-2004, and above the ceiling during 2005-2012. In case of meat, pork prices were fluctuating above and below the price band while chicken prices remained below the price floor throughout the whole period. (Figure 8 and 9 in Annex 1 trace the magnitude of an extra duty or discount applied on APBS commodities over time.)

In terms of the average increase in domestic prices above the international c.i.f. price as a result of an APBS levy, chicken producers benefitted most from the policy throughout 1996-2013 (on average enjoying a price 160% above the international price), followed by soya oil and palm oil producers (67% and 57% respectively), and brown and white sugar producers (52% and 40%). In terms of discounts, they have been primarily applied post 2005 during the international crisis of food prices, with the largest discount being applied between 2005-2013 on white corn (44%), white rice (33%), palm oil and milk (about 22%).

While the active dismantling of the price band appears unlikely in the nearest future due to high political pressures at home to sustain protection (as evidenced by violent protests of domestic farmers in the summer 2013), the effects of the APBS are likely to undergo changes indirectly. For example, in some of its recent FTAs, Colombia has committed to non-application of the price band for imports from its FTA partner (e.g. Canada), and, more generally, various tariff and tariff-in-quota provisions in the country’s FTAs will impact domestic prices, hence also influencing the price band itself. It is worth noting that Chile had a similar price band on selected agricultural products in the past (OECD, 2008), but following Argentina’s successful case in the WTO against it (on the basis of non-compliance with tariffication requirements of the URRAA), the country was forced to abolish some of the price band elements, and modify others.

Note: * The c.i.f. price (i.e. cost, insurance and freight price) is the price of a good delivered at the frontier of the importing country, including any insurance and freight charges incurred to that point, or the price of a service delivered to a resident, before the payment of any import duties or other taxes on imports or trade and transport margins within the country.

Source: Andean Community, Agronet, OECD.
Figure 5. Andean Community Price Band System (APBS) and international prices, 1996-2013

Palm Oil
- International CIF price
- Floor price
- Ceiling price

Soya Oil
- International CIF price
- Floor price
- Ceiling price

White Rice
- International CIF price
- Floor price
- Ceiling price

White Sugar
- International CIF price
- Floor price
- Ceiling price

Brown Sugar
- International CIF price
- Floor price
- Ceiling price

Pork Meat
- Pork Mean International CIF price
- Pork Mean Floor price
- Pork Mean Ceiling price

Source: Andean Community Price Band System (APBS).
1.2 Trade openness and structure

16. The ratio of total exports and imports to GDP is often used to measure a country’s effective openness to global trade in goods and, together with FDI indicators, the level of integration with the world economy. The ratio is, however, influenced by various endogenous factors, including size, structure of the economy, and variation in economic growth and hence can pick up a lot of macroeconomic factors.

17. As Figure 6 illustrates, Colombia has a trade-to-GDP ratio of 22 %, a level comparable to that of Venezuela but below the ratio of Chile (41%) or BRIICS’ average (33%). Given the relatively small size of its economy, this ratio is relatively low. This may be driven by the structure of Colombia’s economy, dominated by services that are less tradable than goods (62% of domestic production in 2011) (Figure 7). Given impressive increases in FDI flows into Colombia in recent years – with a record USD 10.6 billion reached in 2008 – it is clear that the economy is increasingly opening to the global markets. Still, both in the case of investment from abroad and trade (discussed later), the oil and mining sector clearly dominates (Figure 8 and Figure 11).

Figure 6. Trade ratios in BRIICS countries, selected OECD countries and Colombia, 2011

a. Average of exports and imports of goods and services as a share of GDP constant 2000.
b. GDP (constant 2000 USD) logarithmic scale on the horizontal axis.
Source: OECD, WDI.

15 For a detailed overview of the structure and dynamics of Colombia’s FDI, please consult OECD Investment Review of Colombia (OECD, 2012).
18. In terms of trade balance, in the past five years Colombia has been running a small but constant trade deficit, except for 2011 when exports exceeded imports (Figure 9). This may be surprising given the surge in prices of commodities that Colombia is exporting, as one could expect an improvement in the current account balance. The deficit results from the surge in imports driven by buoyant domestic consumption and investment, which compensated for the increase in the value of exports. When the current account is adjusted for the change in terms of trade, the deficit deepens, which suggests declining export volumes and may be again pointing to underperformance of the non-mining sector (OECD, 2013a).

19. The United States is by far Colombia’s largest trading partner, responsible for 33% of Colombia’s total trade, followed by the European Union (19%), China (9%), and Mexico (6%) (Figure 10). While Colombia is sustaining a trade surplus with the United States and Chile, it is running a trade deficit with all its other top trading partners.
20. In terms of the structure of its exports and imports, as mentioned already, Colombia’s fuel and lubricants exports dominate all exports (64% of the total), followed by industrial supplies (16%). It imports, in turn, mostly industrial supplies (33%), capital goods (22%) and transport equipment and parts (21%) (Figure 11). Exports concentration has intensified significantly over the past couple of years –
jumping from 44% in 2005 to 71% in 2011. It remains at the level of some high-income rich-resource OECD economies (76% Australia, 74% Norway), while exceeding others (65% Chile, 43% Canada, 23% Mexico). This is reflected in Colombia’s Herfindahl-Hirshman concentration index (where 1 means more concentrated and 0 means more diversified) that tripled over the last ten years, and remains significantly above the OECD average (Table 5).

Figure 11. Colombia’s foreign trade structure, 2011

Source: UN ComTrade.

Table 5. Herfindahl-Hirschman Index for Colombia and OECD, 2000-2011

<table>
<thead>
<tr>
<th>Year</th>
<th>Colombia</th>
<th>OECD</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>0.201</td>
<td>0.074</td>
</tr>
<tr>
<td>2001</td>
<td>0.148</td>
<td>0.070</td>
</tr>
<tr>
<td>2002</td>
<td>0.146</td>
<td>0.068</td>
</tr>
<tr>
<td>2003</td>
<td>0.156</td>
<td>0.067</td>
</tr>
<tr>
<td>2004</td>
<td>0.153</td>
<td>0.067</td>
</tr>
<tr>
<td>2005</td>
<td>0.171</td>
<td>0.067</td>
</tr>
<tr>
<td>2006</td>
<td>0.164</td>
<td>0.066</td>
</tr>
<tr>
<td>2007</td>
<td>0.148</td>
<td>0.064</td>
</tr>
<tr>
<td>2008</td>
<td>0.222</td>
<td>0.062</td>
</tr>
<tr>
<td>2009</td>
<td>0.242</td>
<td>0.057</td>
</tr>
<tr>
<td>2010</td>
<td>0.332</td>
<td>0.059</td>
</tr>
<tr>
<td>2011</td>
<td>0.418</td>
<td>0.059</td>
</tr>
</tbody>
</table>

Source: UN Comtrade Database.

21. Some of the sectors that were identified by the Colombian government and businesses as having a potential for increased exports include: cosmetics, flowers, and shrimps (in the agricultural sector); vehicles, vehicle parts and engines (in the manufacturing sector), and BPO, software and information
technologies and ecological tourism (in the services sector). In attempting to increase exports in some of these sectors Colombia is often faced with difficulties in reaching the level of Sanitary and Phytosanitary (SPS) requirements in the destination country or, more generally, proving compliance with the mandatory regulatory requirements, partly because of a lack of recognition for certification processes in the country and insufficient testing infrastructure (discussed later in Sections 2.4 and 2.5). As a result, the country’s trade promotion agency – Proexport, focuses its activities on identifying specific requirements that firms face in potential markets and advising on reaching compliance as well as preparing sectoral business plans that identify capacity bottle-necks faced by firms with export potential. Proexport also has the mission of attracting FDI in the country. In general, the agency tends to target firms that are already exporting to assist them in reaching new markets (i.e. geographical diversification), rather than promoting a wider basket of goods for exports (product diversification).

22. Colombia is running a large deficit in services trade (USD 3.52 billion), importing mostly travel, transportation services, other business services, and insurance (Figure 12). Travel and transportation services also dominate Colombian services exports (being responsible for 45% and 28% of total services exports respectively), owing primarily to the country’s position as an attractive touristic destination and the demand for transport coming from the mining sector. Other businesses, encompassing mostly technical and professional services, are also important, growing at an annual rate of over 50% before the crisis, and following an increasing trend thereafter. Finally, the communications sector also offers some potential, having grown at about 15% annually prior to the crisis, and having attracted considerable foreign direct investment in recent years.

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16 This information is based on the sectors identified by the National Programme for Productive Transformation (Programa de Transformación Productiva, PTP), aiming at the promotion and diversification of national exports (for more information see the programme’s website (in English): www.ptp.com.co/portal/default.aspx [as of 27 September 2012]; and the OECD Secretariat’s exchanges with representatives from Colombia’s National Business Association (ANDI) and local Chambers of Commerce. The PTP identifies and promotes necessary improvements as regards the human capital, the regulatory framework, sectoral promotion and innovation, and infrastructure and sustainability. In 2012 the programme met its goods exports goals by 109% (USD 7.683 billion) and its services exports goals by 122% (USD 874 million), while for 2014 it aims at USD 12 billion worth of exports and the creation of 300 000 new jobs.

17 The agency has numerous local offices in markets of interest to Colombian firms that deal with monitoring of market opportunities and regulatory requirements to enter the market.

18 This is done within the Programme of Productive Transformation, described in footnote 14; there are 16 business plans for each of the sectors identified as having a potential for exports.
2. Policy framework for market openness: the efficient regulation principles

23. With reductions in so-called traditional trade barriers (e.g. tariffs) and expansion of global value chains, the complementarities between market openness and regulatory reform have become more apparent. Even if tariffs are removed entirely but significant regulatory barriers to business persist (e.g. it is difficult to obtain an importing license or start a business in a country), tariff reform in itself is unlikely to bring the intended economic effects. Unsurprisingly, some of the large on-going trade negotiations (e.g. Transatlantic Trade and Investment Partnership (TTIP) or the Trans-pacific Partnership (TPP)) focus on the ways to align diverging regulatory requirements in participating economies to facilitate business exchanges. Regulatory reform, hence, is an important element of pursuing market openness, while market openness can help facilitate domestic regulatory reforms.

24. As the balance between ensuring market openness and achieving intended public policy goals is sometimes difficult to strike in the most efficient way, building on their collective experience, OECD Members adopted a set of six principles considered critical for the development of efficient and trade-and-investment-friendly regulations (Box 2). In addition, in the context of an accession review, the OECD Trade Committee also reviews the degree of respect for Intellectual Property Rights (IPR) in the candidate
country. In the following sections, we assess Colombia’s regulatory infrastructure against five of these principles to establish the level of alignment with the OECD best-practice.

<table>
<thead>
<tr>
<th>Box 2. The OECD efficient regulation principles for market openness</th>
</tr>
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<tbody>
<tr>
<td>To ensure that regulations do not unduly constrain market openness, “efficient regulation” principles are built into domestic regulatory process and practices in OECD countries. OECD trade policy makers have identified six principles as key to successful market-oriented, trade and investment friendly regulations. These principles reflect the basic principles underpinning the multilateral trading system.</td>
</tr>
</tbody>
</table>

1) **Transparency and openness of decision making**: Foreign firms, individuals and investors seeking access to a market must have adequate information on new and revised regulations so that they can base their decisions on accurate assessment of potential costs, risks and market opportunities.

2) **Non-discrimination**: Non-discrimination means equality of competitive opportunities between like products and services irrespective of country of origin.

3) **Avoidance of unnecessary trade restrictiveness**: Governments should use regulations that are not more trade restrictive than necessary to fulfill legitimate objectives.

4) **Use of internationally harmonised measures**: Compliance with different standards and regulations for like products can burden firms engaged in international trade with significant costs. When appropriate and feasible, internationally harmonised measures should be used as the basis of domestic regulations.

5) **Streamlining conformity assessment procedures**: When internationally harmonised measures are not possible, necessary or desirable, recognising the equivalence of trading partners’ regulatory measures or the results of conformity assessment performed in other countries can reduce the negative effects of cross-country disparities in regulations and duplicative conformity assessment systems.

6) **Application of competition principles from a market openness perspective**: Market access can be reduced by regulatory action ignoring anti-competitive conduct or by failure to correct anti-competitive practices, particularly by incumbent firms which are normally also domestic.


2.1 **Transparency**

25. Availability of information on policies and regulatory environment in a country allows firms to better foresee the costs and returns of their activities and plan investments accordingly. Even when profound regulatory changes are taking place but market participants are informed in advance and adequate transition periods are provided, firms can minimize the costs of adjustment. Erratic and unpredictable decision-making and non-transparent standard-setting can, on the other hand, lead to sub-optimal allocation of resources, rent-seeking, or a decision to abandon a market altogether. Transparency is therefore important to allow a smooth functioning of a market and ensure a level playing field among market actors.

26. The WTO defines transparency as “the degree to which trade policies and practices, and the process by which they are established, are open and predictable.” WTO membership contributes to increased transparency in a country’s trade-related policies inasmuch as WTO rules include certain transparency

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19 See the Council Roadmap for the Accession of Colombia to the OECD Convention.

20 Regulation with respect to competition, covered in the sixth principle, is treated separately in the context of the OECD accession process and handled under the auspices of the Competition Committee.
obligations\textsuperscript{21}, including notification requirements of technical regulations with implications for trade and the existence of a single contact point for so-called technical barriers to trade (TBT) in a WTO member state. In addition, the \textit{WTO Trade Policy Review} allows for periodic monitoring of countries’ trade-related policies and regulations and the WTO Committees provide a forum for exchanges among members on particular policy issues, overall increasing the scrutiny of the country’s trade related policy framework.

27. Within the OECD context, the \textit{OECD Recommendation of the Council on Regulatory Policy and Governance} define transparency as: 1) the ease of access to information on legislative acts and applicable regulations, 2) the adequacy of consultation mechanisms for market participants, including in the drafting stage 3) and effective appeal procedures. These apply to all regulatory acts, including technical regulations, as well as government procurement procedures. As Colombia’s legal regime has already been reviewed with respect to transparency by the OECD Public Governance and Territorial Development Directorate within the \textit{OECD Regulatory Reform Review 2013} (OECD, 2013b) and by the OECD Directorate for Financial Affairs with the \textit{OECD Investment Review of Colombia} (OECD, 2012a), here we build on this work and highlight aspects of particular importance to trade.

28. Overall, businesses and trading partners recognize the good efforts on the part of the Colombian government to achieve a high level of transparency, to publish draft laws and regulations in advance, and to seek inputs from interested stakeholders. Some changes may need to be considered, however, primarily to systematise the consultation process and increase regulatory predictability, including through the use of forward planning, ex post and ex ante regulatory impact assessments and standardized procedures for preparation of technical regulations. Further government procurement reform should also include further transparency-enhancing measures, along the direction currently planned by the government. Cognisant of the areas for improvement, identified here and in OECD (2013a), the government is currently working on a White Paper (CONPES) proposing some elements of the suggested reform.\textsuperscript{22} To facilitate the reading of this section, Box 3 provides an overview of entities involved in the regulatory process in Colombia (for more detail or explanations, see: OECD, 2013b).

\textsuperscript{21} For example, Article X of the General Agreement on Tariffs and Trade (GATT) 1994 requires that WTO members to publish trade-related laws, regulations, rulings and agreements prior to their entry into force; implement these legal acts in a uniform, impartial and reasonable manner; and provide a means for the review and correction of these acts. Additional transparency obligations are embedded in most WTO accords, including the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Intellectual Property Rights (TRIPS), the Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures, the Technical Barriers to Trade (TBT) Agreement, and the Agreement on Government Procurement (GPA).

\textsuperscript{22} The White Paper on the matter was in the process of finalisation by the National Planning Department throughout 2014.
Box 3. An overview of institutions involved in the regulatory process in Colombia

**Executive**

**The President’s Office** *(Oficina de la Presidencia)* – it is responsible for overseeing and coordinating the implementation of the President’s agenda. It monitors the formulation and execution of policy priorities set in the National Development Plan.

**Administrative Department of the Public Function** *(Departamento Administrativo de la Función Pública, DAFP)* – it is attached to the President’s Office and responsible for the implementation of the Anti-Formalities Policy *(Política Anti-trámites)*.

**National Council on Economic and Social Policy (CONPES)** – it is the highest national planning authority in the country that serves as an advisory body to the government on all policies related to the social and economic development of the country. Importantly, it approves the four-year National Development Plan, providing a blueprint for the government’s strategy during the President’s term. It co-ordinates and guides relevant work of government entities through White Papers outlining an action plan for a given reform – so-called CONPES documents. Its Secretariat is the DNP (below).

**The National Planning Department** *(Departamento Nacional de Planeación, DNP)* – it serves as the government’s technical advisor on the design, implementation, and assessment of the National Development Plan, and co-ordinates its implementation. The Director is appointed by the President, and holds a cabinet level position.

**Ministries** *(Ministerios)* – responsible for putting forward national public policies in their area of competence. In particular, the Ministry of Trade, Industry and Tourism (MICT) is responsible for the national quality policy, which includes the improvement of technical regulations and conformity assessment procedures; and the Ministry of IT (MINTIC) co-ordinates and supports the implementation of the Government online programme *(Gobierno en Línea)* that integrates ICT mechanisms into the administrative simplification process.

**Regulatory Commissions** *(Comisiones de Regulación)* – these are government agencies charged with a task to regulate selected sectors characterised by monopole- or oligopolistic markets (e.g. communication, energy and gas, sanitation) to ensure service provision and competition. They have administrative, technical and financial independence *(Law 142 of 1994).*

**Superintendencies** *(Superintendencias)* – entities with administrative, technical and financial autonomy, linked to a ministry of the respective sector, responsible for supervision, monitoring and control of the sectors in which they operate. For example, the SIC deals with consumer and competition protection, among others. It is a distinctive feature of the Colombian system to have regulation and supervision functions allocated to separate institutions – the former to ministries and commissions, and the latter to superintendencies.

**Legislative**

**The Senate** – the higher chamber of the Colombian Congress.

**The Chamber of Representatives** – the lower chamber of the Colombian Congress.

**Judiciary**

**The Constitutional Court** *(Corte Constitucional)* – it addresses citizens’ unconstitutionality claims on laws *(Art. 241 of the Constitution).* The Constitutional Court case law contributes to establishing the limits of laws and regulations.

**The State Council** *(Consejo de Estado)* – the highest administrative court. It can overturn, in the sphere of its competence, decrees and resolutions by the national government that are considered unconstitutional *(Art. 237 of the Constitution)*

**The Court of Justice of the Andean Community** *(Tribunal de Justicia de la Comunidad Andina)* – it can rule on the non-compliance of the domestic law of the Andean Community Members with the Andean Community law and nullify the Decisions of the Andean Commission if rules them non-compliant with the Community law; it also renders binding interpretations of the Andean Community law.
Access to regulation and information dissemination

29. The first aspect of transparency covered is the ease of access to information: How does a government disseminate information about its legislative acts and, more broadly, regulatory objectives? Is it relatively easy for interested individuals and firms to access the relevant information? These aspects tend to be particularly relevant for new market entrants or foreign firms, in particular of smaller size, that may be unfamiliar with the local regulatory environment.

30. In Colombia, the principle of transparency is embedded in the Constitution. Article 74 of the Constitution establishes the right of the public to access public documents (“every person has the right to access public documents, except in specific cases established by law”); and Article 209 proclaims the administration’s obligation to serve the public, including through the application of the principle of transparency. In addition, Article 12 of the Law 57 of 1985 provides that every person has the right to consult documents that are stored in public offices, except in cases where such documents are reserved in accordance with the law and the Constitution.

31. Publication of laws is a mandatory requirement for any law to enter into force in Colombia. The Law 57 of 1985 further establishes that all legislative acts, laws, decrees, executive resolutions and government acts of general application issued by Ministries, Departments and Superintendencies must be published in the Official Journal (Diario Oficial), managed by the National Press (Imprenta Nacional), and also available online. In addition, all regulations published in the Diario Oficial must also be published by electronic means within five days after the official publication (Law 962 of 2005). Websites of public institutions are an additional source of information as they are usually well-developed, up-to-date and user-friendly, and provide significant amount of relevant information about an institution’s activities and legal acts of interest, often with a section in English. For trade matters, the website of the Ministry of Trade, Industry and Tourism (www.mincit.gov.co) includes a range of trade-related information (e.g. how to import, how to export, information on WTO and OECD) and key legal texts, and offers a newsletter. The website of the single window for foreign trade (Ventanilla Única de Comercio Exterior, VUCE) also provides trade-related information, including news on agencies involved in previous authorisations, permits and certifications for import and export processes, and has a newsletter with relevant statistics and a chat system in English and Spanish for particular queries (www.vuce.gov.co). The website of Proexport (www.proexport.com.co) provides information on Proexport’s services in support of domestic companies’ internationalization strategies and foreign investors’ endeavours to access the Colombian market. The specific transparency measures related to tariff-setting and customs procedures are reviewed in the trade facilitation subsection, under 2.3 below.

32. When it comes to advance publication of legal acts before they come into force, the Decree 1345 of 2010 proclaims that any administrative act should be communicated to the public before it is issued.

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23 Usually, laws enter into force within two months after their official publication, unless the law provides otherwise (Article 52 of the Code of Political and Municipal Regime). In the case of regulations, the time interval is provided by each regulation but the general principle is that they enter into force at the moment of their publication. For technical regulations, the general principle is that they enter into force six months after publication.

24 The current issue of the Official Journal is available here, and it is possible to search previous issues: www.imprenta.gov.co/diariop/diario2.portal [last accessed on 28 August 2013].

25 For example, see the website of the Senate: www.imprenta.gov.co; the Ministry of Commerce, Industry and Trade: www.mincomercio.gov.co, or the Agricultural Institute of Colombia: www.ica.gov.co. A website worth mentioning is www.gobiernoenlinea.gov.co, whose aim is to provide all relevant information of interest to a citizen and an entrepreneur related to public policy in one place.
electronically or through the mail, and the institution must document that it has done so. In the case of primary legislation, the National Congress publishes all law proposals that are currently discussed on the Senate’s website (www.senado.gov.co) to communicate their content and the discussions around them. The Congress Gazette (Gaceta del Congreso) also contains information on the process that a law proposal follows as well as the debates undertaken previous to promulgation, and is also available online. For draft regulations, each institution has an obligation to make public any regulatory proposals, and the information that gives them ground, in order to get opinions, suggestions and alternative proposals within a period set by an institution (Law 1437 of 2011). As each institution decides itself about the period of time during which draft text is available to the public, it provides a level of discretion that at times results in insufficiently long consultation periods. For Regulatory Commissions the process is more defined, however. Namely, under the Article 9 of the Decree 2696 of 2004, regulatory commissions must publish all draft resolutions of general character, except for tariff setting, on their websites, at least thirty days before they are adopted. The Decree still gives discretion to commissions to set criteria for publication and to define exemptions.

33. It is worth mentioning that in order to increase regulatory transparency and limit bureaucratic burdens, the Colombian government created in 2005 a central register of all formalities required of citizens and enterprises in the country – the Sistema Único de Información de Trámites, SUIT. According to law, all public entities are required to register their formalities in the SUIT (Law 962 of 2005), and no formality can be required if not registered (Decree 0019 of 2012). In order to add a formality, a public institution needs to provide the Administrative Department of Public Function (Departamento Administrativo de la Función Pública, DAFP) that is managing the SUIT, with an impact assessment of a proposed formality for its consideration. Only if approved by DAFP, it can be added to the register. The creation of the register has increased the level of transparency pertaining to formalities and provided market participants with a tool to challenge any institutions requiring more than what is formally registered.

34. Still, besides the formalities register, there is no uniform register of all laws and regulations in force in Colombia. The government is aware of this issue, and the Ministry of Justice is currently working on preparing such a stock (called Sistema Único de Información Normativa, SUIN), building on earlier efforts by several entities. While still in early stage of implementation, SUIN already allows access to 20 000 laws and decrees and more than 8 000 decisions of the Constitutional Court, the Supreme Court of Justice, and the State Council, and once complete should allow access to all laws and decrees issued since 2000.

26 The full text of the Decree is available here: http://www.sic.gov.co/recursos_user/documentos/normatividad/Decreto_1345_2010.pdf [last accessed on 30 August 2013].

27 The current issue of the Congress Gazette as well as all issues since 2000 are available online: http://servoaspr.imprenta.gov.co:7778/gacetap/gaceta.portals [last accessed on 28 August 2013].

28 The Energy and Gas Regulatory Commission (CREG) has set out that the publication of draft resolutions will be accompanied by an explanatory note describing the objective of the proposal, the background to it, international experiences, the alternatives assessed, the technical studies conducted and their conclusions, as well as an assessment of the impact of the proposal. The Communications Regulatory Commission, for example, has established an exemptions list.

29 More information on the SUIT can be found in the section 2.3 on avoidance of unnecessary trade restrictiveness.

30 For example, the Central Bank has an online database of laws and jurisprudence of the high courts concerning the Central Bank since 1923 (http://juriscol.banrep.gov.co); the Financial Superintendencia has a normative inventory of regulations applicable for the financial, insurance, and stock market sector available on its website (www.superfinanciera.gov.co/normativa); and three regulatory commissions (CRC, the CRAS and the CREG) also have inventories of regulations applicable to the markets under their competence.
1886. Apart from being a helpful tool for the public and market participants, such a repository of all regulations would assist the administration’s efforts to streamline the regulations and formalities in the country. It would provide a basis for pursuing a review of the existing regulations to remove or reduce any overlapping, conflicting or redundant regulations. While a full review of the entire regulatory stock in the country tends to be costly (OECD, 2013), the government could instead perform consultations with stakeholders to identify sectors or areas requiring particular attention and perform partial reviews first.

35. In addition, a limited use of forward planning by public entities in Colombia hampers the ability of market participants to know in advance about all regulatory proposals that can potentially affect them. While the National Development Plan and the government White Papers (CONPES documents) provide the general lines of planned reform, a systematic use of regulatory forward planning is limited. Only Regulatory Commissions are legally required to define their annual regulatory agendas and consult on them with stakeholders. There is however no such obligation for other regulatory bodies. Ministries still usually establish regulatory objectives with the help of their planning units, and these need to be in accordance with sectoral plans derived from the National Development Plan, and Superintendencies establish planning programmes with support of their advisory planning offices. Still, a lack of obligation and of a set of minimum requirements (e.g. in terms of content, advance publication and consultation periods) results in variability of practices.

36. Overall, businesses consulted in the process of this review acknowledge the government’s efforts to achieve a high level of transparency. It has been highlighted that all draft regulations are published in advance, either in paper or online, stakeholders have an opportunity to comment, and the government is usually attentive to business views. Still, as suggested above and explored in more detail in the OECD Regulatory Reform Review, there is a scope for improvement through further systematisation of procedures for publishing draft regulations, creation of a register for laws and regulations already in force, and a more systematic use of forward planning by all entities. Figure 13 illustrates the cumulative effect of improvements suggested above, which were already raised with the Colombian government in the context of the OECD Regulatory Reform Review.

31 They must also consult on their regulatory agendas with the respective stakeholders before October 30 of each year, and are required to incorporate comments from other sectoral entities into the final plan. Stakeholders have ten days to provide comments to the drafts. Final versions are published by December 31 of each year. They also establish five-year Strategic Plans.

32 The MCIT does prepare an Annual Plan for Technical Regulations, which is presented to the Intersectoral Commission of Quality (Comisión Intersectorial de la Calidad) for discussion.

33 The recommendations underneath have been identified by the OECD Public Governance and Territorial Development Directorate. They were discussed with the OECD Member States and the Colombian authorities during the Regulatory Policy Committee Meeting on 22-23 April 2013. During our first mission to Colombia in March 2012, the National Planning Department that was involved in the preparation of the review (and at that stage already knew the main findings) was already considering relevant reforms.
Consultation mechanisms

37. A second fundamental aspect of transparency refers to equal opportunities for all stakeholders to participate in formal or informal consultations on regulatory acts, including during the drafting stage. Systematic consultations, and an equal access to them, are desirable in any case in a democratic system, but they also have important effects on the quality and enforceability of regulations as they allow market participants to voice their concerns and opinions during the regulations formulation process.

38. In Colombia, the right to petition is a constitutional right. Article 23 of the Constitution provides that every person has the right to present petitions to the authorities for general or private interest and to obtain a prompt reply of such petition (derecho de petición). The Administrative Code (Law 1437 of 2011) also

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provides that in exercise of the right to present petitions any person may, among others, request information and consult, examine or require copies of documents (Article 23). Such petitions must be promptly resolved in no more than 15 days following the submission of the petition, and within 10 days if the enquire pertains to a request of a copy of a document (Article 14). The right to petition also has a special enforcement procedure due to its status as a fundamental right.

39. In the case of primary legislation, the law on Congressional procedures (Law 5 of 1992) establishes opportunities for citizens’ participation in the preparation of draft proposals when they are debated in the corresponding commissions of the National Congress. In the case of regulations, as explained in the previous section, each regulatory entity decides on a case-by-case basis about the method, time period, and the scope of consultation. There is also no obligation for ministries to publish the results of the consultation, nor to provide feedback to the participants in the process. Still, if a citizen enquires about the reason for rejection of his suggestion or a comment, a response needs to be provided as part of the universal right to petition, explained earlier.

40. Regulatory Commissions are subject to stricter consultation requirements. The Decree 2696 of 2004 requires Regulatory Commissions to provide a period for comments of at least 30 days (unless an exemption is agreed on by a Commission), and they are obliged to respond to, and provide feedback on, the comments received (Article 9 and 10). All contributions must be analysed and included in a report explaining the reasons for their rejection or acceptance. The report is published, one working day after the publication of a resolution in the Official Journal. Finally, in some cases, a prior consultation with specific stakeholders (consulta previa) is required by the Constitution and the ILO Convention 169 (considered as a substantive part of the Colombian Constitution), for example, when a project may affect an ethnic community, or by law, as in the case of environmental impacts of mining projects, and is subject to stricter procedure for all entities.

41. In practice, most entities publish draft regulations on their website for comments. Sometimes inputs are sought only from selected stakeholders that may be affected by a particular regulation or have shown interest in the past. As the time period during which comments can be submitted is set on a case-by-case basis by ministries, there are instances when the consultation period provided can be too short or the opportunities for feedback from the industry not sufficiently clear. In general, when a regulation has a high impact on the market or some of its elements are complex and may require further elaboration, longer consultation periods and more inclusive consultation mechanisms can help improve the regulation’s quality and avoid disruptions in the market.

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35 Due to a Constitutional Court decision, Article 14 of the Administrative Code will have to be replaced by a new provision by 31 December 2014.

36 The Colombian Constitution establishes a preferential proceeding for the protection of fundamental rights. Article 86 of the constitution entitles every person, whether a Colombian national or foreign national, to file a writ of protection before a judge for the immediate protection of his/her fundamental right when that person fears such rights may be violated by the action or omission of any public authority. Under this procedure, no more than 10 days may elapse between the filing of the writ and its resolution. The resolution of the writ of protection will consist of an order issued by a judge enjoining others to act or refrain from acting. The order, which must be complied immediately, may be challenged before a superior court/judge, and in any case, the latter may send it to the Constitutional Court for possible revision.

37 See, for example, the Constitutional Court’s ruling 039, M.P. Antonio Barrera Carbonell, 3 February 1997.

38 For example, the formal commenting period proposed by the government for the draft regulation introducing a new pricing system for pharmaceutical products in April 2013 (four days), seriously confused the concerned sector, even if the main aspects of the regulation had been the subject of several workshops with the industry beforehand. The commenting period was extended by 20 days following industry complaints.
42. Overall, businesses confirm that whenever a query or a comment is sent to a government entity, a motivated response is provided and they have various opportunities to raise their views. While there is no obligation to disseminate the results of the consultation process by ministries, some publish them on their websites. Some institutions also use other innovative methods to increase public participation. For example, the MCIT regularly organizes roundtables with interested stakeholders after the completion of the formal consultation process to increase adoption of technical norms; and the Ministry of Health, when preparing the Decennial Plan for Public Health (2012-21), organized some 166 meetings with local stakeholders at the municipal level, 32 at the departmental- and 6 at the regional level to ensure public awareness and participation throughout the country.

43. A particularly interesting example of the government’s use of IT solutions to increase public participation is the Urna de Cristal, or the Cristal Ballot. Urna is a Web application that allows citizens to submit online suggestions, comments and questions on any given topic (www.urnadecristal.gov.co). It was used with success during an extensive six month public consultation process during the preparation of the so-called Anti-formalities Decree (Decree 0019 of 2012) whose aim was to reduce, streamline and automate formalities in the country. Since the goal was to identify and reduce procedures that were considered most burdensome to businesses and citizens, public consultation has been critical to that process. Given the tool’s potential to reach wide audiences and the ease of its use, the administration could consider generalizing its use by public entities to procure comments on regulatory proposals and drafts. A tailored version of the tool to support consultation processes on any public entity’s website and full software support can easily be provided by the Urna de Cristal team at the Ministry of ICT with no financial implications for the concerned entities.

44. Despite the existence of so many consultation tools, one handicap of the current system is that consultations are usually performed once a given regulatory proposal has already been elaborated. When draft regulations are published, interested stakeholders can raise their objections and/or suggest changes to the regulation. At that stage, however, changes tend to be marginal, or the entire regulation is withdrawn if objections are strong, as the design of a regulation is complete at that stage. Ideally, stakeholders would be involved at an earlier stage of the process (e.g. when different regulatory and non-regulatory options are considered and their design discussed) to enable them to co-shape the design choices and propose policy alternatives. The reason why this does not take place in Colombia is the lack of systematic use of regulatory impact assessment (RIA) when producing regulations, which involves inputs from stakeholders to decide on the optimal design of regulations. This has been discussed with the Colombian government in the context of the OECD (2013b) review. Currently, the Ministry of Trade, Industry and Tourism is working on an amendment to the Decree 2269 of 1993 to make RIAs obligatory for all technical regulations issued by public entities, and the National Planning Department is preparing a White Paper on Regulatory Policy, which will include reinforcing regulator’s capacity to use RIAs and eventually make RIAs compulsory. Both texts went through a process of extensive consultations with public and private stakeholders and were ready for enactment in April 2014.

45. Overall, Colombian authorities are forthcoming about receiving comments from stakeholders and employ various ICT tools to increase public participation. The process could however be formalized in order to ensure that consultation periods are adequate and all interested stakeholders have the opportunity to express their opinions. In addition, as will be explained in more detail in the Least Trade Restrictiveness section, a well implemented ex ante RIA programme could also help ensure that consultations are performed early in the regulatory process and serve their function – providing ideas for alternative policy options and co-shaping regulatory design.

39 The Decree is currently in the final stages of inter-agency negotiations and should soon be submitted to Colombia’s trading partners for comments via the WTO TBT contact point.
Appeal procedures

46. A third important aspect of transparency as defined by the OECD Recommendation of the Council on Regulatory Policy and Governance is the openness of appeal procedures. In some cases legal acts or their implementation may affect the interests of a stakeholder or the larger economy. This is when effective appeal procedures become important to allow market participants to voice their concerns and, if appropriate, receive remedies. The possibility to appeal can be embedded in legislation, or can be part of an informal system of lodging and advancing complaints that are open to domestic and foreign parties. In either case, there should be clearly defined time limits for appeals procedures, transparency in the decisions’ reasoning and adequate explanations, for example when requests are denied.

47. In general, there are two forms of appeals available to market operators in Colombia: first, an administrative recourse directly to the entity having issued the regulation or administrative act, or to the immediately superior administrative level, and second, a judicial appeal to administrative courts. If administrative channels have been exhausted, the applicant may take his case before an administrative court. Only in the case of decisions by high-level officials, where no immediately superior administrative level exists, an administrative appeal option is not available following the recourse to the entity having issued the regulation; in that case market participants need to turn to an administrative tribunal straight-ahead. Such a procedure allows disputes to be resolved first with entities that are the source of an administrative problem, and then, when necessary, via administrative tribunals. This is a common practice in the OECD area, and allows reducing the problem of tribunal-clogging. If an official to which an appeal via direct recourse was directed does not respond (or does not respond satisfactorily), or rejects the appeal, the appellant has the right to turn to the official’s direct supervisor within 5 days from the receipt of a decision.

48. In the case of administrative decisions of particular relevance to trade, for example in the case of issuance of non-automatic import licenses, when an importer is faced with a refusal of a licence, (s)he must be informed about the reason for the refusal and may apply for reconsideration under the Administrative Disputes Code. In general appeals can be lodged within 10 days from the contested decision. In the case of Customs Procedures, the Customs Code further provides for the possibility to lodge an appeal within 15 days from the contested customs decision. Finally, each institution has a complaints section (Quejas y reclamos) on its website. A complaint or a query received via this channel is directed to the institution’s responsible contact person who then distributes it to the relevant department. Such queries are protected by the constitutional right to petition and a recipient institution is obliged to respond, with the Director of the Department being held responsible. (See the discussion on the right to petition in section on consultation.)

49. For provisions of general character, i.e. erga omnes, any individual in Colombia can file an appeal before a judge, either through a so-called public action of unconstitutionality or action for nullity. Any citizen that believes a law violates the Constitution can file an action of unconstitutionality in front of the Colombian Constitutional Court (Corte Constitucional). The Decree 2067 of 1991 outlines the


41 This is the case for decisions made by Ministers, Directors of Administrative Departments, Heads of Superintendencias; legal representatives of decentralised entities; and directors or superior bodies of the constitutional autonomous institutions (Article 74 of the Administrative Disputes Code).

42 Article 515.

43 The Constitutional Court decides on all claims of unconstitutionality concerning laws issued by the Congress, decrees having the force of law issued by Government and legislative acts amending the Constitution.
The action of nullification of administrative acts must be brought in front of the State Council (Consejo de Estado), the highest administrative court in Colombia, with the power to nullify a decree or an administrative regulation. Both courts have played an active part in Colombia’s regulatory regime, delineating the limits of administrative actions.

50. Citizens can also lodge a case against general administrative acts in a regular court, if a given act affects their constitutional rights (Article 86 of the Constitution). In such a case, the Decree 2591 of 1991 specifies that each individual, whether a foreign national or a Colombian citizen, can recur to the so-called acción de tutela (i.e. a writ of protection) by turning “to a judge, in any moment and in any place, by himself or by someone else acting on his behalf, for an immediate protection of a constitutional right when they are threatened or violated by an action or omission of any public authority” (Article 1). Under this procedure, no more than 10 days may elapse between the filing of the writ and its resolution, and the judge’s order, either requiring a particular action by a public authority or a restraint from action, must be complied with immediately. The process allows for conciliation mechanisms and hearings for all interested parties, and the order can be appeal to before a higher court. In addition, in a case of legal irregularities or abuse of power, any individual can lodge a complaint against any public servant before the Office of the General Prosecutor (Procuraduría General de la Nación, Procuraduría). The Procuraduría will review the claim in order to determine whether or not to initiate a disciplinary investigation. The Procuraduría can also initiate a disciplinary investigation against public servants not complying with transparency provisions. The outcome of this investigation could be to impose sanctions upon the public servant, including a removal from office.

51. Overall, besides general problems with court case backlogs, businesses consulted in the process of this review have not raised any particular problems with the appeal processes in the country.

**Technical regulations**

52. Technical regulations and standards can vary significantly by country. While divergence in itself is costly for firms seeking to trade internationally, transparency reduces uncertainty over applicable requirements and thereby facilitates access to markets. Best practice in transparent regulatory regimes entails not only access to information, but transparency in the standards-setting process. In the area of standards development, a process that is open to all stakeholders, including foreign ones, can encourage adoption of standards that are more efficient as they benefit from consideration of a greater pool of interests and experiences, and potentially reflect more closely international standards.

53. The legislation on standards and technical regulations in Colombia is composed of national and Andean Community level laws (Box 4 provides an overview of the key legal instruments). According to the Decree 2269 of 1993 that establishes the national system of standardization, certification, metrology and technical regulation, a technical regulation is a "regulation of a mandatory nature, issued by the competent authority, with a basis in law, which sets out technical requirements, whether directly or by

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44 The claim is received and a judge randomly assigned to the case is responsible for admitting or rejecting it. Once admitted, and when it meets all requirements, the judge informs the President and the President of the Congress and requests evidence from the institution that adopted the law or regulation to defend the constitutionality of the norm and the Attorney General presents his opinion. Once the deadline has passed, the judge prepares a ruling and transmits it to the rest of the judges for their opinions. The ruling is passed once the analysis of evidence provided by the parties has been completed.

45 Full text is available on the website of the Constitutional Court of Colombia: [http://www.corteconstitucional.gov.co/lacorte/DECRETO%202591.php](http://www.corteconstitucional.gov.co/lacorte/DECRETO%202591.php) [last accessed in 30 August 2013].

46 Full text available here: [http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=32037](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=32037) [last accessed on 2 September 2013]
referring to or incorporating the contents of a national, regional or international standard, technical specification or code of good practice”. The Andean Commission Decision 562 of 2003 contains guidelines on elaboration of technical regulation in the country, including the 90 days notification requirement (Article 11); and the Decree 3257 of 2008 creates the Intersectoral Commission for Quality.

<table>
<thead>
<tr>
<th>Box 4. Principal legal instruments pertaining to the governance of technical regulations in Colombia</th>
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<tbody>
<tr>
<td>• Decree 2269 of 1993 – created the national system of standardization, certification and metrology.</td>
</tr>
<tr>
<td>• Andean Commission Decision 562 of 2003 – contains guidelines for the preparation, adoption and application of TRs in the member countries and at the Community level.</td>
</tr>
<tr>
<td>• Decree 3257 of 2008 – created the Intersectoral Commission for Quality for which MCIT serves as the Secretariat. The Commission meets 4 times annually and according to need.</td>
</tr>
<tr>
<td>• Resolution No. 1.715 of 2005 – the internal procedure for elaboration of technical regulations (PERT) is developed at MCIT, later amended in 2009.</td>
</tr>
<tr>
<td>• Decree 1844 of 2013 – regulates MCIT’s coordination of the elaboration and international notification of technical regulations and conformity assessment procedures.</td>
</tr>
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</table>

Source: MCIT, WTO (2012).

54. The Ministry of Trade, Industry and Tourism (MCIT) is the principal institution in charge of policies and procedures related to issuing of technical regulations as well as standardization, certification, conformity assessment, accreditation, and metrology activities. MCIT is, via its Directorate for Regulations (Dirección de Regulación), in charge of the National Quality System (Subsistema Nacional de la Calidad, SNCA). It is also the technical secretary of the Intersectoral Commission for Quality (Comisión Intersectorial de la Calidad), responsible for coordinating the work of public entities involved in the process of creating, implementing and enforcing technical regulations in the country.

55. There are two main sources of technical regulations in Colombia. First, the ministries, regulatory commissions and decentralized bodies issue technical regulations. Voluntary national standards issued by the Colombian National Standardisation Institute (ICONTEC) can serve as a basis for such technical regulations. Second, there are two Andean Community level technical regulations that are directly applicable domestically: one pertaining to trade in cosmetic products (Decision 516 of 2002) and one on requirements and guidelines for inspections of establishments manufacturing domestic and personal goods.

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47 Full text available at: [http://www.indecopi.gob.pe/repositorioaps/0/6/par/normalizacion/dec562.pdf](http://www.indecopi.gob.pe/repositorioaps/0/6/par/normalizacion/dec562.pdf) [last accessed on 2 September 2013].

48 See the Decree 2269 of 1993 on the national system of standardisation, certification and metrology; the Decree 210 of 2003 establishing the functions of MCIT; and the Decree 3257 of 2008 that established the National Sub-system of Quality.

49 The following entities participate in the SNCA: (i) the MCIT; (ii) the entities authorized to issue technical regulations; (iii) ICONTEC, which is responsible for coordinating the drafting and dissemination of technical standards; (iv) the Sectoral Standardization Units; (v) the SIC; (vi) ONAC; (vii) the Technical Advisory Council for Accreditation; (viii) the Sectoral Technical Committees; (ix) the accredited Certification and Inspection Organizations; (x) the accredited Testing and Calibration Laboratories; and (xi) other entities with accreditation and control functions, such as the National Institute for the Surveillance of Food and Drugs (INVIMA) and the Colombian Agricultural Institute (ICA).
hygiene products (Decision 721 of 2009). When it comes to technical regulations issued by regulatory bodies, each entity has an internal procedure for preparing its own technical regulations.

<table>
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<tr>
<th>Box 5. Procedure for preparing and issuing technical regulations (PEERT)</th>
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<tbody>
<tr>
<td>1. Application for a technical regulation (TR): (a) from a sector or a user or (b) government initiative</td>
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<tr>
<td>2. Determination of legal competence for the subject matter</td>
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<td>3. Check for duplication in the technical regulation of the same product</td>
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<td>4. Identification of the legitimate objective it is intended to fulfil and the level of risk (TBT Agreement 2.2)</td>
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<td>5. Determination of relevant standards (TBT 2.4)</td>
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<td>6. Determination of the appropriateness of a technical regulation</td>
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<td>7. Notice published at an early appropriate stage (TBT 2.9.1 and 5.6.1)</td>
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<tr>
<td>8. Determination of the scope of the TR (tariff subheadings, exclusions)</td>
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<tr>
<td>9. Choice of the definitions to be included in the TR</td>
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<tr>
<td>10. Determination of the labelling, printing, or marking requirements.</td>
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<tr>
<td>11. Determination of reference technical standards and establishment of guidelines on equivalences between technical standards and technical regulations</td>
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<tr>
<td>12. Establishment of a Conformity Assessment Procedure (PEC) policy</td>
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<tr>
<td>13. Determination of the conformity documents that will be accepted</td>
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<td>14. Determination of the surveillance and control entities</td>
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<td>15. Determination of the penalty regime</td>
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<td>16. Determination of the date of entry into force</td>
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<td>17. Determination of transitional provisions</td>
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<td>18. Determination of derogations</td>
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<tr>
<td>19. Preparation of the complete text of the preliminary draft TR</td>
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<tr>
<td>20. Publication on the Web of the preliminary draft TR and dispatch to the sector for at least ten working days of public consultation</td>
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<tr>
<td>21. Analysis and adoption of relevant comments. Meeting with the sector if necessary and preparation of the draft</td>
</tr>
<tr>
<td>22. International notification (WTO) of the draft TR with 90 days for comments (TBT 2.9.2 and 5.6.2)</td>
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<tr>
<td>23. Opinion on the likely effects on competition (under Law No. 1.340 of 2009, before RTs are published, entities must first seek the opinion of the SIC to establish whether the measure to be issued could affect free competition)</td>
</tr>
<tr>
<td>24. Analysis and adoption of relevant national and international comments (meeting with sector if necessary)</td>
</tr>
<tr>
<td>25. Preparation of the definitive text of the draft TR and request for legal opinion prior to issuance</td>
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<tr>
<td>26. Issuance of the technical regulation (signature, numbering and dating of the administrative instrument)</td>
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<tr>
<td>27. Certification issued by the WTO enquiry point (Article 72 of Law 1480 of 12 Oct 2011)</td>
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<tr>
<td>28. Publication in the Official Journal and on the Web, dispatch to the sector and updating of the notification to the WTO</td>
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<tr>
<td>29. Entry into force</td>
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</tbody>
</table>

Source: MCIT, WTO, OECD.
56. The lack of a uniform procedure or of a minimum set of requirements that all public entities need to follow in the process of elaboration of technical regulations has led to certain variability in practices, as mentioned earlier. The MCIT has, however, developed an internal procedure for elaborating technical regulations (Procedimiento de Elaboración y Expedición de Reglamentos Técnicos, PEERT)\(^{50}\) that includes, among others, the publication of a draft regulation for at least 10 days for public consultation and an international notification of the draft regulation to WTO and Andean Community members for 90 days for comments (Box 5 outlines the steps involved in the procedure.) The procedure is mandatory and applied to technical regulations issued by MCIT, but it does not bind other regulatory authorities. Currently, the Directorate for Regulations at MCIT is working on an amendment to the Decree 2269 of 1993 to introduce a set of minimum requirements in elaboration of technical regulation that would have to be followed by all entities. This would probably include, among others, an obligation to conduct a regulatory impact assessment\(^{51}\), a review of high impact regulations for likely effects on competition by SIC, and a minimum number of days for which a draft needs to be available to the public for comments. The amendment is in the final stages of negotiations among the entities involved and it should be issued in the course of 2014. In the meanwhile, the obligation introduced by Decree 1844 of 2013 to submit new technical regulations to MCIT’s Directorate for Regulations for review and comments helped improve the market orientation of such regulations and their conformity with TBT requirements.

57. When it comes to international notification of technical regulations, Colombia has regularly notified its technical regulations to the WTO, allowing for a longer commenting period than the one recommended by the WTO, i.e. 90 days required by the Andean Community as opposed to 60 days.\(^{52}\) The MCIT’s Regulations Directorate is responsible for notification of all relevant technical regulations, and businesses and trading partners are generally satisfied with the way it is performing its task.\(^{53}\) This task should be further facilitated by the Directorate’s overview of new technical regulations elaborated by all relevant entities, recently introduced by Decree 1844 of 2013. During the period 2006-2011, Colombia made 207 notifications to the WTO Information Centre, notifying technical regulations in their various stages as well as their amendments, rejections and implementation (WTO, 2012). Since 2001, Colombia has notified 72 technical regulations, most of them issued by the Ministries of Health and Social Welfare, Transport and Mining and Energy, MCIT, and the Colombian Agricultural Institute (ICA). The Regulations Directorate also serves as Colombia’s WTO National Enquiry Point for standardisation, technical barriers to trade (TBT), Sanitary and Phytosanitary (SPS) measures and conformity assessment procedures.

58. Overall, businesses and trading partners consulted in the course of this review have all highlighted Colombia’s significant efforts to increase the transparency of its technical regulations, including through advance international notifications of its regulations to WTO partners. While there were some instances when consultation periods were not adequate, the adoption of the new White Paper (CONPES) on regulatory improvement currently elaborated should help standardise the process to avoid such situations in the future. Once implemented, it should be ensured that the entities receive sufficient support to familiarise themselves with the procedure, and that they are supervised in the degree to which they follow the instructions in the Decree. For the latter purpose, a clear allocation of an oversight function to one of the entities at a high political level (e.g. DNP, DAFP, Presidency) would be necessary to ensure that RIAs are of adequate quality and serve their true purpose (see OECD, 2013b).

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\(^{50}\) The procedure was first introduced by the Resolution No. 1.715 of 2005, and updated internally in 2009.

\(^{51}\) A checklist of aspects to be considered in RIA would be included and a methodological guide is planned to be attached to the decree.

\(^{52}\) Colombia has been applying the recommended period of 60 days or more for commenting on notifications outlined in the WTO document G/TBT/18 of 17 February 2006 since 2001.

\(^{53}\) The Decree 486 of 2013 on truck recycling fee mentioned earlier was not notified to the WTO.
Government Procurement

59. Government procurement accounts for a substantial share of GDP in most countries (roughly 15-20%). In the case of Colombia it is estimated at around 25% of the GDP [DAF/COMP/LACF(2012)9]. Consequently, the ability of foreign suppliers to participate in government procurement transactions constitutes an important dimension of market openness. Transparency in government procurement procedures and practices is an essential condition for promoting broad access to government procurement for both domestic and foreign suppliers. There can be substantial economic benefits from such transparency and openness, including increased competition and diversity of supply, reduced opportunities for corruption, and resulting government budgetary savings, among other positive effects.

60. Colombia has undertaken significant reforms in the area of government procurement over the last decade, in particular in relation to increasing the transparency of the national system. In particular, the Decree 4170 of 201154 created the National Government Procurement Agency (Colombia Compra Eficiente), responsible for national purchasing policy and ensuring maximum possible uniformity and transparency of contracting authorities. This was partly in response to the need for such a body identified in a government White Paper on transparency and efficiency of government procurement (CONPES 3249 of 2003) and international recommendations (e.g. World Bank, 2005). The institution is still relatively new and undergoing reforms that aim primarily to increase the transparency and efficiency of the public procurement system. While still searching for its modus operandi, the agency appears committed to an ambitious task of reorienting the role of public procurement towards a strategic use of public resources and substantially increasing the transparency of the contacting process, including through electronic means. This is evident from, among others, the recent Decree issued by the entity that systematised a number of government procurement practices and from the agency’s website, which, besides the Single Procurement Portal, explained later, contains information on all legal acts and news of relevance to potential suppliers and citizens, manuals for entities involved in public procurement and an list of planned actions for 2013, among others.55

61. The main legal basis for government procurement in Colombia is the General Law on Government Procurement (Law 80 of 1993 and Law 1150 of 2007) that establishes principles and rules for procurement by all government bodies at all levels, including the central government, departments, and municipalities. There are some entities that are excluded from the law, for instance procurement by the Central Bank and public Universities, or procurement in some sectors.56 All the legal acts of relevance to Colombia’s government procurement system including regulations issued by Colombia Compra Eficiente are available on its website (www.colombiacompra.gov.co).

62. Regarding the terms for the bidding process, there are five types of selection modes in Colombia: (i) an open tender (licitación pública), (ii) an abridged selection (selección abreviada), (iii) a call for prices and description of experience (concurso de méritos), (iv) direct contracting (contratación directa), and (v) procurement of minimum value (mínima cuantía).57 As a general rule, contractors should be selected by

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54 Full text is available here: http://www.alcaldiaabogota.gov.co/sisjur/normas/Norma1.jsp?i=44643 [last accessed on 2 September 2013].


56 These include postal services, television services, concessions of telecommunications services and activities and contracts undertaken by credit entities, insurance companies and any other public financial entities. For a full OECD review of Colombia’s SOE sector, please consult DAF/CA/SOPP(2013)5.

57 Outlined in Article 84-87 of the Decree 1510 of 2013 and the earlier Decree 2474 of 2008.
open tender except in cases expressly stipulated by the law (Article 2 of Law 1150 of 2007). In practice, open tenders are only used for rather complex purchases, for example without uniform technical characteristics, and of high value, while abridged selection is the most commonly used mode for goods of common use. In the case of a search for consultants or projects where experience and skills are the principal criterion, the third method (concurso de méritos) is used, whereby a jury considers unanimous submissions according to their technical strength. De iure, direct contracting is reserved for cases of evident urgency, contracting of debt, contracts between government entities, or when there are not enough suppliers in the market, among others. However, according to the statistics provided by the Colombia Compra Eficiente, the most commonly used tendering method in 2011 was direct contracting (37.4% of the total contract value) and open tender (28.9%). This suggests that there may be scope for more frequent use of open tender procedures in order to ensure that the most competitive suppliers receive government contracts. In addition, some Colombian trading partners complain about the excessive use of lottery draws to select firms, greater focus on price rather than quality of bids, and preference given to contractors with Colombian qualifications. For example, allegedly, consortiums employing only Colombian engineers are given additional points of preference and deadlines to provide documentation confirming qualifications are limited, which may discriminate against foreigners that need to obtain an authentication of their qualifications documents.

In terms of specific provisions aimed at increasing the transparency of government procurement, Colombia has introduced a number of important reforms in recent years – in particular through Law 1150 of 2007 and, most recently, the Decree 1510 of 2013. Among others, Law 1150 of 2007 established a two-stage selection process – first, it is verified if suppliers comply with all requirements (on the basis of their financial solvency, legal capacity and experience) and, second, the bid proposals are analysed. To verify if formal requirements are met, all domestic bidders must be registered in the central register of bidders (Registro Único de Proponentes, RUP) where all relevant information is stored, such as the bidders’ financial standing and information on contracts that they are currently executing. In addition, all public tender proceedings must be published in the electronic Single Procurement Portal (Sistema Electrónico para la Contratación Pública, SECOP), available online (www.colombiacompra.gov.co).

In addition to contracting of goods and services with uniform technical characteristics and of common use, abridged selection also applies for procurement of “minor value” (as defined by Law 1150 of 2007 and depending on the contracting authority’s budget). Procurement of health services, inconclusive open tender that needs to be resolved by abridged selection, privatisation of state-owned goods and properties, purchase of agricultural products using commodity exchanges, and finally contracting of SOEs, goods and services for national defence, and programs devoted to the protection of threatened persons and population displaced by violence reincorporation of outlawed persons or groups.

A tender can be selected in an open contest or via a pre-qualification list constructed based on experience, intellectual capacity, and organisation of the bidders.

It can also be used for contracting of goods and services in the defence sector with special requirements, contracts of the development of scientific and technological activities, certain types of trust funds of local government entities, provision of professional services or execution of artistic works that can only be executed by certain persons, and renting or purchasing of buildings.

Information based on the OECD Secretariat correspondence with OECD governments.

Foreign bidders without branches in Colombia may participate in public procurement processes without having to register in RUP. If the contract is awarded to one of these foreign bidders, they must establish an office in Colombia, if they want to provide a service on a permanent basis (this includes public works or call centres, among others).

All state entities subject to the General Law on Government Procurement (Law 80 of 1993) are obliged to use the portal to publish their procurement processing from the pre-contractual stage (notification of the tender) up to finalization of the contractual phase (publication of the tender result). While theoretically state-owned enterprises should also disclose their contract information under the “Special Regimes” section of SECOP (in
The Decree 1510 of 2013 has further systematised the publication obligations and improved the functioning of the electronic systems. For example, now all government entities are obliged to prepare annual plans of purchases (plan anual de adquisición) that are available online in SECOP and on the entity’s website. In addition, it is possible for private firms to receive notifications of new public contracts published in SECOP for the type of goods and services they offer using RSS feeds.

64. Going forward, the agency is planning to introduce an integrated e-Procurement platform that would allow the entire procurement process to be carried online and enable citizens, among others, to make customised reports using data provided by all public entities. The government of Colombia could clarify what exactly would the e-Procurement platform allow and what kind of statistics on government procurement would become available that are currently not easily accessible. In the coming weeks, the entity is also planning to conduct a survey among the suppliers registered in RUP on the transparency, efficiency, and integrity of the current government procurement system. Publishing the results of this survey on the Colombia Compra Eficiente’s website, together with information on the identified gaps, could assist the agency in its efforts to improve public procurement practices across the government. In addition, if any malpractice or underperformance is identified in contracting activities or selected agencies, additional training and capacity-building programmes could be a helpful follow-up tool.

65. When it comes to preventing collusion in public procurement, there are a few ways in which Colombia is undertaking the task of combatting corruption and bid-rigging. First, the penalties for engaging in corruption or collusive practices in public procurement are established by law and have been increased in recent years. For example, Law 1474 of 2011 (Anti-corruption Statute) provides fines, prison terms and debarment from participation in public procurement procedures for eight years for participation in collusive practices (Article 27); and a natural person can incur a lifetime debarment if declared legally responsible for bribery, including international bribery (Article 1). Second, the Office of the Attorney General, the General Prosecutor and the Controller General can start ex officio, or on the request of a bidder or an anti-corruption watchdog (Secretaria de Transparencia, widely known as Zar), a criminal investigation into whether or not there were some irregularities in the contracting process. Such an investigation can lead to a fine, removal from the office, or imprisonment of the officials and private agents involved. Third, the national competition authority (SIC) monitors the markets in which public procurement takes place to prevent anti-competitive tender practices and starts an investigation if suspicious practices are detected (either ex officio or by request). In April 2012, an interdisciplinary group specialised in collusive practices was set at SIC to further improve the monitoring of public procurement; and recently a new software tool was developed to help detect collusion by simple measures. The SIC, in accordance with Article 3 of Law 1150 that states that SECOP will contain the official information on contracting made with public resources), not all SOEs are publishing such information in SECOP.

64 See here: www.contratos.gov.co/carguedocs/ConsultaPAA.do [last accessed on 3 September 2013].
65 This has been achieved thanks to introduction of the United Nations Standard Products and Services Code (UNSPSC) classification for goods and products in SECOP and RUP.
66 The contract for preparation of the platform has already been awarded, and the implementation should start soon.
67 Colombia has already shared the information on its efforts in this area with OECD governments in the context of the Latin American Competition Forum that took place in Santo Domingo in September 2012. In particular, to see the written submission of the Colombian government, please consult DAF/COMP/LACF(2012)9.
68 This was done in response to a marked increase in public procurement-related cases investigated by SIC in the last three years. Approximately 30 cases a year have been dealt with during this time.
69 The tool uses simple methods, such as the existence of typos in the same places in supplier’s bids, to trigger an alert if there is a risk of collusion.
line with OECD best practice, also advises public entities engaged in contracting on how to reduce the risk of collusion, among others, through dissemination of a guide on how to combat bid-rigging and regular training opportunities.70

66. Like many other countries, Colombia applies preferential margins, from 5 to 20 percentage points, for offers by domestic suppliers and foreign suppliers using Colombian goods, materials or personnel (Law 816 of 2003).71 National treatment is automatically granted to the members of the Andean Community and for other countries, the principle of reciprocity applies (Article 20 of Law 80 of 1993). This means that Colombia needs to either sign an agreement with relevant government procurement provisions with a country or that national treatment is granted by a government decision following a similar concession by a partner country.72 Two of the recently concluded FTAs – with the United States and the European Union – entail mutual extension of national treatment in government procurement, which in practice means that bidders from the EU and the US will be given the same preferential margins as the domestic producers (the so-called positive levelling). This means, however, the *Colombia Compra Eficiente* will have to ensure a sufficient level of coordination among public authorities so that the bids are analysed in line with these commitments.

67. The statistics provided by the government of Colombia on contracts awarded by the National Infrastructure Agency (*Agencia Nacional de Infraestructura*, ANI) between 1 January 2013 and 26 June 2013 show that 92% of contracts signed by the entity were provided by domestic contractors and 8% by foreign ones (according to the value of the contract awarded), jointly of a cumulative value of COP 82.5 bln (USD 42.6 mln) (Table 6.). The coming into force of the FTAs with the government procurement provisions and further extension of transparency-enhancing measures may further increase the number of bids by foreign contractors. For the provision of services on a permanent basis, foreign providers in any case need to open an office in Colombia, once the contract has been awarded to them.

Table 6. A breakdown of foreign and domestic bids for contracts issued by the National Infrastructure Agency (ANI) between 1 January 2013 and 26 June 2013

<table>
<thead>
<tr>
<th></th>
<th>Total bids</th>
<th>Successful bids</th>
<th>Success rate</th>
<th>Value awarded (in COP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic firms</td>
<td>71</td>
<td>51</td>
<td>72%</td>
<td>76 bln</td>
</tr>
<tr>
<td>Foreign firms</td>
<td>4</td>
<td>1</td>
<td>25%</td>
<td>6.5 bln</td>
</tr>
</tbody>
</table>

*Note:* A domestic entity is an entity with an office in Colombia or incorporated under the Colombian law, regardless of the nationality of the owners or the origin of the entity.

*Source:* Colombia Compra Eficiente, ANI.

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70 Among others, the guide lists factors that facilitate collusion in procurement identified also in the OECD work, such as high market concentration, high barriers to entry, repetitive or frequent bidding, stability of market conditions, and homogenous products with few, if any, close substitutes. For the OECD Guidelines for Fighting Bid Rigging in Public Procurement, see here: [www.oecd.org/daf/competition/cartels/42851044.pdf](http://www.oecd.org/daf/competition/cartels/42851044.pdf).

71 If after the addition of the preferential margins, a foreign supplier is on equal terms with a domestic one, the contract is awarded to the domestic bidder or a foreign supplier utilizing Colombian goods and services (WTO, 2012).

72 Article 150 of the Decree 1510 of 2013.
68. For many OECD and WTO members, government procurement rules are additionally subject to transparency, non-discrimination and other provisions in the plurilateral WTO Government Procurement Agreement (GPA). Among others, the WTO and OECD members that are parties to the GPA commit to the extension of national treatment for purchases above a pre-defined threshold by public authorities covered by the Agreement to other GPA parties. Since February 1996, Colombia has been an Observer to the GPA but is currently not negotiating accession. Nevertheless, in many of its recent FTAs, Colombia has included a copy of the GPA provisions (e.g. in agreements with the US, the EU and Korea). In addition, the country has been deepening government procurement-related provisions in some of its existing FTAs. For example, there are on-going negotiations with El Salvador, Honduras and Guatemala to bring the provisions in the previously negotiated FTA to the GPA level and an additional sector was added to the government procurement chapter in the FTA with Chile.

69. Overall, the intense efforts on the part of the Colombian government to increase transparency of public procurement are apparent. The efforts to make each step of the public contracting process traceable via the Single Procurement Systems can help improve the level of transparency. What will be critical in the process is the ability of Colombia Compra Eficiente to coordinate effectively with various entities involved in public procurement and ensure that standardised processes are followed. In addition, Colombia will have to ensure that the implementation of its recent trade agreements with government procurement provisions will be done effectively across various public entities, and the cases of ad hoc application of preferential treatment to domestic providers are reduced. This may require intensified training and capacity-building efforts for officials involved in the tendering process in various entities, focusing on those with the highest contract turnover, such as ANI. In the long run, facilitated access of foreign suppliers, including through completion of additional agreements or pursuit of GPA membership, could help Colombia pursue its goal of receiving the best value for money in public contracting and achieving public savings.

2.2 Non-discrimination

70. Two non-discrimination principles, most favoured nation (MFN) and national treatment, are considered fundamental to the functioning of the multilateral trading system. At a basic level, they help ensure a level-playing field between like goods and services in a marketplace. The application of the MFN principle means that all foreign producers and service providers seeking to enter the national market should have equal access, regardless of origin. The national treatment principle requires that once foreign goods, services and intellectual property enter a market, they should be treated no less favourably than their domestic counterparts. The extent to which these principles are actively promoted when developing and applying regulations is a helpful gauge of a country’s overall efforts to promote a trade and investment-friendly regulatory system.

71. As Colombia’s overall legal framework was already examined against the OECD National Treatment instrument in the Investment Committee (OECD, 2012a), here we focus in more detail on the regulatory framework for selected services sectors covered by the OECD Services Trade Restrictiveness (transport, telecommunications, and professional services), and on practice in areas of relevance to trade.

73 There are 42 parties to the Agreement, listed here [last accessed on 3 September 2013]: http://www.wto.org/english/tratop-e/tratop_e/gproc_e/memobs_e.htm#memobs.

74 Information based on the OECD Secretariat’s correspondence with the Colombian government.
Overall legal framework

72. The principle of national treatment is embedded in the Colombian Constitution: Article 13 specifically provides for equal treatment of all individuals by the authorities regardless of their nationality. The same principle applies to foreign trade and investment. This is reflected, for example, in the 1991 Law on Foreign Exchange and the Decree No. 2080 that proclaims that “foreign investment in Colombia is treated in all respects in the same way as investment by national residents” (Article 2).

73. Being a WTO member, Colombia is also bound by the national treatment commitments embedded in various WTO Agreements, including GATT, GATS and TRIPS. In its recent FTAs, Colombia has again reaffirmed this commitment and at times extended it, for example, clarifying that it also applies to a sub-federal level of government (e.g. Article 21 of the FTA with the EU; Article 202 of the FTA with Canada; Article 2.2 of the FTA with the US). 75

74. The legal exceptions from national treatment applied by Colombia are limited, and have been notified by the Colombian government to the OECD under the National Treatment instrument of the OECD Declaration (See Annex B and C of OECD, 2012a). They pertain to restrictions on foreign investment in radio and television broadcasting 76 and in fisheries.77 A few other measures were notified by Colombia for transparency (i.e. limitations on purchases of land by foreigners along Colombian borders and coastlines; limitations in the production of chemical, biological and nuclear weapons; corporate organisation limitations in air and maritime transport; the use of public monopolies in liquors and gambling; rules for obtaining a concession).

75. As explained in Section 2, Colombia also applies preferential treatment to domestic suppliers and foreign suppliers using Colombian goods or services in government procurement (via an application of preferential margins ranging from 5 to 20 percentage points of the bidding offer). This is a common practice among many countries that extend national treatment in public procurement to other countries on the basis of reciprocity (i.e. a country extends national treatment to partners that also afford it national treatment). The recent conclusion of a few FTAs with government procurement provisions (e.g. with the US and the EU) has extended Colombia’s application of national treatment in government procurement to a few more countries, and allowed suppliers from the countries that are party to the agreement to compete on equal terms with domestic bidders in Colombia. In practice, this means that they will be assigned the same preferential margins as the domestic providers (so-called levelling up), and it will need to be ensured that the practice is implemented consistently across all contracting public entities to reap the benefits from this opening of the public contracting market. An eventual membership in the plurilateral Government Procurement Agreement (GPA) could help extend the application of national treatment in Colombia to a wider group of foreign suppliers.

76. Only Colombian nationals or legal persons organised under Colombian law may be granted concessions or provide free-to-air television and broadcasting services. In addition, the director of any radio information programme in Colombia must be a Colombian national, foreign equity in any enterprise holding free-to-air television concession is limited to 40%, and regional television may be supplied only by state-owned firms.

77. Only Colombian nationals may engage in artisanal fishing; foreign flagged vessels may obtain a permit and engage in commercial and industrial fishing and related activities in Colombian territorial waters only in association with foreign partners; and the costs of the permit and fishing licence are higher for foreign flagged vessels than for Colombian flagged vessels (OECD, 2012: 31).

75 Similar clauses are also present in Colombia’s FTAs with Mexico, Chile, South Korea, Panama, European Free Trade Association (EFTA), and the Northern Triangle countries (El Salvador, Guatemala and Honduras), and all of the country’s BITs. See Section 1 for a full list of Colombia’s FTAs and BITs.

76 Only Colombian nationals or legal persons organised under Colombian law may be granted concessions or provide free-to-air television and broadcasting services. In addition, the director of any radio information programme in Colombia must be a Colombian national, foreign equity in any enterprise holding free-to-air television concession is limited to 40%, and regional television may be supplied only by state-owned firms.

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Regulatory framework in transport, telecommunications and professional services

76. The Services Trade Restrictiveness Index (STRI) shows that Colombia’s regulatory framework is substantially open to trade in the three services sectors covered – professional services, telecommunications and transport. Figure 14 depicts the STRI indices for Colombia in professional services and telecommunications as compared to the OECD average. The indices are broken down on five policy areas. The first is restrictions on foreign ownership and other market entry conditions and includes foreign equity limits, restrictions on the nationality or residency of board members, screening of foreign investment and a number of other market access restrictions. The second category, restrictions on movement of people, refers to barriers to movement of natural persons for the purpose of providing services on a temporary basis. The third category, other discriminatory measures and international standards, reflects instances where foreign services providers do not enjoy national treatment in the host country. In addition this policy area covers the extent to which international standards are adopted in the national economy, where such standards exist. Barriers to competition and public ownership contain measures related to the control of cartels and pro-competitive regulation in sectors where dominant firms tend to prevail. The category also captures government involvement in the economy through state-owned enterprises and the extent to which such enterprises enjoy privileges or exemptions from the competition law. Finally, the fifth policy area, regulatory transparency and administrative requirements captures to what extent the principles of transparency and consultations with stake-holders are embedded in law-making and regulatory procedures and also some measures that capture administrative hurdles facing businesses.

Figure 14. STRI indicators, Colombia

Source: OECD Services Trade Restrictiveness database.

78 The analysis was performed on the request of the Government of Colombia that wished to be fully integrated in the STRI. The information provided here, prepared by the OECD Secretariat’s STRI team (contact person hildegunn.nordas@oecd.org) have been fact-checked by the Colombian government. The STRI results and analysis presented here are preliminary, and may be subject to modification. The Secretariat is in the process of clarifying national regulatory requirements which may alter a few answers of the STRI database.
This reflects Colombia’s continuous efforts to restructure its regulatory regime over the last decade, which has paved the way for the liberalisation of foreign ownership restrictions and other key barriers to services trade, particularly in air and maritime transport, telecommunications and auditing/accounting services. A relatively low STRI score for Colombia indicates that the country maintains few regulatory restrictions. In effect, Colombia’s STRI score is considerably lower than the average for OECD countries in professional services, and close to the OECD average in telecommunications. Subject to a limited number of exceptions, Colombia accords substantial market access across the three services sectors surveyed.

The openness of the regime is largely underpinned by sound and modern horizontal laws governing commercial practices, foreign investment and competition policy. Since the new Constitution of 1991, Colombia has revised regulatory areas that have an impact on foreign business participation. The reforms to the Commerce Code of 1997 removed a number of barriers to market access in transport and telecommunications. As a result, a hundred percent foreign ownership is now permitted in all of the sectors surveyed. Foreign investment is accorded national treatment, and there are few discriminatory measures registered in the STRI. With limited exceptions, there is no prior screening or economics needs test, so approval is granted on an automatic basis and only subject to registration requirements. Similarly, the country enjoys a modern legal framework governing restrictive commercial practices and unfair competition. Colombia also provides mechanisms for the right to appeal, which are open to foreign investors in order to provide predictability and minimise expropriation risks. Finally, Colombia’s regulatory system is transparent, with publication and consultation procedures.

Despite the overall positive record, the STRI Index reveals some policy areas where the Government could make further improvements to continue its path towards liberalisation. For professional services, the main restrictions are related to the movement of natural persons, including the recognition of qualifications and residency requirements. In transport, certain practices related to market access could also be reviewed to assess whether they reflect the current *modus operandi* and respond to public policy objectives. For telecommunications, the full independence of the regulator and regulation that ensures competitive markets are areas which could be improved. The main measures affecting trade in each sector are briefly reviewed below. It should be noted that the enforcement or implementation of these regulatory measures is not assessed in detail. Also, the measures captured in the STRI are those applied on a most-favoured nation (MFN) basis, so that the more liberal services regime that Colombia maintains for instance within the Andean Community of Nations is not considered.

Professional Services

Colombia generally enjoys a favourable regulatory regime in the professional services surveyed, namely accounting and auditing services, legal services, engineering and architecture. These services are regulated by law, and the Government is in charge of recognising foreign degrees and providing licenses. Across these professional activities, there are procedures in place for the recognition of foreign qualifications, and only in a few cases there are additional requirements to practice (examinations, residency). At the same time, some impediments remain in place, such as limitations on advertising and marketing, which are likely to hinder operations and competition in general.

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79 Article 26 of the Colombian Constitution.
81. With respect to accounting and legal services, there are a number of constraints to foreign entry and operation (Figure 15 A and B). Only persons registered with the Junta Central de Contadores (a public body with control and surveillance functions) may practice as accountants. A foreign provider must have been residing continuously in Colombia for at least three years prior to the registration and demonstrate accounting experience carried out in the territory of Colombia for a period of not less than one year. For legal services, notably, foreign lawyers are not provided with streamlined requirements to practice types of law, other than Colombian law, for which they are qualified (e.g. their home-country law or law of a third-country). This lack of a “limited licensing system” is an important limitation to the way modern legal services are provided across borders. In particular, foreign lawyers and law firms typically do not seek to re-qualify to practice local law; but rather to be allowed to practice the types of law for which they are qualified, and associate with or employ locals to provide an integrated service covering all aspects of a transaction. Reforms in this area could provide better services for consumers and benefit domestic and foreign providers alike.

82. The regulatory regime for engineering and architecture services is relatively open (Figure 15 C and D). Compulsory membership to professional associations is not required to practice in these sub-sectors. Licenses to practice can be obtained by foreigners who have equivalent degrees, and are granted on an indeterminate basis (i.e., not reviewed periodically) without the need of additional examination or training requirements in Colombia; national technical exams for these fields exist to assess knowledge, but are not required for the purpose of obtaining a license. In addition, Colombia has an expedited mechanism to provide temporary licenses to foreign engineers who wish to supply engineering services on a temporary basis. These temporary licenses are granted for a period of one year, and are renewable thereafter.
Figure 15. Legal services, accounting, architecture and engineering

Panel A. Legal services
Panel B. Accounting
Panel C. Architecture
Panel D. Engineering

Source: OECD Services Trade Restrictiveness database.
Telecommunications

83. Columbia has *de jure* a relatively open telecommunications market (Figure 16). The sector has been privatised, but the central government as well as major municipalities and regions maintain equity shares in major fixed line operators, and also two mobile operators. Foreign telecommunications providers may access the market through mergers, acquisitions, green-field investment or they may enter as virtual mobile services providers. Foreign subsidiaries may appoint the board of directors as they see fit.

**Figure 16. Telecommunications**

84. The main contribution to Colombia’s trade restrictiveness index in this sector comes from the barriers to competition and public ownership category. The national government owns 30% of the shares in Colombia Telecomunicaciones and some municipalities, including Bogota, control a number of telecommunications companies, some of them among the largest in the country.

85. The WTO telecommunications reference paper recognises that absence of explicit restrictions on market access is not enough to create competitive and open markets when there is one or more incumbent operators with significant market power. Under such market conditions pro-competitive regulation which obliges the incumbent to give competitors access to its networks at reasonable conditions is necessary for new firms to enter, be they foreign or local.

86. What is considered best practice pro-competitive regulation has evolved with technological developments and depends on the market conditions in each case. But it is clear that best practice includes having an independent regulator with sufficient resources to undertake market assessments at regular intervals and which has the power and legitimacy to impose and implement regulation that prevents firms with significant market power from abusing it. The telecommunications regulator in Colombia is part of the ICT Ministry and therefore not considered fully independent, even if the ICT Minister cannot decide over the regulator’s budget or override its decisions.

87. The tool-kit available to the regulator as mandated in the ICT Act by and large entails the necessary means to ensure a competitive market. The regulator considers fixed line telephony and internet services provided over fixed lines as complementary, while a firm with significant market power has been identified in the mobile sector. Given this market structure, the STRI scoring reflects the fact that the dominant supplier in the mobile sector should face a bit more stringent regulation to ensure that it does not exploit its position. For example, better regulated termination rates would benefit competitors as well as consumers; resale obligations would ease entry for virtual mobile services suppliers (foreign as well as
local); regulated international roaming rates would facilitate international roaming; a maximum time for porting numbers would reduce switching costs for consumers; and finally accounting separation would better enable the regulator to enforce regulation.

88. It should be noted that although no firm has particularly high market shares in fixed line and internet services at the national level, there is a high degree of market concentration in regional markets. As noted, the STRI records the finding of the regulator as far as dominant firms are concerned, but in this case there are some doubts whether or not the markets are competitive given the apparent geographical segmentation of the markets. Colombia’s STRI score in telecoms would be about 10 percentage points higher if fixed and internet services were considered to have dominant suppliers.

Transport and Courier Services

89. Colombia has made significant strides in liberalising the transport services sector (Figure 17). Notable improvements have been made in the elimination of foreign ownership restrictions in air and maritime transport services. Further reform may be needed, however, in particular in the road freight transport.80

90. Regarding air transport, the regulatory regime is relatively open, the main contribution to Colombia’s trade restrictiveness index coming from the barriers to competition and regulatory transparency. Colombia is a member to the Chicago Convention on Civil Aviation and has adhered to the norms set up at an international level. It has signed a range of bilateral air services agreements, several of which with OECD countries, as well as a plurilateral agreement (with the Andean Community of Nations). While efforts towards an open skies policy have been made, several restrictions in bilateral agreements remain in place. In particular, enhanced traffic rights (or freedoms of the air) are restricted, and barriers remain in areas such as pricing and ownership rules. Where there is no relevant international agreement, air traffic in Colombia is governed by the principle of reciprocity. When it comes to domestic reforms, the removal of foreign equity restrictions in the sector, which remain in place in most countries, has been a particularly important step forward. Yet, cabotage remains restricted to foreign airlines, and the system for slot allocation in Colombia entails “grandfathering rights”. Air carriers are allowed to reserve already allocated slots and have priority in the allocation of the slots by the aeronautical authority for the next season, provided that they have performed 80% of the scheduled services.

91. Foreign ownership in commercial maritime shipping companies has also been liberalised with the enactment of the Political constitution of 1991, which eliminated foreign ownership prohibitions and restrictions in the sector. Decree Number 804 of 2001 establishes the principle of free market access to international maritime transport, although it makes it conditional to the principle of reciprocity. For the period under review, however, Colombia has not imposed any measures restricting market access. Colombia has adhered to all international conventions dealing with maritime transport.

92. Colombia is a not party to the UNCTAD Liner Code of Conduct and, thus, has not adhered to the cargo sharing system established by the Code. However, under Decree 501 of 1990, certain cargo (e.g., certain types of coffee) can be reserved for Colombian-flagged ships. In addition to this, the Government can also establish percentages of cargo reservation on imports and exports on cargo originating from or destined to specific countries, if these countries reserve 50% of their cargo, thereby limiting the market access of Colombian-flagged vessels. Hence, limitations on cargo can be established by the Colombian Government to countries that do not grant Colombian flagged ships adequate market access.

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80 The foreign ownership restrictions for air and maritime sectors that were provided under the Commerce Code 97 were removed through the enactment of the Political Constitution of 99, Law 9 of 99 and Decree 2080 of 2000.
Figure 17. Transport and courier services

Panel A. Air transport

Panel B. Maritime transport

Panel C. Road transport

Panel D. Courier

Source: OECD Services Trade Restrictiveness database.
93. The supply of cabotage services (i.e., maritime transport between two points within Colombian territory) is solely reserved for Colombian flag vessels. As an exception to the general regime, the Colombian law permits foreign companies to provide cabotage services when there is no sufficient or suitable capacity on the part of national vessels. In these cases, the Colombian Maritime Authority (DIMAR) authorizes the chartering or leasing of foreign vessels for certain cabotage services. The authorization is issued for six months, and can be extended up to one year. According to the WTO Trade Policy review, about 10% of the cabotage segment is provided by foreign-flagged vessels.

94. Other restrictions affecting trade in maritime transport are related to port services. All foreign-flagged vessels entering a Colombian port must have a representative legally responsible for their activities in Colombia. Moreover, pilotage services on Colombian territorial seas may only be performed by Colombian nationals. Other than that, there is no discrimination in the access to services and facilities at the port. Similarly, tariffs and other port fees are applied on a non-discriminatory basis.

95. Under the Decree 804 of 2001, Colombian shipping companies are allowed to participate in maritime conferences. Contrary to the case of some other OECD countries, where such arrangements enjoy some degree of exemption from competition law, in Colombia they need to adhere to competition rules. The law mandates that such conferences also need to allow free entry and exit of Colombian shipping companies. Finally, the law provides for the right of independent action, through which members of the conference can independently fix rates that deviate from the registered rates of the conference.

96. In the road freight transport sector, although quantitative measures and restrictions on prices are not maintained, more efforts are required to align domestic standards with international ones, such as those provided by UNECE and other organisations. Limitations on cross-border trade also remain in place, for instance in the form of commercial presence requirements in order to provide road freight transport.

97. The restrictions on courier services including postal services relate to commercial presence and minimum capital requirements. In Colombia only juridical persons legally constituted in and authorised by the Ministry of Information Technologies and Communications can provide postal services and express courier services in Colombia.

Application of the non-discrimination principle

98. Despite limited use of de jure exceptions from national treatment, Colombia has some cases of alleged de facto discrimination. The two most notable examples identified in the course of this review pertain to the alcohol and the automotive sectors, described below.

Alcohol industry

99. The current taxation system on alcohol products in Colombia, albeit significantly simplified by the 2002 reform\(^{81}\), continues to discriminate between imported and locally produced liquors. The current system includes two tax rates depending on the alcohol content of the product: a) a rate of COP$280 per degree of alcohol per 750 ml\(^{82}\) for products below 35° of alcohol content, and b) a rate of COP$459 for those with alcohol content above this threshold. As locally produced aguardiente nearly exclusively fall

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\(^{81}\) Law 788 of 2002 that came into effect on 1 January 2003 reformed the excise tax structure in Colombia, including for distilled products, bringing it closer to the systems in place in most OECD countries. Among others, ad valorem taxes on alcoholic beverages were replaced with specific taxes, excise tax and VAT were combined into a single tax, and the overall tax burden on spirits was reduced.

\(^{82}\) The final tax paid will differ depending on the size of the bottle. According to the industry, a sample tax paid on a 750 ml bottle of 40% alcohol-by-volume (abv) whisky is COP 18 360 and for the same bottle of 30% abv aguardiente - COP 8 400.
into the first category of a lower tax rate, while most imported spirits (e.g. whisky) fall into the latter category, the regulation appears to have a *de facto* discriminatory effect against imported spirits.

100. As previous studies also show, a decrease in excise tax on imported alcoholic products in Colombia could increase government tax revenue from alcoholic sales (e.g. Echeverry, 2004; Argáez et al., 2004). This is mainly because of a large informal market for alcohol in the country, making contraband products direct substitutes for legally imported goods. By reducing the relative price of legally imported products vis-à-vis smuggled goods, the government could increase the quantity of taxable imports, and, if this increase is large enough to offset the reduction in tax rate, increase its net revenue. This effect was, in fact, observed in Colombia after the excise tax reform in 2002. As the prices of most imported alcohols fell, the resulting increase in demand for legally imported products more than offset the fall in taxes, leading to an average net gain in government revenue of 6.8-9.1% in 2003 as compared to 2002 (Echeverry, 2004: 24; Argáez et al., 2004: 108). Given the remaining large informal market for rebottled imported alcohols in the country, further reform that would bring the tax rates on domestic and foreign spirits closer to one another could help further diminish contraband in the country, while boosting the government revenue. For this purpose, the government undertook a series of consultations with relevant stakeholders, including the Federation of Governors, importers, DIAN and MCIT, aiming to bring the tax rate in line with international standards and Colombia’s national treatment commitments. The consultation process, which has been closely monitored by the country’s trading partners under the Commissions for the implementation of Colombia’s FTAs, is still ongoing.

101. A related problem that businesses point to in Colombia is that department-level alcohol monopolies seem to engage in anti-competitive practices and *de facto* block market access for foreign providers. In Colombia, as in a few OECD countries, the government maintains department-level alcohol production and distribution monopolies (so-called *licoreras*) that control production, distribution, and marketing of distilled spirits. The monopolies are regulated by Department Assemblies and are subject to taxation by territorial authorities, for which they are an important source of revenue. The existence of the monopolies does not in itself violate non-discrimination principles and can serve important public goals. For example, at least 51% of revenues obtained from the exercise of the monopoly in liquors in Colombia has to be directed towards financing of national health and education programmes (Decree 4692 of 2005). However, if such monopolies engage in market-distorting behaviour and block market access to foreign suppliers, there is a scope for reform. Considering that most alcohol monopolies in Colombia (with a notable exception of Antioquia) have experienced low profitability and many have closed due to high debt ratios, mismanagement of resources, and ensuing scandals, reform could also increase tax revenues from alcohol sales.

102. Market participants report a number of anti-competitive practices by *licoreras*. First, a foreign supplier is obliged to sign a separate distribution contract with each *licorera* in order to be able to sell alcohol in that department. This imposes significant transaction costs and means negotiating for market access with one’s competitor, allowing *licoreras* to play delay tactics during contract negotiations, refuse signing the negotiated contract or cancel the contract unilaterally and at will. In addition, *licoreras* can demand that certain conditions be included in the distribution contracts, often compromising the principles of competition. For example, a market entrant may be required to sell a given brand at a minimum yearly volume (or pay the entire tax burden of the minimum volume otherwise) or at minimum price (often set above the competitive price). In addition, *licorera* may refuse an entry of a foreign brand altogether, if it believes that the product offered is in direct competition with its own product. Domestic providers are not obliged to sign such distribution contracts and are not subject to some additional local fees that foreign producers face (e.g. so-called participation fee and a state strip stamp).

103. Given the large scope for corruption involved in signing the distribution contracts and the incidence of discriminatory and anti-competitive practices by some *licoreras*, the government of Colombia could
consider reforming the system. While the position of licoreras is embedded in the Colombian Constitution (Article 336) and a change of their status may be politically difficult, there could be room for re-organising the distribution contracts system. One possible avenue would be to adopt a uniform distribution agreement, free of anti-competitive elements, to be used in all departments. The alternative would be to consider ways of ensuring that anti-competitive requirements cannot be inserted in the distribution contracts, even if each department retains the right to decide on their design. For example, the contracting practices of licoreras could be more closely monitored by the national competition authority (SIC) and the requirement to sign distribution contracts by foreign firms could be abolished.

Automotive industry

104. The second incidence of a de facto discriminatory practice identified in the course of this review relates to the automotive sector in Colombia, and specifically the recently modified consumption tax and truck scrappage programme in the country.83

105. Regarding the consumption tax, the tax reform adopted by the Colombian Congress in 2012 (effective as of 1 January 2013) introduced a base consumption tax of 8% for all vehicles and an additional consumption tax of 16% for vehicles of value higher than USD 30 000 FOB84 (Law 1607 of 2012).85 According to the Colombian Association of Motor Vehicles (ANDEMOS), all vehicles in the country above this threshold are imported vehicles while all domestically produced vehicles fall below this value. This raises a potential issue of de facto differential taxation on imported and domestic vehicles in Colombia, with discriminatory implications.86 In general, regardless of how high the tax burden that the government wishes to apply on vehicles is (see Figure 18 for an illustration of differences in overall tax rates applied to passenger cars in OECD countries), it should affect equally domestic and foreign producers, in line with non-discrimination principles.

Figure 18. Maximum overall tax rate applied on sales and registration of passenger cars in OECD, 2012

Source: OECD, 2012.

83 It should be noted, however, that no meetings with the Ministries of Transport and Environment have been possible during the review in order to discuss the concerns of the automotive industry.

84 Free on Board (FOB) value is the value that includes the transaction value of the goods and the value of services performed to deliver goods to the border of the exporting country.

85 See Table 2 in Annex 1 for a summary of the impact of the recent tax reform on various types of vehicles.

86 From an economic perspective, it is also not clear why this threshold was chosen, why it is not indexed to inflation, and how the FOB value will be calculated for vehicles produced and sold in Colombia.
106. The scrappage policy for land cargo vehicles has been subject to numerous changes since its introduction in 2003. Initially, a new cargo vehicle could enter public service only if it replaced an old vehicle (the so-called One-to-One Programme). A proof had to be provided that an old vehicle or its parts were subject to total physical disintegration to register a new vehicle. Due to a high demand for new trucks and difficulties with securing the physical scrapping process, the government revised the policy in 2005 to facilitate new trucks registration, allowing market participants to pay a scrappage fee instead. Since 2008, only trucks above 10.5 tonnes Gross Vehicle Weight (GVW), which are mostly imported vehicles, were subject to the scrappage requirement and most of them used the fee option to fulfil it. Most recently, the government decided to suspend the fee payment option altogether, first on a temporary basis and then permanently, effectively freezing the market for imported trucks.

107. Usually, the purpose of a vehicle scrappage programme is to renew the domestic fleet to improve transport safety and/or reduce exhaust emissions or to stimulate the domestic industry through increased purchases (e.g. OECD, 2009; OECD, 1999). For that purpose, most countries offer incentives to vehicle owners (e.g. in a form of a subsidy or a tax reduction) to scrap their current vehicle and purchase a new one. In that sense the design of the Colombian scrappage system is unusual, and the linking of an entry of a new vehicle into the market to the exit of an old one is likely to reduce the fleet renewal process rather than increase it. Given that only the cars above 10.5 GVW are affected by the regulation, which are predominantly foreign cars, the regulation also appears to have a de facto discriminatory effect, while it does not provide the economic and environmental reasoning that has dictated such a threshold.

108. Finally, while increasing barriers to entry in the transport sector may be in the interest of some market participants (e.g. some domestic truck owners), such actions are likely to hurt the rest of the Colombian economy. Domestic freight costs are already among the highest in the region and take up a high share of internal trade costs in Colombia (36% for exports and 39% for imports in 2007 (Figure 19). The reduced access of imported vehicles into the market is likely to increase these rates even further, with negative spillover effects on many productive processes that use transport as an input into production.

109. The concerns expressed by Colombia’s trading partners over the vehicle scrappage scheme has led the government to elaborate a transition programme, whereby the stock of vehicles imported prior to 14 March 2013 would benefit from preferential treatment for its entry in the Colombian market (the relevant decree is currently under discussion with stakeholders). Some flexibility has also been allowed in the One-to-One rules by exempting “special” vehicles (such as construction cargo vehicles, firemen vehicles, waste disposal vehicles) and admitting equivalences between different types of vehicles, so that, for example, two small trucks can be scrapped for the registration of one large truck. Finally, the government intends to enlarge the pool of vehicles eligible for scrappage by bringing forward the targeted vehicles’ lifespan from 25 years currently to 20 years, potentially encompassing 10 000 additional vehicles and setting the lifespan of all new trucks entering the market to 15 years. The relevant regulations are published for public consultations on the webpage of the Ministry of Transport.

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87 Decree 10500 of 2003.
88 Decree 3525 of 2005.
89 First on March 14, 2013 the Ministry of Transport issued Decree 486, which suspended for 90 days the option to pay the scrappage fee to register a truck over 10.5 GVW. On June 14, the Government extended the measure for another 45 days. Finally, on August 19, the Government issued Decree 1769, conclusively removing the fee payment option.
90 See Decree 1131 of 2009 introducing the 10.5 tonnes threshold.
Figure 19. Trade costs break-down in Colombia

Source: DNP, CONPES 3489.

2.3 Measures to avoid unnecessary trade restrictiveness

110. Even if regulations are applied in a non-discriminatory manner, market openness can still be constrained when regulations are more restrictive vis-à-vis trade and investment than necessary to achieve their intended objectives. This can happen either at the design phase, if the impact of planned regulations on market openness is not duly considered, or at the implementation phase. OECD governments employ several tools and mechanisms to ensure that regulations avoid unnecessary trade restrictiveness, explained in turn below.

111. One of the most effective, and yet most difficult to attain, is administrative simplification. It usually requires simplification, streamlining, reduction and (wherever possible) digitalisation of formalities required of firms, as well as rationalisation of the underlying regulations. The goal is to reduce the burden of regulations on businesses while ensuring that regulatory objectives are met. As burdensome procedures tend to affect disproportionately foreign enterprises, which may be unfamiliar with the local regulatory environment, reducing administrative burdens can facilitate trade and investment. Among others, specifically involving foreign enterprises in the consultation processes when new regulations are drafted can help identify and reduce their trade restrictiveness potential. Taking stock of regulations in key economic sectors and comparing them against a reference group of countries – as done in the OECD Services Trade Restrictiveness Index – can also help the government understand which regulations may call for attention, and possibly revision, if greater openness is sought.

112. Simplification, streamlining and automation of border procedures are also particularly important. Efficient and transparent border procedures and practices (often referred to as “trade facilitation measures”) play an important role in easing the movement of goods across borders. The length and burden of border procedures translates directly into the costs of trading and hence is relevant to market openness. The OECD has developed a set of Trade Facilitation Indicators that helps assess the degree of efficiency of countries border procedures and identify areas for improvement.
113. On a more general level, the ability to advocate market openness vis-à-vis regulatory bodies and to promote the use of least-trade restrictive measures is an important aspect of ensuring market openness. This can involve regular monitoring of planned regulations with a likely impact on trade and, wherever possible, proposing alternative policy design that would minimize the negative effect; being responsive to concerns of stakeholders affected by particular regulation (including foreign stakeholders); and mediating solutions with responsible entities, and more generally ensuring compliance with the country’s international obligations.

114. Finally, regulatory impact assessments (RIAs) – used to ex ante identify and evaluate potential market effects of planned regulations – are another powerful tool at the disposal of governments. RIAs require regulators to consider whether a regulation is the most appropriate means of achieving the desired policy outcome (or if there is a policy alternative) and what would be its likely consequences. For example: What new costs will the regulation impose on firms? Will some firms be more affected than others? What adverse consequences may this regulation have? An RIA employs the tools of cost-benefit analysis to help a regulator quantify in a systematic fashion these possible consequences of a proposed regulation or a policy alternative and make an informed choice. While not all OECD Member States use RIAs to the same extent in their regulatory processes and approaches tend to vary, it is generally accepted as a useful tool to assess business impact early in the legislative process.

115. In the following subsections, we review the current situation in Colombia when it comes to potentially trade-restrictive regulations and evaluate the mechanisms used by the government to address them. We consider in particular the government’s effectiveness in reducing the overall level of administrative burdens, its capacity to consider trade and other market effects of proposed regulations during the regulatory process (e.g. through RIA), and evaluate the effectiveness of the country’s border rules and procedures, which impact directly trade flows.

Overview of the ease of doing business in Colombia

116. A country’s performance in international rankings on the ease of doing business is usually approximate but it can point to general trends and problems in an economy, relative to other countries. Colombia ranks 69th out of 144 economies in the World Economic Forum’s Global Competitiveness Report 2012-2013 and 45th out of 185 countries in the World Bank’s Doing Business 2013 ranking (Table 7), scoring above the region’s average and below OECD as a whole but higher than some OECD economies. The country has improved its ranking in both listings in recent years, scoring highest for its prudent macroeconomic management, strong investor protection, and efficiency in resolving insolvency. Still, a few significant areas are regularly highlighted as requiring further improvement, notably the ability of businesses to enforce contracts, poor infrastructure and a still unstable security situation in the country (e.g. World Bank, 2013a; World Economic Forum, 2012).

91 For example, Colombia ranks before Mexico (49), Poland (55), Turkey (71) and Italy (73) in the Doing Business report 2013.
Table 7. Doing Business, 2013

<table>
<thead>
<tr>
<th>Ranking</th>
<th>Colombia</th>
<th>LAC</th>
<th>BRIICS</th>
<th>OECD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ranking</td>
<td>45</td>
<td>97</td>
<td>105</td>
<td>29</td>
</tr>
</tbody>
</table>

Note: The rankings for OECD and BRIICS are simple averages.

Source: Authors calculations based on the World Bank's Doing Business database.

117. The underinvested infrastructure in particular is contributing directly to the high costs of trading in the country, which remain about 50 to 60% higher than those observed on average in OECD countries (Table 8). The inland transportation costs are indeed one of the highest in the region, and are responsible for about 70% of the overall export and import costs in Colombia (Table 9).

Table 8. Trading Across Borders indicators, 2013

<table>
<thead>
<tr>
<th></th>
<th>Colombia</th>
<th>Latin America and the Caribbean</th>
<th>BRIICS</th>
<th>OECD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Documents to export (number)</td>
<td>5.0</td>
<td>6.0</td>
<td>7.0</td>
<td>4.0</td>
</tr>
<tr>
<td>Time to export (days)</td>
<td>14.0</td>
<td>17.0</td>
<td>17.3</td>
<td>10.0</td>
</tr>
<tr>
<td>Cost to export (US$ per container)</td>
<td>2255.0</td>
<td>1268.0</td>
<td>1499.8</td>
<td>1028.0</td>
</tr>
<tr>
<td>Documents to import (number)</td>
<td>6.0</td>
<td>7.0</td>
<td>8.2</td>
<td>5.0</td>
</tr>
<tr>
<td>Time to import (days)</td>
<td>13.0</td>
<td>19.0</td>
<td>23.8</td>
<td>10.0</td>
</tr>
<tr>
<td>Cost to import (US$ per container)</td>
<td>2830.0</td>
<td>1612.0</td>
<td>1601.7</td>
<td>1080.0</td>
</tr>
</tbody>
</table>


Table 9. Breakdown of factors contributing to the Trading Across Border results

<table>
<thead>
<tr>
<th></th>
<th>Colombia</th>
<th>Average of five selected OECD economies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Export</td>
<td>Duration (days)</td>
<td>US$ Cost (days)</td>
</tr>
<tr>
<td>Documents preparation</td>
<td>5</td>
<td>300</td>
</tr>
<tr>
<td>Customs clearance and technical control</td>
<td>2</td>
<td>250</td>
</tr>
<tr>
<td>Ports and terminal handling</td>
<td>3</td>
<td>170</td>
</tr>
<tr>
<td>Inland transportation and handling</td>
<td>4</td>
<td>1535</td>
</tr>
<tr>
<td>Totals</td>
<td>14</td>
<td>2255</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Import</th>
<th>Duration (days)</th>
<th>US$ Cost (days)</th>
<th>Duration (days)</th>
<th>US$ Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Documents preparation</td>
<td>6</td>
<td>250</td>
<td>3</td>
<td>212</td>
</tr>
<tr>
<td>Customs clearance and technical control</td>
<td>2</td>
<td>300</td>
<td>1</td>
<td>112</td>
</tr>
<tr>
<td>Ports and terminal handling</td>
<td>2</td>
<td>200</td>
<td>2</td>
<td>276</td>
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<tr>
<td>Inland transportation and handling</td>
<td>3</td>
<td>2080</td>
<td>2</td>
<td>608</td>
</tr>
<tr>
<td>Totals</td>
<td>13</td>
<td>2830</td>
<td>8</td>
<td>1208</td>
</tr>
</tbody>
</table>

Note: The five selected OECD economies are: Chile, Germany, Mexico, the UK, and the US. Simple averages are presented.

Source: Authors calculations based on the World Bank Doing Business database.

118. In terms of the ease of starting a business, Colombia has made progress in recent years, primarily as part of its efforts to reduce a large informal sector in the country by facilitating enterprise registration. This is reflected in the country’s good performance vis-à-vis OECD and BRIICS countries (Figure 20 Panel A). Variation across the regions in the country persists, with some taking up to four times longer than others to process the documentation (Figure 20 Panel B) but most cities in the country have made progress in the last three years (with a few big entrepreneurial centres such as Bogotá, Medellin, Cartagena and
As will be explained later, while very much a work in progress, the Colombian government has been carrying out a few initiatives aimed at streamlining of formalities at the sub-national level, including through the use of one-stop shops (Box 6), extension of anti-red tape programmes to the regions and a few structural reforms that affected departments (e.g. the 2002 tax reform and the reform of the general system of royalties).

**Figure 20. Ease of starting a business in Colombia, 2013**

Panel A. Comparison with the region, the OECD and BRIICS countries

Panel B. Comparison in performance among regions in Colombia, 2013

<table>
<thead>
<tr>
<th>Rank</th>
<th>Procedures (number)</th>
<th>Time (days)</th>
<th>Cost (% of income per capita)</th>
</tr>
</thead>
<tbody>
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<td>Armenia</td>
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<td>9</td>
<td>10</td>
</tr>
<tr>
<td>Santa Marta</td>
<td>2</td>
<td>9</td>
<td>11</td>
</tr>
<tr>
<td>Pereira</td>
<td>3</td>
<td>9</td>
<td>11</td>
</tr>
<tr>
<td>Cali</td>
<td>4</td>
<td>9</td>
<td>11</td>
</tr>
<tr>
<td>Ibagué</td>
<td>4</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>Cartagena</td>
<td>6</td>
<td>9</td>
<td>14</td>
</tr>
<tr>
<td>Bogotá</td>
<td>7</td>
<td>10</td>
<td>16</td>
</tr>
<tr>
<td>Manizales</td>
<td>7</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Neiva</td>
<td>9</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td>Bucaramanga</td>
<td>10</td>
<td>9</td>
<td>11</td>
</tr>
<tr>
<td>Medellín</td>
<td>11</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>Palmira</td>
<td>12</td>
<td>10</td>
<td>13</td>
</tr>
<tr>
<td>Sincelejo</td>
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<td>18</td>
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<td>Barranquilla</td>
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<td>Pasto</td>
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<td>18</td>
</tr>
<tr>
<td>Villavicencio</td>
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<td>11</td>
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<td>Cúcuta</td>
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<td>12</td>
<td>18</td>
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<td>Riohacha</td>
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<td>Popayán</td>
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<td>Montería</td>
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<td>18</td>
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<tr>
<td>Valledupar</td>
<td>21</td>
<td>17</td>
<td>23</td>
</tr>
<tr>
<td>Tunja</td>
<td>22</td>
<td>17</td>
<td>34</td>
</tr>
<tr>
<td>Dosquebradas</td>
<td>23</td>
<td>14</td>
<td>40</td>
</tr>
</tbody>
</table>


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92 All 23 cities covered by the World Bank’s Doing Business Report but one (Sincelejo) made progress since the last report in 2010. For more details see World Bank (2013b).
Specific problems raised by businesses

119. Overall, Colombia’s trading partners and businesses operating in the country recognize the government’s commitment to improve the overall business climate by reducing “red-tape”, increasing the efficiency of border-related processes, and progressively improving the regulatory quality in the country. Progress has been particularly noticeable in regards to the management of import licensing via the single window for foreign trade (VUCE), advances in administrative simplification, customs reform, and attempts to improve the processes of preparing technical regulations. This is still a work in progress, however, and there are a few areas where businesses consulted in this review highlighted there could be space for improvement.

120. Colombia sustains a system of import licenses for goods, which require a government authorisation prior to being imported. There are two types of import licenses in the country: so-called automatic import licenses – for products requiring a prior approval by public entities, for example because they are subject to sanitary control or a technical regulation, and non-automatic licenses, for imports requiring special controls (e.g. goods classified for national security or used for manufacturing of narcotic drugs). The MCIT Foreign Trade Directorate is responsible for managing the former via the single window for trade (VUCE), which also covers 21 other government agencies issuing foreign trade related permits.

121. The implementation of a single window for foreign trade has significantly facilitated the process of obtaining an automatic import license, which can now be procured online and costs around USD 15. According to the data provided by MCIT, it takes on average 19 minutes for MCIT to process an application for an automatic import license, and about 1.75 days for other government agencies covered by VUCE to issue their respective import-related permits. Still, some businesses complain that obtaining import-related permits from different government agencies is burdensome and takes time. One possibility to facilitate registration for new importers by these agencies would be to rely on system-wide audits (i.e. evaluation of the official controls performed by a partner country’s competent authorities and an inspection of a representative sample of establishments), instead of performing inspections of all enterprises one-by-one. Apart from saving time, this would reduce the cost of inspections, which are currently born by importers, but in the future will have to be covered by the Colombian control authorities in accordance with Colombia’s FTA commitments.

122. In addition, some OECD Members assert that Colombia applies SPS standards that are stricter than those present in relevant international recommendations (e.g. World Organisation for Animal Health). Specifically, this relates to Colombia’s import ban on live bovine animals and bovine products from countries that experienced cases of Bovine Spongiform Encephalopathy (BSE) and on poultry and poultry

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93 See Table 3 in Annex I for a full list of products covered by non-automatic licensing. In 2011, there were 2 939 tariff lines subject to automatic licensing in Colombia and 188 subject to non-automatic licensing (WTO, 2012: 61)

94 This has been suggested to be the case for sanitary permits from INVIMA and SPS permits from ICA required to obtain an import licence. The Colombian government highlights however that it takes on average between 2-3 days for INVIMA to issue a permit upon a request from MCIT. Some have also suggested that the requirement to register a contract for services provided from abroad in VUCE in order to obtain a tax deduction serves as a barrier to services trade as many exchanges are taking place on the basis of invoice-payment only. This requirement is now eliminated by upcoming regulation (the relevant draft Decree was in the process of signature as of October 2013).

95 The cost and time savings stem from the fact that ICA and INVIMA, instead of having to travel to inspect each enterprise wishing to export to Colombia, would perform a general audit and reduce the number of inspections and travel required to perform them.

96 Article 92 and 93 of the FTA with the EU.
products from countries where an outbreak of avian influenza or Newcastle disease was reported or detected in the sanitary surveillance. Colombia could engage in further dialogue with the affected parties to consider ways for introducing more flexibility, for example by allowing trade in certain goods following a fulfilment of additional certification requirements.

123. Other industries that reported problems with licensing procedures in Colombia are the cosmetics industry, producers of medicines and medical equipment, the wine industry, the automotive industry, and industries requiring environmental licenses. In the case of sanitary registration for medicines and medical devices, traders complain that application requirements vary depending on which official deals with the registration application, and fees are much higher than elsewhere in the region (See Table 1, Annex 1). If higher registration fees translate into higher costs of health services, this could be an important issue for the government to consider. While sanitary registration for cosmetics appears to be consistent with the practice elsewhere in the OECD, there is no simplified or less costly registration for same family products. Registration fees used to be quite high (e.g. about 60% higher than in Ecuador), but their latest review by INVIMA resulted in a 30 to 40% decrease in September 2013, bringing them below the Latin American average. Wine producers also complain about the need to pay registration fees separately for each product. Applications for environmental licenses also appear to suffer from large delays. While this is partly driven by the need to conduct prior consultations with affected stakeholders (consulta previa), which is a common practice in the OECD, insufficient resources in some agencies appear also to be responsible.

124. In the case of the automotive sector, the problems with registration and other regulatory measures have been rather severe. First, the lack of transition periods for the new scrappage policy (described in Section 2.2) has left many importers with unused inventories, interrupted revenue streams, and an uncertain pay-back on already made investments. If a similarly drastic change would be replicated in other sectors, this could undermine traders’ confidence in the predictability of Colombia’s regulatory environment. Another instance where regulatory plans could have had a lesser impact on trade is Colombia’s biofuel policy. As of September 2013, mandatory fuel blends of 20% for ethanol and 10% of biodiesel were to become effective in the country. While the government has prepared a feasibility study for biofuels production, it appears that no study of the likely effect of the planned regulation was conducted (assessing among others the impact on producers and consumers). Given that incentives planned for domestic biofuel producers will have fiscal implications, that some elements of the policy design appear uncertain, and that the impact of biofuel policies on land and food prices is controversial, the...
government could take a more cautious approach. This could involve step-wise increases in the blend, voluntary rather than obligatory provisions, and the use of transition periods to monitor the effects of the regulation.

125. Finally, care needs to be taken that the measures designed to facilitate trade do not have adverse effects as a result of poor implementation. This may be the case with the VAT exemption programme for some imported goods destined for sale exclusively in special zones (i.e. San Andrés, Providencia, Santa Catalina and Amazonas) 105, which, due to insufficient supervision, were sold in the rest of the country without paying the full VAT contribution, with adverse effects on competition in the formal sector and the tax revenue collected by the government.

126. Overall, businesses recognise the progress Colombia has made in improving its business climate. There were, however, a few instances where less trade-restrictive regulations might have been possible. Now we turn into the evaluation of government’s efforts to avoid such situations by pursuing administrative simplification, advocacy of trade bodies vis-à-vis other regulatory bodies, assessing the impact of planned regulations, and introducing trade facilitation measures.

Administrative simplification

127. The Colombian government has made intense efforts to reduce the administrative burdens on businesses and citizens in recent years. These have been primarily pursued via initiatives to reduce red tape and streamline formalities in the country, creation of one-stop shops and online government services, and some joint initiatives with the private sector to identify and amend particularly burdensome regulations.

128. Efforts to reduce administrative burdens focused up to now on simplifying formalities and took place in three stages (Figure 21): the first started in 1995 with Decree 2150, the second in 2005 with the creation of a single register for formalities (SUIT), and the most recent in 2012, with the adoption of the so-called Anti-formalities Decree 0019 (Decreto Antitrámites). The latter, among others, forbade any public entity to require administrative acts, statements, certificates or documents that it already possesses, and established that a formality can only be required if it is registered in SUIT. 106 (For more detail and a full overview of administrative simplification efforts in Colombia, see OECD, 2013b.)

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104 See, for example: OECD-IAE, 2008; OECD-FAO, 2013; OECD, 2010; OECD 2012b.
105 Tax Statute, Article 475, 482—1 and Law No. 488 of 1998, Article 112.
106 This complements an earlier Decree 4669 of 2005, which requires all public entities to provide DAFP with a RIA if they wish to add a formality or modify an existing one.
129. These initiatives, and in particular the creation of a single register for formalities, seems to have allowed the government to control the number of new formalities\textsuperscript{107}, and simplify and automate a large number of the existing ones (826 formalities were simplified between 2005 and 2012, according to DAFP). By now all formalities administered by the central government are registered in SUIT\textsuperscript{108}, and the focus is on extending the coverage to the regions\textsuperscript{109} and using the information gathered to pursue further simplification.\textsuperscript{110} Besides SUIT, the focus on simplifying and automating formalities also meant that the government introduced a number of one-stop shops to deal with specific business procedures such as for registering property (VUR), creating an enterprise (CAE) and engaging in trade operations (VUCE). (See Box 6 for an overview)

130. Still, there is no indication as to what the real impact of the streamlining efforts on businesses has been to-date. This is partially due to lack of a previous baseline measurement (now created by SUIT) but

\textsuperscript{107} Only 41 new ones were created between 2006 and mid-2012, according to DAFP (OECD, 2013b).

\textsuperscript{108} DAFP facilitated the process of registering the stock of formalities through training, guidance documents (e.g. SUIT user manual available \url{http://portal.dafp.gov.co/form/formularios.retrive_publicaciones?no=559}) and onsite support.

\textsuperscript{109} As of August 2012, 2162 formalities from the central government were registered in SUIT, 1162 from the Departmental level, and 3702 from the municipal level. The efforts to extend the coverage of formalities managed by sub-national authorities have been hampered by the lack of Internet access by some municipalities. As a result, currently the Vive Digital Plan managed by the Ministry of ICT aims to increase the number of municipalities connected to fibre optic broadband from 200 now to 700 by 2014.

\textsuperscript{110} As all agencies have access to the information in SUIT and can compare their relative performance, this has according to DAFP unleashed certain competitive dynamic for improvement. The DAFP’s new “maturity system” will also classify entities in SUIT according to their progress, strengthening the soft naming-and-shaming mechanism.
also because the focus has been on the number of formalities reduced or automated, rather than their impact. It will hence be important to employ some measurement of the impact of formalities on businesses in order to ensure that high-impact formalities are targeted first (OECD, 2013b). While in the long run, a cost-benefit analysis in RIA would provide such an estimate, in the short run a rough measure of the possible impact (e.g. the number of firms or households affected) could be added to SUIT to assist DAFP’s streamlining efforts.

131. In addition, while the government’s commitment to reduce and simplify formalities is welcome, in order to achieve a long-lasting effect, it is the regulations underlying the formalities that will need to be streamlined and, over time, the quality of regulatory production improved. Otherwise, the symptom of the administrative problem is addressed but its source is not. This is because burdensome formalities are often a result of a stock of conflicting, overlapping, redundant or inefficient regulations that underlie them. Hence, to address the problem in a comprehensive manner, the government will need to undertake a review of the existing stock of regulations and streamline those, while also incorporating the use of ex ante regulatory impact assessment (RIA) into the preparation of new regulations to address the flow problem – discussed next (Figure 22). A comprehensive regulatory policy would ultimately impact formalities while the inverse is not necessarily true (OECD, 2013b).

### Box 6. One-stop shops in Colombia

As part of its administrative simplification efforts, the Government of Colombia has implemented a number of one-stop shops to deal with particular business procedures. These include among others:

- **Single Window for Foreign Trade** *(VUCE, Ventanilla Única de Comercio Exterior)* – created in 2004 via Decree 4149, VUCE is managed by the Ministry of Trade, Industry, and Tourism and allows electronic processing of authorisation, permits and certifications required by State authorities to engage in foreign trade operations. Currently, the response time of MCIT for approval of automatic licences is on average 19 minutes and of other agencies participating in VUCE 1.75 days. It operates on a 24/7 basis. VUCE also allows simultaneous inspections for exports (already operational in the main maritime ports for containerized cargo exports).

- **Single Window for Registering Property** *(Ventanilla Única de Registro VUR)* – started in 2006, VUR established a unique contact point for citizens wishing to register transactions for real estate property. By 2012, VUR was operating in 11 municipalities, and about 200 notaries. Between 2009 and 2012 the number of VUR consultations rose dramatically, indicating improved service. The obligation for the client to be physically present in some instances has however blocked some procedures from being automated.

- **Business Support Centers** *(CAE, Centros de Atención Empresarial)* – Started in 2003, the CAE programme established one-stop shops on the premises of the participating Chambers of Commerce to allow starting a company “in one day, in one step, in one place, in one counter, and at minimal cost.” CAE helped reduce the national average time for starting a business from 55 days to 5 and average cost COP 85 400, arguably contributing to the increased number of newly registered businesses in the country (from 33 752 in 2006 to 57 768 in 2011). Citizens can use the CAE Internet portal (www.crearemempresa.com.co) to consult information concerning business formalities, fill out and print forms, and follow up their applications.

- **Single Window for Payment of Copyright** *(VID, Ventanilla Única para el pago de Derechos de Autor y Derechos Conexos)* – it was created in January 2013, as a result of Decree 0019 of 2012, and allows paying online fees for storing and distributing copyright material and receiving a license. It is managed by the National Copyright Office *(Dirección Nacional del Derecho de Autor, DNDA)*.
Figure 22. Overview of the elements lacking in the Colombia’s regulatory system

Source: OECD.
Assessing the impact of regulation on trade

132. To assist administrative simplification efforts, ex ante regulatory impact assessment (RIA) should be integrated at an early stage of preparing new regulatory proposals (e.g. OECD, 2012, OECD, 2002). This allows regulators to decide if a regulation is necessary, consider all options (including non-regulatory alternatives), and evaluate trade-offs through cost-benefit analysis and early stakeholder consultation. Such process ensures that the adverse impact of regulations on business is minimised, including impact on trade.

133. There is so far no systematic obligation to conduct RIAs in Colombia. As discussed in Section 2, this has led to a variation in the quality of regulatory proposals and at times rendered consultations less effective in shaping regulatory design. There are, however, several mechanisms of ex ante evaluation of regulations in use in the country that involve some elements of RIA (Box 7). Building on them would allow the Colombian government to assess better the impact of planned regulations on trade, public finances, and markets more broadly. Introducing a systematic use of RIAs will require strong political commitment and suitable oversight on the part of the government, most likely in a form of a single supervisory body at Cabinet level (OECD, 2013b). This role could realistically be taken up by DNP, the Presidency or DAFP, which already has experience in supervising RIAs in the context of SUIT. In the meantime, while various pilot projects on a smaller scale are being conducted, simpler methods of co-ordination can yield results. For example, a unified template for the conduct of cost-benefit analysis should be provided to all entities and an additional coordination mechanism could be envisaged for high-impact regulations (e.g. via an Intersectoral Commission for Better Regulatory Quality or other interagency body).

134. In the area of technical regulations, the Colombian government is currently preparing important reforms. Namely, the planned CONPES on Regulatory Improvement and the amendment by MCIT to the Decree 2269 of 1993 on regulatory quality would make RIA mandatory for technical regulations prepared by public entities. The amendment includes a unified format for preparing a RIA and a methodological guide for the use of regulatory entities, and requires that the executive summary of the RIA is published in advance along with the draft regulation on the entity’s website. The decree is in the final stages of interagency coordination and, following extensive consultations with public and private stakeholders, should be adopted in the course of 2014.

135. Finally, there are two initiatives, which aim at identifying and removing most burdensome regulations and procedures, which are worth highlighting. First, GRAT (Grupo de Racionalización y Automatización de Trámites) is a high-level advisory body created in 2005 via Decree 4669 to assist the government in identifying formalities that are considered particularly burdensome by businesses and citizens (OECD, 2013b: 63). It includes representatives both from the private and public sector, supports the decision making of the President’s Office, and is considered to have played an important role in the anti-formalities campaign. The second one is the public-private information system SIFAI (Sistema de Facilitación para la Atracción de Inversión), managed by Colombia’s trade and investment promotion

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111 Regulations with high impact could be identified by developing a threshold of “economic significance” or, alternatively, through consultations with stakeholders (e.g. focus groups, sectoral reviews, SIFAI, GRAT). For the former, SIC’s methods of identifying regulations requiring a competition review could be leveraged on and various measures of impact identified in the course of ex ante assessment used for evaluation (e.g. the overall money impact on the market, the number of firms and households affected, etc.).

112 The Colombian government has received technical support from the Canadian government in the process and has is seeking tailored advice on RIA best practices from the OECD Directorate for Public Governance and Territorial Development. For more information, please contact jacobogarcia@gmail.com.

113 It is integrated by two delegates from the following institutions: the Presidency, the Vice-Presidency, the Ministry of Interior and Justice, DAFP, DNP, and the MINTIC.
agency Proexport. Via inputs and complains from firms the system identifies regulations and formalities that could be improved so as to facilitate foreign investment, and then via its technical committee composed of representatives of the private and public sector sets forth suggestions for reform. There have been a few legal amendments adopted as a result of advice coming from SIFAI.

**Box 7. The use of ex ante evaluations of regulations in Colombia**

There is no fully fledged Regulatory Impact Assessment (RIA) in Colombia at the moment but several mechanisms in place contain some elements of RIA:

- **The MCIT developed an internal procedure for issuing technical regulations (Procedimiento para la Elaboración y Expedición de Reglamentos Técnicos, PEERT), which requires an ex ante assessment as part of the preparation of technical regulations. It is binding within MCIT, but not outside. Until recently, it included some basic steps, such as identifying the policy problem, alternatives to a technical regulation, and associated costs. As part of its cooperation with the Government of Canada, MCIT completed its first fully fledged RIA incorporating the use of cost-benefit analysis in December 2012 during an update of a technical norm on home appliances requiring gas. Starting 1 January 2013 all draft technical regulations need to be accompanied by a RIA. During 2013-2014, MCIT also plans to review the existing technical norms using RIA. The planned CONPES on Regulatory Improvement and amendment to the Decree 2269 of 1993 will extend the obligation to perform a RIA on technical regulations to all regulatory entities.**

- **According to Law 962 of 2005 and Decree 4669 of 2005, all national agencies wishing to add a new formality to the national register for formalities (SUIT) need to provide DAFP with a RIA. No new formality can enter into force without being registered in SUIT (and hence without having its accompanying RIA considered by DAFP). The RIA should include: a description of the formality and its legal justification; a design proposal for the process of the formality; the likely benefits for the public entity and the users; the lack of alternative solutions at lower costs; the implementation costs, and the financial resources required for implementation. These documents are not routinely published.**

- **Law 1340 of 2009 establishes that the SIC can issue an ex ante opinion on draft regulations that may have an impact on free market competition (Article 7). However, in order for SIC to carry out this function effectively, regulatory authorities must inform when they plan to issue regulations, which does not always happen. Currently, a few cases are pending in the Constitutional Court of Colombia that would clarify if a regulation is annulled when not reviewed in advance by SIC. An affirmative ruling could give the review much teeth (see OECD 2013: 30 for more detail). SIC’s mandate to review draft regulations was strengthened by Decree 2897 of 2010, which established criteria against which public entities should assess the impact of their regulatory proposals on competition. SIC also issued a booklet that explains its mandate and provides a checklist assisting entities in the decision whether or not they need to consult SIC.**

- **By virtue of Decree 2696 of 2004, regulatory commissions are required to conduct a form of ex ante evaluation when preparing new regulations to assess likely economic impacts on market participants. There is, however, no standardized methodology or process requirements and hence the practice varies. The Communications Regulatory Commission, for example, prepares the ex-ante evaluation for all draft proposals (which includes information about the identified problem, possible alternatives, and an impact assessment of each alternative) and publishes it with other supporting documents. The publication of impact assessment is the basis for the consultation process.**

- **Normative Impact Study (Estudio de Impacto Normativo, ESIN): According to the Guidelines to Elaborate Legal Texts (Decree 1345 of 2010), an ESIN should be done in the preparation of draft decrees and resolutions to establish the need to adopt, modify or eliminate a legal instrument. Preparation of an ESIN is mandatory for ministries and administrative departments for draft decrees and resolutions for signature by the President. An ESIN provides for a basic overview of the impact of a draft proposal, including timeframes and measures required for the implementation of a new regulation but it falls short of RIA. Many ministries use this instrument to prepare their draft regulation and some extend its scope. For example, the Ministry of Environment and Sustainable Development, considers legal, economic, and environmental impacts as part of the ESINs accompanying its draft proposals.**

*Source: OECD (2013b), OECD Secretariat exchanges with the Colombian government.*
Trade advocacy

136. Another important aspect of reducing the impact of regulations on trade is the ability of trade bodies to advocate less trade restrictive solutions vis-à-vis other regulatory entities.

137. Through the work of its officers reviewing the country’s compliance with international trade obligations and receiving enquiries and complaints from traders via a WTO TBT contact point\(^{114}\), the Ministry of Trade, Industry and Tourism is well positioned to learn about potential problems and advocate changes. The Ministry is also the coordinator of the National Quality System\(^ {115}\) (dealing with technical regulations, harmonisation, conformity assessment, etc.), overviews new technical regulations and conformity assessments\(^ {116}\) and chairs the Intersectoral Commission of Quality\(^ {117}\), which allows it to raise with other agencies any particular regulatory problems. Its participation in SIFAI and GRAT (discussed earlier) also assist it in this task.

138. In addition, MCIT influences policies with impact on trade via its participation in the Committee on Customs, Tariffs and Trade Affairs (the so-called *Comité Triple A*)\(^ {118}\). This is a technical body, composed of Vice-Minister level officials from seven ministries and chaired by the Deputy Minister of Foreign Trade, which studies all proposed changes to tariffs, customs procedures, and international trade policy more broadly and makes recommendations to the Superior Council on International Trade.\(^ {119}\) If a particular issue is raised to MCIT’s attention, through its own analysis or by a stakeholder, it can be brought forward for a discussion in the Committee, and it can lead to a particular policy recommendation for the Council.\(^ {120}\)

139. Overall, importers praise MCIT’s attention to their concerns and efforts to solve issues with other government agencies whose regulation may be a source of problems. Still, MCIT’s capacity to influence the activities of other regulatory agencies appears limited. Its position vis-à-vis other regulatory bodies could be strengthened once the conduct of RIAs for all technical regulations becomes obligatory, with MCIT’s Directorate for Regulations in charge of co-ordination (as discussed earlier).\(^ {121}\) To ensure that the impact of new regulations on trade can be scrutinised, a specific mandate for controlling the quality of RIAs prepared by concerned entities would be desirable, either for MCIT or any other regulatory quality oversight body. In addition, a regulation’s likely impact on trade and investment could be specifically added to the list of issues for consideration in RIAs, included in the proposed unified template for them. This could later allow developing a threshold of impact that is considered significant and may require an additional review from a trade perspective.\(^ {122}\)

\(^{114}\) These are International Legal Affairs Bureau and Directorate for Regulations, respectively.

\(^{115}\) Decree 210 of 2003.

\(^{116}\) Decree 1844 of 2013.

\(^{117}\) Decree 3257 of 2008.

\(^{118}\) Decree Law 2350 of 1991 as amended by Decrees 2553 of 1999 and 3303 of 2006.

\(^{119}\) The Committee consists of: the Technical Deputy Minister of Finance and Public Credit, the Business Development Deputy Minister, the Deputy Minister of Agriculture and Rural Development, the Deputy Minister of Mines and Energy, the Deputy Director General of the National Planning Department, the Director of National Customs and the two senior Advisors from the Superior Council. It convenes once every three months or as required, participation is compulsory, and decisions are taken by a supermajority.

\(^{120}\) Decree 3303 of 2006.

\(^{121}\) MCIT will be in charge of publishing all draft regulations and the executive summaries of accompanying RIAs prepared by all agencies but without authority to review or approve.

\(^{122}\) For that purpose, the SIC’s on-going efforts to strengthen its competition review for regulations with potentially large impact on the market could be usefully leveraged.
Border procedures and trade facilitation

140. As tariff levels have declined over the years through GATT/WTO rounds, the costs imposed by border procedures have attracted growing attention from businesses. Border procedures encompass formalities and procedures in collecting, presenting, communicating and processing data requested by customs and other border agencies related to the movement of goods in international trade. Costs are generated by compliance with documentary requirements (acquiring and completing the documents and paying for their processing) and by delays of cargo processing at borders. The aims of border procedures (to collect revenue, to compile statistics, to ensure that trade occurs in accordance with applicable regulations, such as those aiming at protection of human safety and health, protection of animal and plant life, environmental protection, prevention of deceptive practices, etc.) should be pursued so as to ensure that the procedures do not create unnecessary obstacles to international trade. In other words, the lowering of trade barriers may not achieve the full efficiency of liberalisation without harmonised, simplified, fast and secured border procedures.

141. Over the recent years Colombia has undertaken significant efforts to simplify its customs and international trade procedures, to improve border efficiency and to promote trade facilitation. Some trade facilitation measures are already operational, bringing improvements in terms of timeliness and customs quality: Colombia progressed on the World Bank’s Logistics Performance Index (LPI) from rank 116 to 64 for customs quality, and from rank 87 to 57 for timeliness between 2007 and 2012. Other reforms are currently underway and their impact on Colombia’s trade facilitation performance remains to be seen. The following section is drafted taking into account the regulatory framework recently established, the provisions of which are already largely set but not yet in force in spring 2014. The actual trade friendliness of the border process will ultimately be defined by implementation and enforcement in practice.

142. Trade facilitation efforts are led by the Directorate of Taxes and National Customs (Dirección de Impuestos y Aduanas Nacionales, DIAN), the institution responsible for customs administration in Colombia, and by MCIT, in charge of external trade. Central to the endeavour to improve the country’s competitiveness by facilitating trade while improving the efficiency of border controls against smuggling and fraud is the elaboration of a new Customs Code, meant to replace the Customs Code in force\(^\text{123}\). The spirit of the new Code was greatly influenced by the need to consolidate applicable regulation in order to improve its accessibility for users; to ensure compatibility with the country’s upcoming international commitments, including the US and EU FTAs; and to emulate international best practice in shaping customs and international trade procedures, among others with respect to the system of sanctions. Areas for simplification and streamlining were also identified thanks to the Antitramites campaign, which helped collect user’s views regarding unnecessary costs and burdens of the border process. The draft underwent an extensive process of consultations with concerned stakeholders since 2010 using the Urna de Cristal process and will be promulgated as soon as it has been signed by the competent ministries and the Presidency of the Republic. After a legal setback over port mooring zones, which delayed the enactment of the new Code in late 2013, the Colombian government removed the controversial provisions and obtained the approval of the High Council for Foreign Trade (Consejo Superior de Comercio Exterior) for the remaining text, which should now be enacted by mid-2014. The resulting text goes a long way towards simplifying and facilitating the Customs process, although it still has to undergo the litmus test of enforcement and be completed by parallel efforts to streamline operations of other border agencies. The reforms introduced in the new Code also address some of the requirements for allowing Colombia’s accession to the WCO Revised Kyoto Convention (RKC)\(^\text{124}\), including with respect to risk management and customs controls. The process for acceding to the RKC was launched in February 2013.

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\(^{124}\) International Convention on the Simplification and Harmonisation of Customs Procedures.
The OECD Trade Facilitation Indicators (Figure 23) show that Colombia performs better than the averages in the Latin America and Caribbean region and among the group of upper middle income countries in the areas of information availability, involvement of the trade community, advance rulings, fees and charges, simplification and harmonisation of documents, streamlining of procedures, internal border agency co-operation, external border agency co-operation and governance and impartiality. The country’s main weakness seems currently to lie in the area of automation, where it performs less well than the average in the above groups of countries. This score can be explained by the current limitations regarding the automation of the border process and the generalisation of risk management among border agencies, as described below. However, in order to reach the OECD average, Colombia will also need to further improve its trade facilitation performance in the areas of advance rulings, appeal procedures, and external border agency cooperation.

Figure 23. Colombia’s trade facilitation performance: OECD indicators

Notes: The OECD average includes 25 OECD countries\(^\text{125}\). UMICs are upper middle income countries according to the World Bank classification. Analysis is based on TFIs latest available data as of January 2013 and the set of TFIs as constructed in “Trade Facilitation Indicators: The Potential Impact of Trade Facilitation on Developing Countries’ Trade” (OECD Trade Policy Paper No. 144, 2013) for 107 countries outside the OECD area.

\(^{125}\) Australia, Belgium, Canada, Czech Republic, Denmark, France, Germany, Greece, Hungary, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States.
Box 8. The OECD trade facilitation indicators

To help governments improve their border procedures, reduce trade costs, boost trade flows and reap greater benefits from international trade, OECD has developed a set of trade facilitation indicators that identify areas for action and enable the potential impact of reforms to be assessed. They are as follows:

**Advance Rulings:** Prior statements by the administration to requesting traders concerning the classification, origin, valuation method, etc., applied to specific goods at the time of importation; the rules and process applied to such statements.

**Appeal Procedures:** The possibility and modalities to appeal administrative decisions by border agencies.

**Co-operation – External:** Co-operation with neighbouring and third countries.

**Co-operation – Internal:** Co-operation between various border agencies of the country; control delegation to customs authorities.

**Fees and Charges:** Disciplines on the fees and charges imposed on imports and exports.

**Formalities – Automation:** Electronic exchange of data; automated border procedures; use of risk management.

**Formalities – Documents:** Simplification of trade documents; harmonisation in accordance with international standards; acceptance of copies.

**Formalities – Procedures:** Streamlining of border controls; single submission points for all required documentation (single windows); post-clearance audits; authorised economic operators.

**Governance and Impartiality:** Customs structures and functions; accountability; ethics policy.

**Information Availability:** Publication of trade information, including on internet; enquiry points.

**Involvement of the Trade Community:** Consultations with traders.

OECD quantitative analysis for the group of upper-middle income countries, which includes Colombia, shows that the areas with the greatest impact on increasing bilateral trade flows and lowering trade costs are: formalities (procedures, documents, automation), governance and impartiality, and information availability. The indicators involvement of trade community, advance rulings and fees and charges also have a significant impact on trade flows.

Transparency and predictability of the border process

144. Colombia enjoys a relatively transparent and accessible border process. Information about applicable regulation and procedures is available on the websites of DIAN (www.dian.gov.co) and of the single window for foreign trade (Ventanilla Única de Comercio Exterior, www.vuce.gov.co). The DIAN website is thorough and well-articulated, offering easy to access information on tariffs and on procedures. Efforts are also devoted to ensuring that the site is regularly updated. The clustering of export or import related information on VUCE’s portal clarifies considerably the process for concerned users. In addition, a general enquiry system in English and in Spanish, included in the VUCE portal, and specific enquiry points on various regulation and border process issues in the DIAN and MCIT’s webpages allow users to request information and clarifications as necessary. However, the existence of two separate platforms, for Customs on the one hand and for other trade-related procedures on the other, rather than one all-inclusive single window, is still a limitation to the availability of information and user-friendliness of the border process, even though VUCE and DIAN are connected through web services in order to share information. This
limitation should be overcome when DIAN’s new management system MUISCA\textsuperscript{126} is finally connected with VUCE, as scheduled. For the time being, importers need to register separately in MUISCA for customs clearance purposes and in VUCE in order to obtain trade-related permits and import licenses. Interoperability of both systems is partial, hampering the exchange of information among the entities.

145. The predictability of the process should also be enhanced following the introduction in the new Code of advance rulings on all matters proposed in the draft WTO text on trade facilitation.\textsuperscript{127} The new provisions are largely in line with the negotiating text, ensuring the binding character of the ruling so long as the supporting information is accurate and circumstances have not changed,\textsuperscript{128} committing the administration to a 90 days issuance deadline and subjecting the ruling to the same appeal mechanism available for Customs matters. Whether the provisions on advance rulings will play their predictability-enhancing role will obviously depend on stakeholders’ buy-in; the administration could help promote the use of this tool through awareness-raising campaigns and by making available online tools on the Customs website through which advance rulings requests can be made.

146. Although there are no regular consultation mechanisms applying to the border process, Customs users are extensively consulted whenever new provisions are introduced or the existing ones amended. A case in point is the consultations effort undertaken during the elaboration of the new Customs Code and in particular the provisions on the Authorised Economic Operators and on the transition from the existing UAP and ALTEX programmes to the AEO programme (see below). DIAN also maintains regular contacts with users, including the Colombian Federation of Logistics Agents (FITAC\textsuperscript{129}), the National Business Association (ANDI), the National Exporters Association (ANALDEX\textsuperscript{130}) and local Chambers of Commerce concerning required formalities, applicable practices or working hours. Customs and border fees, formalities and requirements are periodically reviewed by the Committee of Tariffs, Customs and International Trade Affairs (so-called Comité Triple A)\textsuperscript{131} to ensure their continuing relevance and compliance with international obligations. If necessary, the Committee formulates recommendations to the Superior Council of International Trade with a view to promoting appropriate changes by the government.

Streamlining and simplification of border procedures

147. Customs declarations can be filed electronically on a 24 hours/7 days basis and electronic declarations represent more than 98% of the total of import declarations. However, while the current system already allows import declarations to be submitted up to 15 days prior to the arrival of the goods\textsuperscript{132}, only 9% of all declarations are currently submitted in advance (11.5% in terms of the goods’ value). Taking aim at the country’s commitment\textsuperscript{133} to streamline and simplify its border procedures so as to

\textsuperscript{126} Modelo Único de Ingresos, Servicio y Control Automatizado. Initially covering export declarations and manifest controls, MUISCA was gradually expanded to also include the import declarations, replacing the old SYGA system.

\textsuperscript{127} Advance rulings are currently only available for questions of classification, which have been provided in Colombia since 2000 (art 154 of DIAN Resolution 4240/2000).

\textsuperscript{128} With a maximum validity period of five years.

\textsuperscript{129} Federación Colombiana de Agentes Logísticos en Comercio Internacional.

\textsuperscript{130} Asociación Nacional de Exportadores.

\textsuperscript{131} Decree 3303 of 2006 requires the Comité Triple A to periodically review tariffs and fees or charges applicable to imports, users’ requests to modify tariff rates and customs practices and implementation of measures and their consistency with relevant international practices.

\textsuperscript{132} Article 119 of the current Customs Code.

\textsuperscript{133} In the article 5.2.2 of the Colombia-USA FTA.
expedite to the extent possible goods’ clearance within 48 hours from their arrival, the administration seeks to promote the pre-arrival processing of customs declarations, abolishing the counter-incentives that were included in the current regime and generalizing the mandatory payment of duties by electronic means. The Customs administration expects the enforcement of the new provisions to reduce the average clearance time by 39%, with 82% of goods cleared within 6 hours and only the 9% of goods undergoing physical inspection taking around 85 hours to be cleared. Yet, such a streamlining would also require the development and generalisation of a modern risk management system in Customs and other agencies present at the border, as well as a better integration of those agencies, such as the Colombian Agricultural Institute (Instituto Colombiano Agropecuario, ICA), the National Institute for Food and Drug Surveillance (Instituto Nacional de Vigilancia de Medicamentos y Alimentos, INVIMA), immigration or police authorities.

148. Indeed one of the main challenges in the border process relates to the management of documentary and physical controls by the border authorities. Customs use basic risk analysis and management, mainly based on the type of merchandise and the country of origin in order to distinguish low risk from high risk operations and target inspections on the later. Other agencies present at the border do not have selectivity systems for limiting physical inspections (including on the basis of quality certificates or the outcome of inspections at the port of origin). DIAN is currently working to further develop the risk management system, improving risk profiling based on the compliance record of concerned traders, reinforcing post-clearance audits and ensuring that information obtained thereby is fed back into the risk management system. ICA and INVIMA are at a reflection stage concerning risk management with technical assistance from Canada and IADB. The gradual development and implementation of risk management systems among these entities over the coming years should pay equal attention to “facilitating and expediting international trade without compromising control”, as specified in the risk management section of the new Customs Code. More generally, in order for the enhanced provisions and processes currently introduced to produce the intended trade facilitation effects, they will have to be complemented by a change of mindset and of the operating approaches of border officials.

149. According to the government, customs physically inspect on average 1% of all goods (10 to 15% of incoming goods), while around 3.5% of goods undergo sanitary or phytosanitary inspections by ICA or INVIMA (in the case of INVIMA this represents 100% of goods under the agency’s responsibility and ICA also applies 100% control on some products) and 5.8% of goods are inspected by the Antinarcotics police unit. A fraction of the goods may have to undergo multiple physical inspections by involved

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134 The current statute imposed significant penalties for changes in the declared consignment between the prior declaration and the arrival of the goods; these are abolished under the new Customs Code. Furthermore, duties currently have to be paid as soon as the import declaration has been presented and accepted and prior to the performance of a risk analysis and the eventual documentary or physical inspection of the goods; the payment is now shifted until after the release of goods.


136 Article 475-1 of the current Customs Code.

137 This is pursued both via the elaboration of advanced risk analysis, implementation of a comprehensive risk management software (UNISIS) integrated with the Customs system co-financed by DIAN and USTR, and improvements in data inter-change. Investments in border control infrastructure (e.g. scanners) complement this effort.

138 Article 520.

139 A number of those, performed on goods for exportation, on the basis of cooperation protocols concluded between INVIMA and sanitary and phytosanitary authorities in the importing countries.

140 Importers contend that inspection rates are actually higher.
agencies, both inside the port and once they have left the Customs zone. The impact of numerous inspections, exacerbated by the lack of coordination, variations across border facilities and delays linked to staffing and facilities shortages of control agencies also drive costs up.

150. Since 2011 a simultaneous inspection module (SIIS) in VUCE permits the co-ordination of the interventions of border agencies with respect to goods exports: a corresponding system for imports does not yet exist but is under design and expected to become operational in 2014. The requests for inspection of imports by ICA and INVIMA and payment of related fees and charges is thus far managed via separate systems, and inspection and clearance records have to be transmitted manually to the rest of the concerned border agencies. The incorporation of these separate systems in VUCE should help alleviate the burden borne by the traders on the condition that physical inspection by various entities is also coordinated. Since 2012, ICA, INVIMA are obliged to perform joint inspections in exports of containerized cargo at maritime ports.\footnote{Circular 001 of 2012, available here: http://www.ica.gov.co/getattachment/447593b6-e462-44f9-8d1c-42c2633882d2/2012CI01.aspx [last accessed 18 September 2013].}

151. Since September 2011, Colombia introduced the concept of Authorised Economic Operators, which will ultimately replace the existing systems of Permanent Customs Users (UAP) and of Frequent Exporters (ALTEX)\footnote{Decree 3568 of 27 September 2008.}. UAP and ALTEX enjoy special prerogatives, including reduced Customs inspections, the separation of release from clearance, the periodic payment of their fees and duties by depositing a global guarantee and the possibility to lodge declarations directly, without using a customs broker\footnote{The use of a Customs broker is currently mandatory for all imports when the f.o.b. value is more than USD 1 000. The new Customs Code eliminates the mandatory use of a Customs broker for all users.}. The status of UAP and ALTEX is granted on the basis of trade volume and value criteria\footnote{In the 12 months preceding the submission of their application, applicant UAPs must have made imports with an f.o.b. value of at least USD 5 million - or with this annual average value in the three years preceding the application - or filed at least 100 import declarations. ALTEX must have made exports with an f.o.b. value of at least USD 2 million.}, but does not comprise any elements of increased reliability or compliance records and concerns only Customs operations. New requests for the UAP and ALTEX status are no longer possible and the system will be phased out by 2017 for companies and individuals currently covered by it.

152. On the contrary and in accordance with the concept as defined by the WCO SAFE Framework of Standards, the status of AEO corresponds to the notion of a trusted operator which complies with supply chain security standards; it can be granted, in addition to importers and exporters, to any other economic operator at the border, including brokers, carriers, terminal operators, etc. and covers the operations of all border agencies. Applicants to an AEO status have to demonstrate high quality internal processes and good compliance records. They are entitled to a series of facilitations beyond what was proposed to UAP and ALTEX, including the separation of release from clearance without the requirement to deposit global guarantee, simplified Customs controls, preferential export lanes, and reduced physical inspections from the Antinarcotics police. AEOs also enjoy the possibility to have their merchandise inspected by DIAN or ICA at their premises both for exports and for imports\footnote{This possibility already existed for ALTEX operators but for DIAN inspections only.}. As prerogatives and requirements to obtain the status of ALTEX or UAP differ from those of AEO, DIAN has undertaken an extensive information campaign to increase awareness of potentially concerned economic operators.\footnote{See, for instance www.dian.gov.co/descargas/operador/index.htm.} It would be useful for
these efforts to be pursued in the near future, because the completely different philosophy between the old and the new system has created significant apprehension among current and potential users.

### Box 9. Expediting the border process in the port of Cartagena

The port of Cartagena is the biggest port in Colombia in terms of volume—and second after Buenaventura in terms of value—, the first container hub, hosting 65% of the country’s total container traffic (48% of imports and 68% of exports) and home to the most important Customs house for maritime transport, second only to Bogotá airport with respect to total trade. It contains 52 terminals, 4 of which are public.

Following the government’s decision to pursue economic liberalization, concessions to private operators have been granted in four Colombian ports, including Cartagena in 1993. The initial 20 year concession has been extended to 40 years in 2003 and the port’s private stakeholders undertook substantial upgrading of its equipment, which allowed the port to position itself as a significant hub in the region. 70% of the port’s movements concern transshipment to destinations in the Caribbean region which lack the capacity to receive big vessels, the rest involving domestic cargo (600,000 TEUs annually, or 50% of the total movements in Colombian ports). The port of Cartagena expects in the coming years to receive 20 million TEU via the Panama Canal on the way to other Caribbean destinations.

#### Breakdown of costs to export and import in Cartagena, USD

![Chart showing breakdown of costs for exports and imports in Cartagena, USD](chart.png)

Among the most significant challenges facing the port of Cartagena in its endeavours to increase turnover and improve productivity, the operator identifies the difficulty to plan in advance cargo movements, inspections and warehousing and to optimize the management and use of port facilities and equipment. The two main causes for these difficulties are related to the lack of advance information from private operators to the port authorities due to the poor uptake of pre-arrival declaration possibilities; and the need to improve coordination between the various border agencies, in particular as regards planning for physical and documentary controls and inspection. In the absence of coordinated physical inspections of border agencies for imports the Cartagena port has put in place an informal system of alerts, ensuring the presence of customs officials that can perform inspections at the same time when an inspection from ICA or INVIMA has been planned in the port.

Furthermore, the movement of goods to and from Cartagena is impaired by the cost of inland transportation in Colombia, which is one of the highest in the region. According to the 2013 Doing Business indicators, inland transportation and handling accounts for 66% of costs for exporting and 77% of costs for importing via the Cartagena port and the situation is no different in the other Colombian ports (World Bank, 2013). The poor quality of road infrastructure and inefficient transport services mean that much of the efficiency gains obtained by streamlined processes in the port are not translated into reduced time and costs for the concerned goods.

The private sector (2011-2012 National Competitiveness Report of the Consejo Privado de Competitividad; ANDI 2011 Competitive Agenda; WEF 2011-2012 Global Competitiveness Report) identifies infrastructure, transportation and logistics among the most important bottlenecks stifling Colombia’s competitiveness and calls for significant investments in roads and highways, railways, airports, water transportation and ports, and the design of a multi-modal transportation systems.

Overall, Colombia’s on-going efforts to modernize and streamline its border process are commendable. They could in the medium run greatly facilitate trade and enhance the competitiveness of
the economy, provided that the mind-set and operating practices in the field evolve smoothly in the same direction as provisions on the books and that they are complemented by parallel efforts to streamline operations outside the Customs agency. The two most important challenges at this stage are related to the management of documentary and physical controls by border agencies, which critically calls for an improvement of risk management in a way that enhances efficiency and promotes facilitation; and requires better coordination between the various agencies so as to optimize equipment and infrastructure use and reduce costs for traders. Efforts to reinforce infrastructure to and from the country’s main entry points and internal transportation network would ensure that any benefits from trade facilitation trickle down to the whole economy.

2.4. Encouraging the use of internationally harmonised measures

154. The application of diverging standards and regulations for like products in different countries – often explained by natural and historical reasons relating to climate, geography, natural resources or production traditions – confronts firms wishing to engage in international trade with significant and sometimes prohibitive costs. In order to reduce the costs created by regulatory divergence, governments can rely on internationally harmonised measures, such as international standards, as the basis of domestic regulations, when they address the policy objectives set at the national level in an appropriate manner. By virtue of the WTO Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures, the multilateral trading system encourages countries to base their technical requirements on international standards and to avoid conformity assessment procedures that are stricter than necessary to attain regulatory objectives.

155. Despite the development of global standards, there are still many areas where specific national regulations prevail, preventing manufacturers from selling their products in different countries and from enjoying full economies of scale. The concept of internationally harmonised measures refers to two complementary scenarios: reliance on international standards as the basis of domestic standards and regulations (where this is feasible and appropriate) and acceptance of foreign measures as equivalent to domestic measures in attaining a given regulatory objective.

156. Colombian standardisation, quality, certification, accreditation and metrology policies are defined by MCIT, which coordinates the National Quality System with the aim of promoting product safety and quality, consumer protection and the competitiveness of the productive sector. These policies were shaped by a series of White Papers and in particular CONPES 3446 of 2006, which established the National Quality Policy; Decree 3527 of 2008 which outlined the National Competitiveness Policy, highlighted quality infrastructure a building block of competitiveness and created the Intersectoral Commission for Quality; and CONPES 3582 of 2009 defining the national policy on science, technology and innovation and emphasizing the need to enhance the international recognition of the national reference laboratories.

157. Much of the standardisation, quality testing, certification, and accreditation work is carried out by two private or semi-private entities, the Colombian National Standardisation and Certification Institute (ICONTEC) and the Colombian National Agency for Accreditation (ONAC) – described further below. The work is technically and scientifically supported by the National Institute of Metrology (INM). Finally, sanitary and phytosanitary policy is in the hands of the Colombian Agricultural Institute (ICA) and of the National Institute for the Surveillance of Food and Drugs (INVIMA). The National Quality System, composed of all the above agencies and the Superintendency for Industry and Trade (SIC), in charge of legal metrology, establishes, coordinates, directs and oversees the national industrial quality control, weights, measures and metrology programmes and organizes the required quality control and metrological laboratories.
158. INM coordinates scientific and industrial metrology, carries out research, provides metrological services, supports metrological control activities and disseminates measurements. INM was established in 2011, absorbing the scientific and industrial metrology attributions previously belonging to the SIC and the activities of the Centre for Quality Control and Metrology (CCCM).\textsuperscript{147} It is attached to MCIT but enjoys budgetary, technical and administrative autonomy. Since its creation it has pursued cooperation with neighbouring countries and has concluded Memoranda of Understanding with Argentina’s National Institute of Industrial Technology (INTI) and Brazil’s National Institute of Metrology, Quality and Technology (INMETRO). In May 2013 it has concluded a Mutual Recognition Agreement (MRA) with the International Committee for Weights and Measures (CIPM), which will allow international recognition of national measurement standards and calibration and measurement certificates issued by the INM.\textsuperscript{148}

159. Although the current institutional framework generally operates in favour of international harmonisation of standards and technical regulations, much of the regulatory foundation of this policy is still discretionary on concerned entities. This policy was supported by the political priority successive governments in recent years have attached to harmonisation as an international competitiveness tool (as evidenced by the relevant White Papers), but could lose steam if political priorities were reversed. Moves to reinforce and consolidate that regulatory framework in order to emancipate it from the political agenda would be clearly desirable.

160. Furthermore, a policy in favour of international harmonisation is not sufficient to overcome the hurdles of regulatory divergence as long as the system for streamlining conformity assessment procedures is not yet fully operational, as will be described in the next section. At this stage, the most significant challenges facing Colombian standardisation, metrology, conformity assessment and accreditation concern infrastructure and capacity. In particular, insufficiently developed laboratory and testing facilities restrain industry capacity to expand globally by meeting requirements and demand for certified products worldwide. The reinforcement of laboratory and testing capacity is at the centre of the standardisation, certification and accreditation institutions’ strategic policies for 2012-2020. For instance, INM devotes annually USD 3 million for investments, against USD 5 million for operating costs, and a recent reform allowed for channelling of 10% of national royalties’ revenue towards R&D activities, including building laboratories.

**Technical regulations**

161. Colombia’s policy on standards and technical regulations, framed by Decree 2269/1993, is based on the principle that standards and technical regulations should not create technical obstacles to regional or international trade, either intentionally or de facto.\textsuperscript{149} It is also in principle oriented towards a system of voluntary standards, initiated and elaborated by the industry, academia and consumers as a foundation for the economy’s competitiveness, and where mandatory technical regulations are issued – only in the specific cases where they are deemed necessary - based on available voluntary standards. Step 6 of the PEERT (see above, section 2) calls for domestic regulatory bodies elaborating technical regulations to

\textsuperscript{147} The CCCM (Centro de Control de Calidad y Metrologia) was created in 1977 in cooperation with Germany’s metrology centre Physikalisch Technische Bundesanstalt (PTB) to address Colombia’s metrology needs, train testing and metrology professionals and support the creation of testing and metrology laboratories.

\textsuperscript{148} Colombia has officially become a full member on 6 February 2013 on the basis of the Law 1512 of 6 February 2012 ratifying the Convention.

\textsuperscript{149} The principle is reiterated in a series of legal provisions, including Law 170/1994 enacting the 1994 WTO agreement in Colombia, Andean Community Decisions 376, 419 and 562, Resolution 1715/2005 as amended in 2009 and Decree 2360/2001 launching a review of official Colombian standards to ensure they do not create technical obstacles to trade. A more detailed description of the principal legal instruments relating to standardisation in Colombia is included in section 2.1.
investigate the existence of and seek to align to corresponding Colombian technical standards (NTCs), but also to relevant international standards or technical regulations of third countries, as provided by articles 2.4 and 2.7 of the WTO TBT agreement. However, at this stage this instrument is only binding on MCIT, while other regulatory authorities follow their own procedures and seem to pay less attention to regulating sparingly and by reference to existing voluntary standards domestically and abroad. Although technical regulations are supervised and controlled by the Superintendency of Industry and Trade (SIC), SIC does not have the authority to monitor the recognition of equivalence of foreign measures granted by the competent regulatory bodies. The obligation introduced by new Decree 1844 of 2013 to submit all new technical regulations prior to their promulgation to MCIT’s Directorate for Regulation for review and comments should help ensure a better enforcement of TBT related requirements among regulatory authorities.

162. In the absence of a standardised procedure for determining whether foreign measures are equivalent to domestic ones, the policy of accepting the equivalence of foreign measures is not consistently implemented across the Colombian administration. A relative safeguard is provided within SIC’s Circular Única (consolidating circular) of 2001 for products complying with foreign measures that have not been recognised as equivalent to domestic measures. Concerned manufacturers or importers that wish to import such a product can apply prior to importation for a declaration of equivalence by the authority who issued the relevant domestic regulation, indicating the corresponding foreign measure and supplying the demonstration of the equivalence between the two. Once accepted, this equivalence enjoys general applicability and is published on the website of the issuing authority, of MCIT and of SIC. In practice, this is quite a burdensome process, as authorities such as INVIMA may take a very long time to act upon those applications and SIC does not have the authority to monitor or expedite the process. The on-going revision of Decree 2269/1993 in order to extend the mandatory character of PEERT provisions to other bodies would clearly be valuable, as it would further promote and systematize the recognition of equivalence of foreign technical regulations and measures. Colombia could also consider request regulators to specifically address the implications of adopting measures that deviate from existing international standards in the planned RIA, in accordance with some of OECD best practices.  

163. Where it takes place, the acceptance of equivalence takes the form of a direct reference within the technical regulation of foreign standards that can be used as a basis for testing, conformity assessment or type-approval, instead of the corresponding domestic requirements. For instance, the Colombian technical regulation on car tyres accepts the equivalence of testing undertaken on the basis of specific UN/ECE regulations, Japanese, or USA standards, while the technical regulation on car brakes accepts the results of conformity assessment undertaken against specific USA, Canadian, Australian, Chinese standards, Japanese regulations, and European directives and standards, or standards whose references correspond to the above standards and regulations, in particular the recommendations of document TRANS/WP.29/343 Rev.18 of the UNECE World Forum for Harmonization of Vehicle Regulations (WP29). In the framework of the Andean Community work is also underway to harmonise technical regulations for labelling of clothing and footwear, with a view to facilitating trade between Andean countries. However, recognizing the equivalence of foreign standards and technical regulations does not solve the problem of multiple certification obligations still facing Colombian businesses, inasmuch as it only concerns the

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150 For instance in Australia.

151 Respectively E/ECE/324 # 30, E/ECE/324 # 54 and E/ECE/324 # 75; JIS D 4230; and FMVSS-109, FMVSS-139 and FMVSS119.

152 Respectively FMVSS 105, 121 FMVSS, or FMVSS 135; CMVSS 135; ADR 31, ADR 35A, or ADR 35/01; GB 12676; the Japanese regulation of the Ministry of infrastructure, transport and tourism No. 1490 of November 9, 2007 applicable only for buses and trucks; and the European directive 71/320/EEC (98/12) applying standards ECE R13, ECE R13-H, ECE R13-05 or ECE R13/06.
requirement and not the process by which conformity to this requirement will be certified (see following section).

164. Alignment with international standards in the area of sanitary and phytosanitary (SPS) measures is first of all pursued upstream: Colombia seeks to participate actively in the process of elaboration of the Office International des Epizooties (OIE), Codex Alimentarius and IPPC standards in order to ensure that they are consistent with the country’s specific circumstances and can be adopted without amendments. At a second stage, and quite comparably to the process described above on technical regulations, government entities elaborating domestic regulation on SPS issues seek to identify corresponding international standards and determine their appropriateness for Colombia. This is established on the basis of a review of the technical information contained in those standards and a risk assessment undertaken by the Risk Analysis Unit of the National Institute of Health under the Ministry of Health and Social Protection (MSPS). Risk analysis in primary production is in the hands of ICA, which is also responsible for regulating, preventing, detecting, monitoring and eradicating phytosanitary and animal health problems; while INVIMA handles sanitary aspects mainly related to processed food trade, including monitoring of domestic beef slaughtering and processing plants. Responsibility for notifying SPS measures to the WTO lies with MCIT.

165. According to the government, Colombian SPS measures are generally aligned with international standards at least partially. For instance, INVIMA Resolution 2906/2007 establishing maximum residue limits of pesticides in food fully adopts the corresponding Codex Alimentarius standards. However, Colombia’s trading partners complain about the level of compliance with international SPS standards.

166. As regards SPS issues though, the challenges appear to cover not only the formulation of related regulations but also their implementation by concerned entities at the local level. Colombia’s SPS system is not part of the National Quality System and has not developed at the same pace as the various components of the SNC. Local health authorities vary widely in terms of human capacity and expertise, and generally lack the capacity to undertake laboratory analysis beyond a certain level of complexity, for which they have to resort to INVIMA’s national reference laboratory. The MSPS undertakes training and technical assistance programmes in order to reinforce local level capacities, in particular in the areas of inspection, monitoring and control, and in that context it produces and disseminates manuals and guides for the inspection of specific products, incorporating international phytosanitary standards. MSPS training and technical assistance programmes are however held back by shortages of means and personnel, both at its own end and among the receiving entities, and by a significant turnover of trained officials, which limits the benefits accruing from the programmes.

**Standard setting**

167. There are two categories of technical standards in Colombia: the Colombian Technical Standards (NTC), developed by the Colombian National Standardisation and Certification Institute (ICONTEC), Colombia’s national standardisation body; and the sectoral technical standards (NTS), drafted by a sectoral standardisation body for a specific sector. As described in detail in Section 2.1 on the transparency of technical regulations, Colombia applies technical regulations (RT) issued either domestically by ministries, regulatory commissions and decentralized bodies, or at the Andean Community level. Technical


154 They usually draw on the technical standards (NT), “based on the consolidated results of science, technology and experience” and approved by a recognized body. All three categories are defined in Decree 2269/1993.
regulations produced domestically are often based on NTCs, which are previously created by ICONTEC, or elaborated upon MCIT’s call with a view to address specific policy objectives. Furthermore, ICONTEC provides expert feedback to MCIT regarding the incorporation of technical standards into technical regulations under elaboration and the expected regulatory impact of the latter.

168. ICONTEC was created in 1963 as a private not-for-profit organisation, composed of representatives from the private sector and the government, in order to promote the development of technical standards, quality assurance, and product certification. It is exclusively self-funded, up to 80% by means of its certification, calibration and training activities, the remaining 20% coming from its standardisation activities (sale of standards and affiliates’ subscriptions). Recognized as Colombia’s national standardisation body since 1984, it represents Colombia in international and regional standardization organizations such as the International Standards Organization (ISO), the International Electrotechnical Commission (IEC), the Pacific Area Standards Congress (PASC), the World Forum for Harmonization of Vehicle Regulations (UNECE/WP.29) and is a member of the Pan American Technical Standards Commission (COPANT). It enjoys recognition by the American National Standards Institute (ANSI), the German Accreditation Association (TGA), the Chilean National Standardization Institute (INN), and the Peruvian standardization institute (INDECOPI) among others, and maintains offices in Chile, Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua, Dominican Republic and Peru.

169. ICONTEC’s standardisation work takes place in 170 Technical Committees covering a wide range of issues and topics on metrology, occupational health, air, soil and water quality, solid waste, bar codes, conformity assessment, geographic information, environmental assessments, food and vegetable standards, and construction products, among others. The Technical Committees develop around 300 standards every year in addition to conducting reviews of existing standards. Standardisation work follows an annual plan (PAN) defined by ICONTEC on the basis of needs and requests expressed by the private sector and the administration, as well as the Institute’s own assessment. The PAN is presented at the Intersectoral Commission for Quality and published on ICONTEC’s website in advance of its implementation in order to raise awareness about upcoming standardisation activities and improve the involvement of concerned stakeholders.

170. ICONTEC has accepted the WTO Code of Good Practice for the Preparation, Adoption and Application of Standards and thereby committed to ensure that standards are not prepared with a view to or the effect of creating unnecessary obstacles to trade and are based on internationally harmonised standards where possible and appropriate. About 30% of all standards in the ICONTEC database are based on ISO standards and 20% based on ASTM standards, reflecting the Colombian industry’s dilemma in pursuing harmonisation against two leading standardisation models. These percentages are rather limited compared to the stock of aligned domestic standards in some OECD countries (62% in France, 78% in Canada or 90% in Sweden).\(^\text{155}\) Despite its role in coordinating and managing the National System of normalization, accreditation, certification and metrology and in formulating the policies in these matters, MCIT does not have formal supervisory authority over the compliance of ICONTEC or other standard setting bodies with this policy of standardisation by reference to relevant international standards. However, MCIT is represented in the governing bodies of ICONTEC, as well as in its technical committees.

171. ICONTEC is also accredited by ONAC for product certification, quality assurance, and environmental systems certification and in that capacity it is a member of the International Certification Network IQNet. Certification by ICONTEC is greatly reliant on laboratory availability and can take between two weeks and one month. An additional challenge to the Institute’s certification activities is the low demand for product certification, even among export oriented companies. In view of that, ICONTEC

\(^{155}\) OECD Review of Regulatory Reform in Australia, 2010.
works in cooperation with the Centro para el Aprovechamiento de los Acuerdos Comerciales\textsuperscript{156} to identify productive areas\textsuperscript{157} and geographical destinations\textsuperscript{158} for which certification would need to be developed in priority.

172. Products of public health interest as fit for human consumption are certified by INVIMA, in coordination with the regional health authorities. INVIMA also makes proposals to the Ministry of Health and Social Welfare for the formulation of policies and regulations concerning quality control and sanitary surveillance in relation to those products.\textsuperscript{159}

173. Overall, while standardisation and certification policy in recent years has gradually promoted the use of internationally harmonised measures, this still rests on a framework that is discretionary on concerned authorities and relies on the continuation of momentum at the political level. Furthermore, Colombia’s limited testing and certification capacity still restrains the potential of internationally harmonised measures to enhance the openness of the domestic market and the access of Colombian production to globalised markets.

2.5 \textit{Streamlining conformity assessment procedures}

174. Conformity assessment refers to measures taken to assess the conformity of products, processes and services to specific requirements or standards.\textsuperscript{160} These procedures may have the effect of facilitating trade, or they may act as technical barriers to trade. Public policy objectives like health, safety and the environment require rigorous and efficient conformity assessment procedures, which often generate significant costs of compliance for producers. However, when designed in a manner that is not more burdensome than necessary to address the public policy objectives, these procedures lead to high consumer confidence and increased sales, helping firms recoup compliance costs.

175. An important source of compliance costs for internationally traded goods is the need to demonstrate the compliance of imported products with applicable regulations in the import country through testing and certification accepted in that country. Procedures and mechanisms developed to facilitate acceptance of conformity assessments conducted by foreign conformity assessment bodies as equivalent to those conducted by domestic ones can help reduce these costs. Such mechanisms include mutual recognition agreements (MRAs) whereby trading partners agree to mutually accept conformity assessments carried out by conformity assessment bodies located in partner countries. The success of international endeavours to achieve mutual recognition is naturally reliant on the quality of testing, certification and accreditation. In order to ensure the adequacy of these activities to the needs of evolving markets, governments increasingly leave them in the hands of private entities. National accreditation bodies, which usually operate under the supervision of the public authorities, are responsible for inspecting and acknowledging the competence and reliability of conformity assessment performed domestically or abroad; the establishment of a network of mutual recognition agreements among accreditation bodies, such as the International Accreditation

\textsuperscript{156} A specialised public body aimed at coordinating public and private responses to the opportunities created by the growing body of Colombia’s FTAs.

\textsuperscript{157} Three areas have been identified at this stage: stoves, high pressure boilers and corrugated rods.

\textsuperscript{158} Current targets include Brazil, Mexico and Central America.


\textsuperscript{160} This implies the testing of the product by the certification body directly or by subcontracting to an accredited laboratory, or auditing the manufacturer’s management or quality system as the case may be. The certification body will regularly follow-up to ensure that the conditions which enabled a certificate to be granted are still in place.
Forum (IAF), or the International Laboratory Accreditation Cooperation (ILAC), allows multiplying the validation effect across countries by sharing inspection results.

176. In Colombia, conformity assessment is mandatory in the case of products subject to a technical regulation: prior to marketing, manufacturers, importers and marketers must supply a certificate of conformity in order to demonstrate compliance with the RT. In accordance with the procedure established in the PEERT, the conformity against applicable standards or technical regulations can be assessed and certified either by domestic accredited laboratories and certification bodies, or by foreign laboratories and certification bodies whose results are validated by a certification body accredited in Colombia, or covered by a mutual recognition agreement (MRA) concluded between Colombia and the country of origin of the products. This process of validation allows, for instance, products certified by certification bodies in Argentina, Venezuela, Brazil, Chile, Mexico and the United States, with which ICONTEC has developed recognition agreements, to be accepted by MCIT in accordance with the PEERT procedure.

177. Colombia has concluded in 1997 a MRA with Ecuador161, covering the recognition and automatic acceptance of certificates of conformity with technical regulations applicable in the two countries. Furthermore, since June 2001 goods certificates produced by certification bodies accredited in any of the four member countries of the Andean Community are recognized and accepted in Colombia by virtue of CAN Decision 506. Finally, Colombia pursues negotiations with Chile, Mexico and Peru for the conclusion of a series of MRAs in the context of the Pacific Alliance. Discussions with Chile on a possible MRA on cosmetics are at an initial stage.

178. Certification and conformity assessment procedures are subject to the same principle of avoiding the creation of technical obstacles to trade as technical regulations and standards, by reference to TBT articles 2.7 and 6.1. However, as is the case with technical regulations, the predictability and stability of the system is undermined by the fact that the PEERT procedure is currently only binding within MCIT. Regulatory authorities outside MCIT apply each their own procedures for assessing conformity and each technical regulation determines which of the above procedures is applicable to the requirements that it establishes, depending on the level of risk involved. They generally do not accept foreign certificates, even if they have been validated by a certification body accredited in Colombia, unless they originate from an Andean Community country or a country with which Colombia has concluded a MRA. Conscious of this drawback, the administration is currently reviewing Decree 2269/1993, setting the national standardisation, certification and metrology policy, in order to introduce a unique conformity assessment procedure for all regulators. The amended decree should be complemented by measures meant to promote awareness and buy-in of domestic entrepreneurs.

179. Beyond the discretionary character of the streamlined conformity assessment procedure outside MCIT, a significant problem of the conformity assessment and certification system in Colombia still concerns the insufficient testing and certification capacity. The need to improve the country’s infrastructure of laboratories was highlighted by the National Planning Department (DNP) and the MCIT and a diagnostic document is currently in the process of elaboration. The DNP is also elaborating a CONPES document on a national laboratories policy, and a recent reform of the national royalties system allowed the regional commissions to decide channelling some of the royalties into the development of new laboratories. Furthermore, in June 2013 MCIT commissioned an evaluation study of the National Quality Policy162 and of the activities of the national quality system, in order to assess the effects of the institutional changes brought by the policy on Colombian standardization, technical regulations, conformity assessment, accreditation and metrology, and to measure its contribution on the competitiveness of

161 The MRA was renewed in 2012.
162 Contained in CONPES 3446 of 2006.
Colombia’s productive sector and its access to international markets. The results of the study, expected by December 2013 should help further strengthen the national system of quality and to increase the competitiveness of Colombian companies.

180. Addressing the problem of testing and certification capacity has also been one of the core objectives of the Colombian National Agency for Accreditation (ONAC). ONAC was created in November 2007 on the foundations of CONPES 3446 of 2006, establishing the National Quality Policy and containing a roadmap for quality infrastructure. ONAC awarded its first accreditation in 2009, recuperating the accreditation functions previously held by SIC. From February 2009 to July 2011 it has accredited 458 conformity assessment bodies, while in the course of 2012, 171 more accreditations have been awarded. At the end of September 2013, there were in Colombia 26 bodies accredited for product certification, 13 accredited for the certification of management systems, 25 accredited for the certification of persons, 48 inspection organisations, 107 calibration laboratories, 154 testing laboratories and 4 clinical laboratories. The accreditation powers of SIC were abolished in 2010, but accreditation can also be undertaken by other entities, including ICA, INVIMA, the Institute of Hydrology, Meteorology and Environmental Studies (IDEAM), the National Institute of Forensic Medicine and Forensic Sciences, as well as private entities, in accordance with requirements laid down by the MCIT.

181. ONAC is a not-for-profit semi-public entity, capitalised up to 60.3% by public funds and by private sector participation for the remaining 39.7%. At its creation, technical assistance and capacity building have been provided by the European Union, the United States and the German Metrology Institute (PTB). ONAC’s operations are fully self-funded with revenue from its certification and accreditation activities. Its activities and programmes are under the administrative supervision of the MCIT. ONAC validates conformity assessment results issued by foreign laboratories and certification bodies by certifying the competence of the concerned foreign bodies to assess conformity against applicable Colombian technical regulations. ONAC-accredited certification bodies can also certify conformity with foreign technical standards declared as equivalent to a Colombian technical regulation. In order to ensure that no specific interest groups drive ONAC’s decisions, ONAC’s Executive Board’s (Junta Ejecutiva) has decided to publish the minutes from their meetings on ONAC’s website. A further step could be to invite interested stakeholders to selected sessions for consultation.

182. In order to benefit from the multiplier effect of international recognition of accreditations, ONAC has actively pursued membership to international accreditation networks. It is a full member of the Inter American Accreditation Cooperation (IAAC) since April 2009, and of ILAC since April 2014. In March 2014, ONAC became a member of the Multilateral Recognition Arrangement for Testing and Calibration Laboratories of IAAC. ONAC was also accepted as an associated accreditation body to IAF in February 2010. Membership in these networks allows ONAC to offer to the certification bodies it has accredited the international recognition of equivalence of their conformity assessment results without additional accreditations by other ILAC members. Likewise, ILAC membership should facilitate the recognition of certification results undertaken by firms abroad without the need to undergo multiple certifications. Furthermore, since August 2011 ONAC has pursued in parallel the international recognition by IAAC and ILAC of the accreditations it has awarded to calibration and testing laboratories.

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164 As of May 2013. The initial private sector participation to ONAC’s capital raised from 21% at the moment of its creation. Government participation in ONAC’s capital is meant to decrease over time, so as to allow the transition of ONAC to a private corporation. The government will nevertheless conserve the nine seats it holds in ONAC’s Board of Directors.
Table 10. Overview of accreditation activities in Colombia

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</thead>
<tbody>
<tr>
<td>N° ISO norm CAB</td>
<td>#</td>
<td>%</td>
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<td>%</td>
<td>#</td>
<td>%</td>
<td>#</td>
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</tr>
<tr>
<td>1 17020 CDA</td>
<td>109</td>
<td>59%</td>
<td>198 55%</td>
<td>82%</td>
<td>243 46%</td>
<td>23%</td>
<td>3 3%</td>
<td>263 40,8% 8,2%</td>
</tr>
<tr>
<td>2 17024 CRC</td>
<td>58</td>
<td>31%</td>
<td>95 26%</td>
<td>64%</td>
<td>121 23%</td>
<td>27%</td>
<td>1 1%</td>
<td>159 24,7% 31,4%</td>
</tr>
<tr>
<td>3 17024 OCP</td>
<td>0</td>
<td>0%</td>
<td>0 0%</td>
<td>N.A.</td>
<td>2 0%</td>
<td>N.A.</td>
<td>2 2%</td>
<td>4 0,6% 100,0%</td>
</tr>
<tr>
<td>4 15189 LCL</td>
<td>0</td>
<td>0%</td>
<td>0 0%</td>
<td>N.A.</td>
<td>2 0%</td>
<td>N.A.</td>
<td>0 0%</td>
<td>3 0,5% 50,0%</td>
</tr>
<tr>
<td>5 17025 LAB</td>
<td>11</td>
<td>6%</td>
<td>30 8%</td>
<td>173%</td>
<td>65 12%</td>
<td>117%</td>
<td>54 49%</td>
<td>88 13,7% 35,4%</td>
</tr>
<tr>
<td>6 17025 LAC</td>
<td>0</td>
<td>0%</td>
<td>17 5%</td>
<td>N.A.</td>
<td>48 9%</td>
<td>182%</td>
<td>28 25%</td>
<td>70 10,9% 45,8%</td>
</tr>
<tr>
<td>7 17065 CPR</td>
<td>1</td>
<td>1%</td>
<td>6 2%</td>
<td>500%</td>
<td>12 2%</td>
<td>100%</td>
<td>5 5%</td>
<td>17 2,6% 41,7%</td>
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<tr>
<td>8 17021 CSG</td>
<td>3</td>
<td>2%</td>
<td>5 1%</td>
<td>67%</td>
<td>10 2%</td>
<td>100%</td>
<td>1 1%</td>
<td>10 1,6% 0,0%</td>
</tr>
<tr>
<td>9 17020 OIN</td>
<td>4</td>
<td>2%</td>
<td>11 3%</td>
<td>175%</td>
<td>24 5%</td>
<td>118%</td>
<td>17 15%</td>
<td>30 4,7% 25,0%</td>
</tr>
<tr>
<td>Total</td>
<td>186</td>
<td>100%</td>
<td>362 100%</td>
<td>95%</td>
<td>527 100%</td>
<td>46%</td>
<td>111 100%</td>
<td>644 100,0% 22,2%</td>
</tr>
</tbody>
</table>

Note: CAB- Conformity Assessment Body; CDA- Centre for Automotive Diagnostics; CRC- Centre for Drivers Qualifications; OCP- Certification Body for People; CGS- Certification Body for Management Systems; LCL- Calibration Laboratories; LAB- Testing Laboratories; LAC- Clinical Laboratories; CPR- Certification Body for Products; OIN- Inspection Body.

183. Colombia is a recent player in the area of conformity assessment and accreditation. Steps have been taken in the right direction but have not yet fully produced results. The future accession of the Colombian accreditation agency to the main international accreditation networks should bring a very welcome boost to the efforts for overcoming the cost implications of regulatory divergence for domestic and foreign business alike.

3. Protection of Intellectual Property Rights

184. Colombia has adopted an aggressive policy of intellectual property rights (IPR) protection in recent years as a part of the country’s strategy to improve the investment climate and attract foreign investors. This is reflected in the inclusion of advanced IP provisions in Colombia’s trade and investment agreements, ratification of a number of international IP treaties, improvement in the functioning of the IP-related institutions and heightened enforcement efforts, among other initiatives. As a result, Colombia’s legal framework for IP protection is well developed, especially given the country’s per capita income levels, and the country is taking an active role in a number of cutting-edge IP initiatives in the region, such as the introduction of the Madrid system for trademark filings or patent prosecution highways.

185. Despite this progress, numerous challenges remain, in particular in regards to enforcement of IP infringements. According to most observers, high rates of optical disk and digital piracy are still a significant problem, and the country’s weak judicial system and limited IP knowledge of enforcement authorities and judges hampers the ability of the rights-holders to assert their rights formally protected by the legal framework. Last but not least, while interagency coordination has improved, notably through the creation of the Intersectoral Commission for Intellectual Property (CIPI), further steps will need to be taken to ensure coherence on IP protection among government agencies. Providing the national Patent and Trademark Office (PTO) with an appropriate level of independence and resources, and ensuring adequate IP training for officials dealing with IP protection could assist in this task.

186. Overall, Colombia is an emerging IP user with an ambitious IP agenda, but faces significant challenges related to a large informal sector and a market for counterfeited and piracy goods, limited financial resources and IP utilisation capacity of domestic firms, and an evolving innovation policy. Therefore, care needs to be exercised when designing new IP-related policies in the country in order to strike the right balance between IP protection, IP promotion and wider goals of increasing the innovativeness of the economy. The OECD Science, Technology and Industry Department has recently concluded a full review of Colombia’s Innovation Policy (OECD, 2013c) and a review of its national IP
system (OECD, 2013d). In this chapter, we focus on the aspects of particular relevance to trade and investment.  

3.1 Overview of the IP system in Colombia

187. Colombia is still a nascent IP user with a low level of R&D spending and IP use (Figure 24). For example, as asserted in a number of prior studies, the level of IP utilization by local innovators remains limited, with the number of resident patent applications filed with the national PTO significantly below the OECD and regional averages \textsuperscript{166} and below the levels predicted by the country’s R&D spending \textsuperscript{167} (e.g. SIC, 2012; OECD, 2013c).

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure24.png}
\caption{Investment in R&D and patent applications in Colombia 2012}
\end{figure}

\textit{Note:} Values in brackets represent the number of resident's patent applications per million inhabitants. 

\textsuperscript{165} The Directorate for Financial and Enterprise Affairs (DAF) has also reviewed the aspects of Colombia’s IP regime of relevance to investment (OECD, 2012). Here we take a holistic view of IP matters of relevance to both trade and investment as in the context of an accession the review of the level of IPR protection in a candidate country falls under the auspices of Trade Committee (see Accession Roadmap). This section has been reviewed and benefitted from comments from DAF colleagues.

\textsuperscript{166} In 2011, there were 1 953 patent applications filed in Colombia as compared to 2 792 in Chile, 14 055 in Mexico, and 28 306 in Brazil. Source: WIPO.

\textsuperscript{167} For example, the model employed in SIC (2012) shows that given Colombia’s characteristics, there could have been 200 patent applications more filed annually than what was observed in the period 1996-2007. It further shows that with the observed levels of R&D spending in the country, these should be more than 300 patent applications by residents annually, while the number never exceeded 200 (SIC, 2012: 122-129).
188. Figure 25 below shows the breakdown of applications for patents, trademarks, utility models and industrial designs in Colombia over the last decade. Noteworthy is the very low number of patent applications by residents – 9% of all patent applications in 2011 as compared to 91% filed by non-residents. This may suggest that local inventions are not adequately protected, either because the barriers to the use of IP instruments are relatively higher for residents than for non-residents (e.g. due to a smaller available resource base or lower IP awareness) or because the costs of seeking protection via patenting (e.g. registration fees, the need to hire an attorney, a patent application processing time) are higher than the perceived benefits, especially given the remaining enforcement challenges. The fact that residents use more frequently utility models, offering lesser protection for inventions but being also easier to obtain, may suggest that patenting remains overly burdensome, either due to costs or time requirements.168

189. Trademark registrations also increased somewhat in recent years, with a relatively higher increase for resident applications, which may reflect recent process improvements introduced by the PTO, including the Madrid application system. Still, the use of trademarks in the country is limited, which may be explained by relatively low attention paid by some public entities to existing trademarks in the context of their respective control and surveillance functions (see the later discussion on INVIMA) and a large informal market and trade in counterfeited goods.169

190. The market for copyrighted music is also rather small – there are only 10 music services in the country, facing significant competition from the illegal optical disk and digital piracy market. Despite a moderate increase in overall sales in 2012 (USD 17 285 mln), the sales of legally distributed music decreased dramatically in recent years, an effect largely attributable to online piracy according to the industry.170 Internet piracy allegedly corresponds to 90% of the entire digital music market in Colombia, 50% of which is provided via peer-to-peer networks171, and digital and physical piracy remains a large problem for the TV and book industry, too. Colombia has also been a source to many successful international artists in recent years (e.g. Juanes, Shakira, Fonseca, Fanilu) and is a source of popular new rhythms (e.g. cumbia, vallenato, salsa), which may warrant better copyright protection in the future.

168 The Colombian government is aware of this problem and has drawn an action plan (SIC, 2012) that involves greater spending on IP promotion in the country and better resources for the local PTO. As will be demonstrated later, the average application examination times by SIC have fallen in recent years as have the fees for IP registration.

169 For example, in a recent survey conducted by ANDI – the National Association of Colombian Entrepreneurs, a better control of illicit trade was identified as one of top 5 issues to be addressed by the government.

170 Information based on the OECD Secretariat’s correspondence with the International Federation of the Phonographic Industry (IFPI).

171 So called cyber-locker service – allowing online storage for large volume of infringing files uploaded by individual users and access by the public, also remain popular (a 41% increase in 2012) as do local infringing music sites (25% increase in 2011), either allowing direct downloads or linking to the infringing material hosted outside of Colombia. Increase is measured by the number of unique monthly users.
Figure 25. Breakdown of IP applications in Colombia by resident and non-resident, 1992-2011

Panel A. Patent

Panel B. Trademark

Panel C. Industrial design

Panel D. Utility models

Note: A resident application is an application filed with an IP office by an applicant residing in the country in which the office has jurisdiction. A non-resident application is an application filed with a patent office of a given country by an applicant residing in another country. An application abroad is an application filed by a resident of a given country with a patent office of another country.

Source: WIPO, IP Statistics Database.
**IP protection regime in Colombia**

191. Overall, Colombia has pursued an aggressive IP policy over the past decade, as part of a wider policy goal of increasing national competitiveness and promoting growth. A Government’s White Paper on IP governance (CONPES 3533 of 2008\(^{172}\)), for example, proposed a national action plan 2008-2010 to improve the functioning of the IP system as a tool for increasing competitiveness of the economy, and some of its recommendations were put in force.\(^{173}\) Other strategic documents – notably the CONPES 3582 of 2009 on science, technology and innovation\(^ {174}\), the CONPES 3678 of 2010\(^ {175}\) and the CONPES 3527 of 2008\(^ {176}\), while not specifically devoted to IP system, also included recommendations on better protection of intangible assets as means of promoting innovation in the country, and the National Development Plan 2010-2014 has identified IP as one of four priority areas for the government in its efforts to sustain economic growth.\(^{177}\) This political commitment has translated into a highly developed legal framework for IP protection in Colombia which is currently evolving further due to on-going implementation of advanced IP provisions in the country’s recent FTAs (notably with the United States and the European Union). However, as will be discussed next enforcement efforts will be critical.

**The legal and policy framework**

192. Colombia’s IP regime is to-date shaped to a significant extent by the Andean Community law. For example, the Andean Community Decision 486 of 2000\(^{178}\) establishing the Common Intellectual Property Regime of the Andean Community outlines *inter alia* application procedures, registration criteria and validity terms for patents, utility models, industrial design and trademarks; while the Andean Community Decision 351 of 1993 regulates common copyright rules and related rights. As a member of the WTO, Colombia is also bound by the provisions of the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights), which specifies minimum standards of IP protection that countries need to adhere to\(^ {179}\) and is subject to the WTO Dispute Settlement Mechanism.

193. Colombia’s domestic law and the Andean Community law provide a level of IP protection that is generally either TRIPS-based or goes beyond TRIPS. For example, the protection term for copyright in

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\(^{172}\) The full text of CONPES 3533 of 2008 is available here: http://www.ica.gov.co/getattachment/a1be26c2-af09-4635-b885-c3f3ee7291e4/2008cp3533.aspx [last accessed on 23 August 2013].

\(^{173}\) For example, it included a proposal to create the Intersectoral Commission on Intellectual Property (CIPI) to improve cooperation on IP issues among public agencies, a recommendation put into use via Decree 1162 of 2010. The full text of the Decree 1162 of 2010 (in Spanish) is available on the WIPO’s website: http://www.wipo.int/wipolex/fr/text.jsp?file_id=190310 [last accessed 23 August 2013].


\(^{176}\) The full text of the CONPES 3527 of 2008 is available here [as of 23 August 2013]: https://www.dnp.gov.co/Portals/0/archivos/documentos/Subdireccion/Conpes/3527.pdf.


\(^{178}\) The full text of the Andean Commission Decision 486 is available (in English) on the WIPO’s website: http://www.wipo.int/wipolex/en/text.jsp?file_id=223717 [last accessed on 22 August 2013].

\(^{179}\) For example, TRIPS requires that patents have a minimum term of 20 years (Article 33) and trademarks and service marks of seven years and must be renewable indefinitely (Article 18).
Colombia lasts 80 years after the death of the author\textsuperscript{180}, as compared to the minimum requirement of 50 years present in the Berne Convention and TRIPS\textsuperscript{181}. The validity term for patents in Colombia is 20 years from the filing date, for trademarks – 10 years from the date of grant (which may be renewed for successive 10-year periods), and for industrial designs and utility models 10 years from the filing date. Colombia also grants a 5 year protection period for protecting undisclosed data related to safety and effectiveness submitted to INVIMA as a condition for approving the health register of pharmaceutical products and a 10 year protection period for protecting undisclosed test or other data submitted to ICA as a condition for approving the marketing of agricultural chemical products\textsuperscript{182}. Regarding penal measures, Articles 270-272 of the Colombian Criminal Code establish the scope of criminal sanctions for IP infringements, including sanctions for the circumvention of effective technological measures used to exercise exclusive copyright or related rights (Article 272).\textsuperscript{183}

194. With the implementation of the Colombia’s FTA agreements with advanced IP provisions under way (e.g. with the European Union and the United States), Colombia’s IP regime is undergoing further changes, and it is reaching increasingly a TRIPS+ level of regulatory protection. For example, Law 1648 of 12 July 2013 introduced the possibility for the court to order the destruction of trademark or copyright infringing goods at the rights-holder’s request\textsuperscript{184} and established a system of statutory damages for IP infringements.\textsuperscript{185} In addition, the Copyright bill currently discussed in Congress\textsuperscript{186} would introduce additional civil and legal measures for copyright infringements, and the planned bill on Internet Service Providers (ISP) would establish a basis for their limited liability for copyright infringements\textsuperscript{187}. Finally, some FTA provisions require Colombia to achieve certain process efficiencies – most notably reducing processing time of patent applications, which go beyond sheer legal reform.\textsuperscript{188}

\textsuperscript{180} The protection term is 80 years after the death of the author if it is a natural person, and 50 years from the date of the creation or the publishing of the work in the case of legal persons (i.e. companies and entities).

\textsuperscript{181} Article 7 of the Berne Convention on terms of protection, see Berne Convention available on the WIPO’s website: \url{http://www.wipo.int/treaties/en/text.jsp?file_id=283698} [last accessed on 22 August 2013].

\textsuperscript{182} According to the Decree 2085 of 2002, once a new chemical entity is acknowledged by INVIMA and an application to obtain data protection has been submitted and approved, data may not be accessible for third parties for five years; and the Decree 727 of 2012 on data protection for pesticides and chemicals for agricultural use, provides that when a new chemical entity is acknowledged by ICA, its data may not be accessible for third parties for ten years.


\textsuperscript{184} Required by Article 16.11.11.b of the US-Colombia FTA.

\textsuperscript{185} Statutory, or pre-established, damages are a method of addressing the difficulty of a high burden of proof on the part of the right holder to establish the true volume of infringement in IP cases. Usually, they are calculated on the basis of twice, or three times, the full price payable for the respective use of the infringed right. Some countries also fix a precise amount, or a margin, for the pre-established damages to be paid. They are hence supposed to serve as a remedy fully compensating the right holder for the harm suffered and, simultaneously, a deterrent. Source: WIPO. For more information, see WIPO’s website: \url{http://www.wipo.int/enforcement/en/faq/judiciary/faq08.html} [last accessed on 22 August 2013].

\textsuperscript{186} Law 306 of 2013. This was filed before the Congress after Law 1520 of 2012 was declared unconstitutional by the Constitutional Court on procedural grounds.

\textsuperscript{187} As required by Article 16.11.29 of the US-Colombia FTA.

\textsuperscript{188} The US-Colombia FTA required both parties to process patent applications without “unreasonable delay”, i.e. no later than three years from the moment the request for examination has been made or adjust patent terms otherwise.
Box 10. International IPR related conventions to which Colombia is a party and dates of accession

**Industrial property**

- Paris Convention for the Protection of Industrial Property (Paris Convention), 1996
- Patent Cooperation Treaty (PCT), 2001
- Trademark Law Treaty, 2012
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Mark (Madrid Protocol), 2012

**Copyright and related rights**

- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), 1976
- Berne Convention for the Protection of Literary and Artistic Works (Berne Convention), 1988
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Phonograms Convention), 1994
- WIPO Copyright Treaty, 2002
- WIPO Performances and Phonograms Treaty, 2002
- Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels Convention), 2012*
- Beijing Treaty on Audio-visual Performances**, 2012

**Plant varieties**

- International Union for Protection of New Varieties of Plants (UPOV Convention), 1996

Notes: * The Brussels Convention has been ratified by Law 1519 of 2012. On June 26, 2013 the Constitutional Court of Colombia declared it constitutional but the ruling has not been published yet. ** Treaty not yet in force, signed in 2012.
* The Budapest Treaty has been ratified by Law 1518 of 2012. On June 19, 2013 the Constitutional Court of Colombia declared it constitutional but the ruling has not been published yet.

Source: WIPO, Colombian government.

195. Finally, it is worth mentioning that Colombia is a party to the Patent Cooperation Treaty (PCT). (See Box 10 for a list of all international IP-related conventions to which Colombia is a party.) This means that, on one hand, any applicant in Colombia seeking patent protection simultaneously in a few countries can file an “international” patent application with the Colombian PTO and, *vice versa*, that an investor interested in filing an application in Colombia can do it via the PCT system. 92% of all patent applications in Colombia in the period 2005-2011 were filed through the PCT system. As of last year, Colombia is also a party to the Madrid System for trademarks, which offers a trademark owner the possibility to have his
Institutions involved in IP protection

196. As mentioned earlier, Colombia’s IP regime is shaped to an important extent by policies on the international-, Andean Community-, and domestic level. Analogously, institutions relevant to IP-protection in the country involve supranational bodies, federal agencies as well as departmental and local-level authorities, mostly responsible for enforcement and infringement control. Figure 26 outlines the structure of IP governance in Colombia, introducing key domestic institutions relevant for IP protection.

197. From the perspective of an investor, a few institutions worth noting are:

- **The Superintendency for Industry and Commerce** (Superindendencia de Industria y Comercio, SIC) attached to the Ministry of Trade, Industry and Tourism (MCIT) serves as Colombia’s Trademark and Patent Office (PTO). It processes applications for industrial property protection (patents, trademarks, industrial designs and utility models), is in charge of the patent bank and the online trademark registry, and performs some (limited) IP promotion and capacity-building activities. SIC also disposes of a specialised IP court capable of ruling in first-instance civil cases on industrial property infringements. The Colombian PTO generally enjoys a good reputation among investors who recognize the value of on-going reforms. However, resource limitations constrain SIC’s capacity to play a more active role in IP promotion (see section 3.2.3)

- **The National Copyright Directorate** (Dirección Nacional de Derechos de Autor, DNDA) attached to the Ministry of Interior is responsible for copyright protection in the country. It processes copyright applications and administers the National Copyright Register, available online. The DNDA also disposes of judicial powers to rule in first instance civil cases on copyright infringements.

- **The Agricultural Colombian Institute** (Instituto Colombiano Agropecuario, ICA) attached to the Ministry of Agriculture and Rural Development is responsible for plant-breeders rights and is in charge of the National Register for Protected Plant Varieties. It also disposes of a specialised IP court capable of ruling in first-instance cases on plant breeders’ rights. In addition, ICA is responsible for protecting undisclosed test data for pesticides or chemical substances for agricultural use.

- **The National Institute for Surveillance of Food and Drugs** (Instituto Nacional de Vigilancia de Medicamentos y Alimentos, INVIMA) attached to the Ministry of Health is responsible for protecting undisclosed test data for chemicals used in pharmaceutical products. As applications for sanitary permits concern specific products (not generic substances), the permits provided by INVIMA are by definition attached to the products and its trademark. Insufficient attention paid as to whether the applicant is actually the right holder of the trademark (as registered with SIC) has sometimes led to conflicts regarding trademark registration. In particular, given that

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190 For example, officials at times provided a sanitary permit to a product that did not correspond to a valid trademark registered with SIC, which later disallowed the rightful trademark owner to receive a sanitary permit because a permit had already been obtained for that trademarked product by somebody else.
Colombia has an online trademark registry managed by SIC, it would be recommended that INVIMA officials have an easy access to it and are trained in its use.

- **The Intersectoral Commission for Intellectual Property** *(Comisión Intersectorial de Propiedad Intelectual, CIPI)* is managed by the National Planning Department and is responsible for coordination on IP matters across relevant government agencies 191. When an IP-related issue comes up in one agency, it can be considered and discussed from the perspective of IP protection more generally within CIPI. It also allows firms, associations or groups of citizens to voice their views on IP matters in front of all institutions working on the issue. Some enterprises suggested, however, that CIPI could benefit from leadership at a higher political level to allow for more strategic decision-making and political influence.

- **Customs authorities (DIAN), enforcement authorities and the judicial branch** of the government play an important role in enforcing the rights of the rightholders and prosecuting infringements. In Colombia, when police intercepts IP infringing material, it files a case with the Office of the Attorney General *(Fiscalía General de la Nación)*, which starts an investigation, and can take the case to court. Few investigations are however started and even fewer reach a court- and sentence stage. DIAN also disposed of a trademark border registry, separate from the registry managed by SIC, where enterprises can, without an additional fee 192, register their trademark to facilitate seizure of counterfeit goods at the border. As it will be explored in the next section, enforcement authorities suffer from insufficient IP training and coordination among them remains weak, which diminishes significantly the efficiency of infringement control.

- **Several support institutions and IP associations** also play an important role as they promote the use of IP in the country (e.g. public-private *Convenio Antipiratería* offering IP training for officials, public and firms) as well as monitor government efforts, and voice their opposition or support on issues relevant to IP (e.g. National Association for Intellectual Property, ACPI). 193

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191 The Commission is comprised of representatives of the Ministry of Interior, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Agriculture and Rural Development, the Ministry of Health, the Ministry of Trade, Industry and Tourism, the Ministry of National Education, the Ministry of Environment, the Ministry of Information Technologies and Communications, the Ministry of Culture, the National Planning Department.

192 For a firm it would however imply a payment for attorney service to add the trademark to the register.

193 Both organisations have been consulted in the course of this review.
### Figure 26. IP Governance in Colombia

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<th>National Institute for Surveillance of Food and Drugs (INVIMA)</th>
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<tbody>
<tr>
<td>Protects undisclosed information regarding test data submitted to obtain a sanitary permit for pharmaceutical products containing new chemical substances; Sanitary permits are granted for specific trademarked products.</td>
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<td>Plant breeders rights office with judicial powers regarding plant breeders rights; in charge of the National Register for Protected Plant Varieties, responsible for protection of undisclosed information concerning test data on chemical pesticides for agricultural use.</td>
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<td>Patent and Trademark Office (PTO) with judicial powers regarding patents and trademarks.</td>
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<td>Responsible for inter-agency coordination</td>
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<td>Ministry of ICT</td>
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<td>Ministry of Health</td>
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<th>Judges</th>
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<th>Police</th>
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<tr>
<th>Customs authority (DIAN)</th>
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<tr>
<th>Attorney General</th>
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Source: Colombian government, OECD.
198. Overall, while the creation of the Intersectoral Commission for Intellectual Property (CIPI) has facilitated coordination among agencies, there is scope for more coherence. This could be achieved via better training for officials directly and indirectly involved in IP protection (e.g. customs officials, enforcement authorities, ICA and INVIMA) and stronger supervision by SIC of their activities, including through regional presence. On a practical level, it should be ensured that the tools for IP management at the disposal of the SIC, e.g. official trademark registry, are used appropriately by other agencies. In addition, equipping CIPI with higher-level support (e.g. through representation at a vice-minister level) could give the body more political clout needed to resolve difficult horizontal problems.

Processes in practice

199. Besides the legal basis for IP protection in the country, it is the efficiency of the associated processes – including registration and enforcement – that is instrumental for the private sector’s view of the level of IP protection in a country. Here we assess both in turn.

Registration process

200. Figure 28 outlines all the steps in the patent application process in Colombia, from the moment of the application filing until the publication of the patent registration in Gaceta de Propiedad Industrial.\textsuperscript{194} In general, all applications must be filed, in Spanish, with the Patent Office (i.e. División de Nuevas Creaciones at SIC). The date of receipt by the Patent Office constitutes the filing date. For trademarks, the process is similar, but requires less time.\textsuperscript{195} For copyright, one can register a literary, audio-visual or other work with the National Copyright Office (DNDA) without any payment, and the DNDA needs to approve or reject the application within 15 working days. The Government is also making good use of ICT tools to facilitate access for users. For example, by now all patent, trademark and copyright applications and appeals can be done on-line. Most recently, the DNDA implemented a single window for copyright-related payments and licenses due to the Collective Management Societies. The copyright register is publically available online,\textsuperscript{196} and the Patent Bank\textsuperscript{197} and the state-of-the-art online trademark register managed by SIC are searchable by enterprises for a fee.

201. In the past, one of the problems with patent protection in Colombia was a high rate of rejections of patent applications that served as a \textit{de facto} barrier to protecting new inventions. In the last couple of years, however, the acceptance rate increased significantly (Table 11) and the time it takes for SIC to process an application reduced substantially, too – from 70 months in 2006 to 38 months today (Figure 27). The problem of significant patent backlogs appears therefore to have been momentarily resolved. This is primarily thanks to SIC’s concerted efforts to address the problem through mobilization of additional


\textsuperscript{195} For trademarks, within 15 days from the application’s filing date, the SIC performs a procedural examination of the application and publishes a notice in the Gaceta de Propiedad Industrial for 30 days when third parties can voice opposition. Once this phase is completed (either no opposition filed or the ruling on the opposition in favour of the original applicant), a substantive examination is performed and, if successful, the registered trademark is published in the Gaceta de Propiedad Industrial. On average, within 6-9 months from the filing date a trademark is registered or rejected.

\textsuperscript{196} To consult the online copyright register, see: http://201.234.78.25/trl/consultasS_filtros.aspx [last accessed on 23 August 2013].

\textsuperscript{197} More information about the Patent Bank is available on SIC’s website: http://www.sic.gov.co/banco-de-patentes1 [last accessed on 15 August 2013].
resources, automation, simplification of application procedures through the Resolution 21447 of 2012\textsuperscript{198}, increasing reliance on the patentability examination by other countries via the PCT system and moving to a multiclass application system, among others.

Table 11. Acceptance rate for patent applications in Colombia, 2005-2011

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
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<tbody>
<tr>
<td>No. of patent applications</td>
<td>1803</td>
<td>2035</td>
<td>1983</td>
<td>1953</td>
<td>1672</td>
<td>1872</td>
<td>747</td>
</tr>
<tr>
<td>No. of patent applications approved</td>
<td>264</td>
<td>89</td>
<td>60</td>
<td>440</td>
<td>498</td>
<td>669</td>
<td>297</td>
</tr>
<tr>
<td>Approval rate</td>
<td>15%</td>
<td>4%</td>
<td>3%</td>
<td>23%</td>
<td>30%</td>
<td>36%</td>
<td>40%</td>
</tr>
</tbody>
</table>

Source: SIC.

Figure 27. Average time to decide a patent, industrial design or a utility model application (in months)

Source: SIC.

\textsuperscript{198} These include, for example, the possibility to file documents using electronic means, removal of the requirement of legalization and authentications of the filed documents (except for the renouncement of rights), and possibility to grant the powers of attorney for patent matters without any notarization or legalization. The Resolution 21447 of 2012 is available at [last accessed on 23 August 2013]: www.sic.gov.co/es/c/document_library/get_file?uuid=7e71eeec-9428-48bd-9e73-4c2de0acfa9e&groupId=10157.
202. However, in order to sustain the trend, the Colombian PTO will need to ensure that resources directed towards application processing are adequate in the future\(^\text{199}\) and pursue further automation and simplification efforts (see also OECD, 2013c). This may require additional investment in SIC’s capacity, along the lines suggested in SIC (2012), and carving out the PTO office from SIC to create an independent innovation institute with the necessary political and budgetary autonomy to pursue its functions (SIC, 2012; OECD 2013c). Further standardization of criteria used in the applications assessment could also help speed up the processing times and ensure that applications are analysed purely on technical rather than political grounds.\(^\text{200}\) Overall, Colombia’s commitment to processing patent applications without undue delay in its FTA with the US\(^\text{201}\), may provide additional urgency to consider these ideas. The creation of a pilot Patent Prosecution Highway (PPH) with the USPTO in September last year is in any case welcome and can help fast-track parallel patentability examination processes in both offices.\(^\text{202}\)

203. In addition to improved efficiency in applications’ processing, registration fees have also been reduced in Colombia.\(^\text{203}\) For example, partly thanks to the implementation of the multiclass trademark system, the fee for each additional trademark class was reduced by 50%, which reduced the overall registration costs. Also, an average application for three patent classes costs now USD 750 as opposed to USD 1 125 in the past.\(^\text{204}\) SIC also offers discounts of 50% for small and medium-sized enterprises and universities collaborating with Colciencias\(^\text{205}\) to increase the take-up by residents. Nevertheless, given the very low level of resident patent applications in the country, SIC could consider extending the offer of reduced rates also to enterprises and institutions without formal ties to Colciencias. Finally, some enterprises suggest that high levels of royalties on patents may also work as a deterrent against patent registrations in the country.\(^\text{206}\)

204. Overall, Colombia has significantly improved the efficiency of registration processes, and has pursued various efficiency increasing efforts, including through allocation of more resources, greater

\(^{199}\) Some of them have been assigned on a temporary basis in order to deal with the backlog.

\(^{200}\) Most recently, an initial version of the draft Law 210 of 2013 proposed that patent applications are pre-screened by the Ministry of Health before being analysed by the SIC. A number of enterprises objected to the proposal arguing it would introduce a risk of politically-motivated rather than technical examination, and would violate Article 26 and 273 of the Andean Commission Decision 486 and Article 3 and 20 of the Decree 1886 of 2011 that appoints the SIC as the agency competent to decide on patent applications. The government has reacted to these concerns and, instead of allocating a formal role in analysing patent applications to the Ministry of Health, proposed creating a technical unit in the Ministry that would be devoted to filing patent oppositions, when necessary.

\(^{201}\) From the text of the Colombia-US FTA: “an unreasonable delay shall at least include a delay in the issuance of the patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later, provided that periods attributable to actions of the patent applicant need not be included in the determination of such delays”. Full text available at: http://www.ustr.gov/sites/default/files/col-ipr.pdf [accessed on 23 August 2013].

\(^{202}\) For more information on US-Colombia PPH, see: http://www.uspto.gov/patents/init_events/pph/pph_co.jsp [last accessed on 26 August 2013]. Colombia is also in discussions about a PPH with the Spanish PTO.


\(^{204}\) Information based on the OECD Secretariat’s correspondence with SIC.

\(^{205}\) Colciencias is a Colombian government agency that supports fundamental and applied research in Colombia. See: www.colciencias.gov.co or OECD (2013c) for more detail.

\(^{206}\) In the case of royalties paid for the exploitation of intellectual property to a non-resident, the withholding tax is 33% of the total amount paid.
automation and simplification of procedures, and the use of multiclass applications systems. If this trend is sustained, it is likely to have positive spillovers on the IP use in the country.

Enforcement

205. While the legal framework for IP protection in Colombia is generally well-developed and the efficiency of the registration processes improves, enforcement remains problematic. For example, the level of self-reported software piracy in the country was 53% in 2011 (Figure 29) – while one of the lowest in the region, it still amounts to the estimated cost of USD 295 million to the industry (Business Software Alliance, 2011). Sale of counterfeit goods is also not an uncommon view on the streets of Colombia, and physical and Internet-based piracy is endemic for music, TV, and books. For example, according to IFPI, digital piracy for music in Colombia is responsible for 90% of the entire digital market.

![Figure 29. Piracy rates in Colombia as compared to other selected countries, 2011](source: BSA Global Software Piracy Study 2011)

206. One of the most important reasons why enforcement lags behind the sophistication of the legal framework in Colombia is a weak judicial system and low efficiency of the enforcement authorities in prosecuting IP infringements. While Colombia in general ranks low on the efficiency of its judicial system in various country comparisons (e.g. it takes three years to settle a simple commercial dispute according to the World Bank Doing Business indicators), the problem is compounded in the case of IP by lack of adequate IP expertise of judges and prosecution authorities (see also OECD, 2012a).

207. As a result, IP infringements are still considered a minor offence and often never reach the court. According to the statistics of the General Attorney (Fiscalía General) out of 24,895 infringement cases registered in 2011, a criminal procedure was initiated for 1,580 of them, which resulted in 15 convictions and six dismissals, the rest never making it to the court stage.\(^\text{207}\) The National Police (Policía Nacional) statistics for the same year further show that out of 2,795 people captured for IP infringements, only 8% was detained, but there is no information on the number of those sentenced. The Convenio Antipirateria, a

\(^{207}\) Information provided via OECD Secretariat’s correspondence with the Convenio Anti-pirateria and International Federation of the Phonographic Industry (IFPI).
public-private venture promoting IP in Colombia mentioned earlier, additionally points out that even large quantities of infringing materials (i.e. commercial scale) were treated as minor\textsuperscript{208} and, hence, were not prosecuted. A low level of prosecution of IP infringers sends a sign of impunity and perpetrates the culture of lack of respect for intellectual property.

208. There are several reasons for a low level of prosecutions. First, regular civil and criminal courts in Colombia are experiencing significant backlogs and, unsurprisingly, IP infringements are not considered a priority issue. While major judicial reforms introduced through the Law 1395 of 2010 attempted to address this problem, they appear not to have yet translated into shortened resolution times. In addition, Colombian judges often lack specialized IP expertise, which at times has precluded them from reaching a just and/or timely ruling on IP issues. To address this problem, the government established three specialised IP courts for first-instance cases: one under SIC on industrial property matters, one under ICA for plant breeders’ rights, and one under DNDA for copyright issues. The initiative has been much welcomed by the private sector, and the courts were particularly useful to stop IP infringements when large commercial losses are at stake. For example, the SIC can issue preliminary injunctions within 10 to 20 days to stop infringements. Nevertheless, since second instance cases have to be ruled upon in regular courts, this step appears not to have solved the problem of enforcement difficulties in Colombia.\textsuperscript{209}

209. Cognisant of these limitations, the police and the General Prosecutor’s office often do not even launch an investigation against an alleged IP perpetrator. In addition, enterprises often complain of the problem of the “lack of closure” on IP matters in Colombia: Even if an IP infringement is caught, an investigation started and the perpetrator taken to court, the probability of reaching a ruling and receiving a remedy by the right holder is still low. While the authorities are aware of these difficulties and bemoan the lack of adequate “IPR culture” in the country, certain additional actions could be taken to improve the situation.

210. First of all, the level of coordination among enforcement authorities and their IP expertise will need to be improved. While the Ministry of Justice organised in the past some training opportunities for public officials, training for enforcement officials and judges will need to be more tailored and practical. For street patrol and border control units, dissemination of guidelines and organisation of unit-level sessions on how to identify counterfeited material and what to do next could decrease tolerance for blatant violations. If the idea of setting up of SIC’s regional offices comes to fruition, practical courses could be undertaken with police and DIAN authorities at the regional level, possibly in collaboration with regional Chambers of Commerce to reduce costs. While the functioning of the border registry for trademarks is a welcome development, it would have to be ensured that DIAN’s officials trained in using it are not re-assigned to non-IP related tasks to avoid a knowledge leak. Enterprises complain that even when resources are spent on sensitizing border officials, high turnover causes the knowledge to be lost. For judges and prosecutors, the government could pair up with interested Colombian universities to offer specialised courses in IP law. This could be undertaken through a programme administered jointly by the Ministry of Education, the Ministry of Interior, the Ministry of Justice and MCIT and take a form of private-public

\textsuperscript{208} E.g. as if they were for personal use only when lesser penalties usually apply.

\textsuperscript{209} Moreover, when a line of defence for an IP infringer is the questioning of the validity of the underlying IP right, for example a trademark, before a sentence on the trademark infraction can be reached by the SIC’s IP court, the Colombian Council of Estate (\textit{Consejo de Estado}) needs to rule on the validity of the original trademark. The Council of Estate, in turn, seeks a prejudicial interpretation from the Andean Court of Justice before it rules on the matter, further extending the process. While it would have been possible to grant a provisional suspension of the trademark validity case to allow the trademark infringement case to continue on the basis of a bond or a guarantee, these are not granted for industrial property cases, according to the National Association for Intellectual Property (ACPI), causing significant delays for resolution of IP infringement cases.
partnership to secure funding. Finally, as mentioned earlier, CIPI could be given more political clout through participation of higher-level officials. Given that within CIPI there is a special enforcement policy group led by the Ministry of Justice, higher-level political participation could also give IP enforcement the necessary political push.

211. These efforts will have to take place parallel to ongoing strengthening of institutions involved in IP governance and adoption of remaining legal measures that enable better prosecution. For example, the adoption of legislation on Internet Service Providers (ISP) liability for copyright-infringing materials could help combat online piracy as it would provide the legal grounds for holding server owners liable for infringements.

212. All in all, the steps undertaken by the Colombian government in the area of IP protection have been clearly in the right direction. With the increasing sophistication of the legal framework, the focus should gradually shift towards improved enforcement, institutional capacity-building, and IP promotion. Only then, and in conjunction with robust innovation policy, will the laws on the books credibly contribute towards greater IP use and IP generation in the economy.

4. Compliance

213. The degree of compliance with international rules on trade and investment is an important aspect of the predictability of a country’s trade policy as it provides an insight into the country’s willingness to honour its commitments. To assess the degree of compliance, the OECD market openness reviews focus on specific mechanisms in place that ensure the country’s legal framework is in line with the obligations it undertook (e.g. the existence of review mechanisms) and the record to-date in commercial disputes in a multilateral and plurilateral context, most notably the WTO Dispute Settlement Mechanism (DSM).

214. In Colombia, the International Legal Affairs Bureau of the Ministry of Trade, Industry and Tourism is responsible for reviewing compliance with existing international trade obligations. In regards to planned tariff changes, it is the Comité Triple A that ensures compliance, and in the area of technical regulations, the Directorate for Regulations at MCIT that serves as Colombia’s WTO TBT contact point. When potential concerns of non-compliance are brought to the MCIT’s attention by its trading partners, for example via its TBT contact point, the Ministry engages in bilateral discussions to address the issue. Generally, Colombia’s partners are satisfied with the country’s responsiveness to their concerns and willingness to engage in dialogue. There is one pending dispute against Colombia in the WTO.

215. To-date Colombia has participated in 49 WTO dispute settlement cases, 5 times as a complainant, 4 times as a respondent, and 40 times as a third party. Three out of four cases in which Colombia was respondent were settled through a mutually agreed solution and terminated, and three out of four were initiated by Panama. The one case that concluded in a Panel ruling and Colombia’s obligation to conform, pertained to the use of indicative prices in customs valuation and restrictions on the number of port entries for importation of textiles, garments and footwear (WTO, 2012). Colombia conformed to the Panel ruling, notifying to the WTO, among others, the removal of the entry port restrictions and introduction of a new customs risk management system. Still, on 18 June this year Panama initiated a new WTO dispute against Colombia, this time for the use of a compound tariff on the importation of textiles, apparel and

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footwear, which in some cases appears to have resulted in an application of tariff rates above Colombia’s bound rates. Consultations are on-going.

216. Traditionally, Colombia has rarely used trade defence measures (i.e. anti-dumping, countervailing and safeguard investigations) to protect its domestic industry. During the period 2006-2011, Colombia did not adopt any countervailing duties, nor did it initiate any subsidy investigations, and initiated 25 anti-dumping investigations, 15 of which resulted in the non-application of definitive measures (WTO, 2012). As of 31 December 2012, Colombia was maintaining only 9 definitive anti-dumping measures, all applied to imports from China. On 17 July 2013, Colombia initiated a safeguard investigation on steel wire, and three more investigations on steel in August. In early 2014, the High Council for Foreign Trade (Consejo Superior de Comercio Exterior) decided to close the investigations on steel bars, ribbed wire rod, steel angles (“L profiles”), steel square profiles and plates, maintaining safeguard measures only on smooth low carbon wire rod.

5. Conclusions and policy options

217. Open trade and investment policies have been an important part of Colombia’s recent reforms aimed at modernizing its economy and improving the overall business climate to achieve growth. This review highlights Colombia’s progress in removing a number of non-tariff barriers to trade and developing a more trade and investment friendly regulatory framework, but also draws attention to a number of challenges that would need to be addressed in order to ensure that the economy can reap the benefits of globalised markets. The transparency of the regulatory environment has been greatly enhanced, but scope remains for further improving the predictability of rule-making. A number of potential de facto discrimination cases call for attention against an otherwise non-discriminatory policy framework. Improvement of the overall business climate has been consistently and efficiently pursued by concerned authorities, although further administrative simplification, trade facilitation and infrastructure enhancement efforts could bring additional benefits to the economy. Momentum in favour of internationally harmonised measures and streamlined conformity assessment procedures has reduced some of the costs borne by businesses but would need to be further embedded into the regulatory process in order to allow firms to truly benefit from the undertaken reforms. Finally, steps undertaken in the area of IP protection have been in the right direction and will now need to focus more on improved enforcement and institutional capacity building.

5.1 General assessment and main challenges

218. Businesses and trading partners recognize the good efforts on the part of the Colombian government to achieve a high level of transparency, to publish in advance draft laws and regulations, and to seek inputs from interested stakeholders. Some further reforms may be necessary, however, primarily to systematise the consultation process and increase regulatory predictability, including through the use of

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212 G/L/1031; WT/DS461/1.

213 The Colombian authority competent for investigating dumping, subsidy and safeguard cases is the Foreign Trade Directorate of the MCIT through its Trade Practices Sub-directorate.

214 For the relevant notification to the WTO, please see G/ADP/N/237/COL.


216 6 August 2013 it initiated safeguard investigations on steel angles (“L profiles”) and on steel square profiles and plates, and that on 9 August 2013 it initiated a safeguard investigation on iron and steel bars and wire. Further information regarding these investigations may be found in Colombia’s notifications G/SG/N/6/COL/5, G/SG/N/6/COL/6 and G/SG/N/6/COL/7.
forward planning, ex post and ex ante regulatory impact assessments and standardized procedures for preparation of technical regulations. The on-going government procurement reform should also include further transparency-enhancing measures. Cognisant of the areas for improvement, identified here and in OECD (2013), the government is currently working on a White Paper proposing some elements of the suggested reform.\textsuperscript{217}

**Policy Options**

- Support the efforts of the Ministry of Justice to create a single register for all regulations to take stock of regulation in force in the country; consider undertaking a review of the regulatory stock, even if only in selected sectors, in order to reduce or streamline any conflicting, overlapping or redundant regulations.

- Gradually improve and standardise the process of preparing regulatory proposals in the country. Amending the Decree 2269 of 1993 to introduce a set of minimum requirements for elaboration of technical regulations by all public entities, including the need to conduct an \textit{ex ante} regulatory impact assessment (RIA) and undertake forward planning will be an important starting point. Going forward, provide regulatory entities with necessary support and supervision to achieve satisfactory quality of new regulations and supporting materials (e.g. RIA, regulatory agendas).

- Introduce common minimum consultation requirements for all public entities to help standardise consultation processes for the benefit of the commenting stakeholders, and ensure their adequacy. In particular, consider introducing a minimum commenting period and a requirement to publish the comments received as well as the rationale for their rejection or approval. The crystal ballot (\textit{Urna de Cristal}) could be used as a tool for online consultations on regulatory drafts to increase the pool of commenting stakeholders. With time, consultations should serve as a critical input into RIA, allowing for reconsideration of available options early in the regulatory process.

- Pursue further transparency-enhancing reforms planned by the National Government Procurement Agency, including through the implementation of the E-Procurement Platform and improved statistics on public contracting. Ensure that adequate resources are committed to training and supervision of public contracting activities in public entities involved in tendering processes. Provide sufficient supervision of public entities involved in public contracting to ensure consistent implementation of government procurement-related provisions in the country’s FTAs, and avoid arbitrary application of preferential treatment to domestic suppliers (going beyond the official preferential margins).

219. The \textbf{non-discrimination principle} is generally applied in Colombia’s overall regulatory, trade and investment framework, and there are few legal national treatment exceptions. Colombia’s score on the OECD Services Trade Restrictiveness Index (STRI) also reveals an open regulatory regime in the three services sectors covered – professional services, telecommunications and transport. Still, further regulatory reform in some sectors could be advisable, and surveillance of \textit{de facto} discriminatory market practices will be critical to ensure that the benefits of legal reform are reaped fully and the non-discrimination principle observed in practice.

\textsuperscript{217} The White Paper on the matter was being prepared by the National Planning Department throughout this year and should be issued before the end of 2013, possibly by the end of October.
**Policy options**

- Further liberalisation in government procurement could assist the Government in its goal to improve the efficiency of public contracting and achieve savings. In the short run, the level of coordination among public entities will need to be strengthened to ensure that national treatment afforded to suppliers from eligible countries is implemented in a consistent manner. In the long run, Colombia’s membership in the Government Procurement Agreement (GPA) could help extend the application of national treatment to a wider group of foreign suppliers.

- In services sectors, the Government could consider focusing its attention on weaker points identified under the Services Trade Restrictiveness Index:
  - In the transport sector, the focus should be on road freight transport, where some limitations on cross-border trade pertain (e.g. commercial presence requirements), and further aligning with international standards (e.g. UNECE) would be desirable.
  - In telecommunications, further strengthening of the position of the regulator and pro-competition regulation will be important to ensure market openness and efficiency (e.g. via the use of termination rates, resale obligations, or a maximum time for porting numbers). Given high market concentration on the regional level, surveillance of market practices there should also not be neglected.
  - In professional services, the legal regime is already open, but lessening of restrictions on movement of natural persons (e.g. through the recognition of qualifications and reduced residency requirements) could further facilitate trade, in particular in legal and accounting services.

- The Government should review alleged cases of *de facto* discrimination to ensure the principle of national treatment is not compromised in practice.
  - In the alcohol sector, the national excise tax system may need to be revised and the problem of anti-competitive practices of regional alcohol monopolies (*licoreras*) addressed to ensure foreign providers can access the market on equal terms.
  - In the automotive sector, a tax applied on vehicles and the national scrappage policy for land cargo vehicles seem to reduce market access for new suppliers, in particular foreign, and may contribute to higher freight costs in the country affecting trade.

220. In the area of **least trade restrictiveness**, Colombia has made significant advances in improving its overall business climate. Besides an improved security situation, the efforts to-date focused on improving macroeconomic management and simplifying and automating formalities, including via a series of new trade facilitation measures. Still, there are a few critical areas in which Colombia scores consistently poorly in various international rankings, including the quality of infrastructure, the efficiency of the judicial system and the stability of the security situation, which will require continuous multi-level reform. In addition, this review finds that the country will need to improve the quality of its regulations, continue administrative simplification efforts (also on the sub-national level), and increase the efficiency of its border risk management systems, to reduce the possible negative impact of domestic regulations on trade.
Policy options

- Address the problem of high costs of inland transportation in the country, including through investment in inland and river transportation infrastructure, and regulatory changes that would bring down the costs of freight transport (see non-discrimination section).

- Continue the efforts to improve the business climate in the country, including through efforts to reduce the informal sector and facilitate the ease of starting and doing business. Among others, the CAE programme could be expanded further as could other sub-national initiatives promoting entrepreneurship (e.g. the use of single windows, anti-formalities campaign via SUIT, etc.).

- Facilitate the registration process of new products and importers with the veterinary and sanitary agencies (i.e. ICA and INVIMA), among others, by providing these entities’ with adequate resources, greater reliance on system-based audits in the imports’ country of origin, and standardisation of application requirements.

- Work on reducing further the processing times of import license applications via the single window for foreign trade (VUCE), including through faster issuance of import-related permits by agencies other than the Ministry of Trade, Industry and Tourism.

- Regarding the use of domestic SPS measures, greater reliance on international standards and recommendations (e.g. OIE) may be possible without compromising consumer safety in the country. In particular, Colombia could engage in further dialogue with countries affected by its SPS-motivated import restrictions to consider if more flexibility would be possible (e.g. allowing trade if additional certification requirements were fulfilled).

- Pursue further administrative simplification efforts, ensuring that high-impact formalities are targeted first, and focusing increasingly more on improving the quality of the underlying regulations. This should include the introduction of a systematic use of Regulatory Impact assessment (RIA) at an early stage of the regulatory process (see also OECD, 2013), and streamlining the existing stock of redundant, conflicting and overlapping regulations.

- In the area of trade facilitation, the Government should, in particular:
  - Ensure a prompt promulgation and implementation of the new Customs Code, and pursue efforts to increase awareness about the new provisions among government officials and traders. Step up awareness campaigns to ensure the new system of Authorized Economic Operators (AEOs) is properly understood by potential users and that concerns about its implications are addressed.
  - Expedite plans to integrate the customs system (MUISCA) with the single window for foreign trade (VUCE) and ensure that the resulting platform has sufficient resources to perform all processes included therein in an efficient way.
  - Promote the use of advance ruling mechanisms among potential users by means of information and training campaigns; allow for advance ruling requests to be made online on dedicated pages in the Customs website.
  - Further promote pre-arrival processing of customs declarations by making prior declarations more attractive to the users.
− Further develop risk management and ensure its generalised use for customs controls and clearance; undertake systematic collection and structuring of customs intelligence and reinforce post-clearance audits; define specific targets for promptly developing and implementing SPS-specific risk management systems for ICA and INVIMA.

− Further pursue the efforts to improve the coordination among border control authorities so as to reduce the burden of repeated inspections on businesses; finalise and launch the simultaneous inspection module for imports in VUCE; fully dematerialise and incorporate in VUCE payments to all border agencies and proof thereof.

− Consider undertaking a Time Release Study (TRS), covering performance of both public and private operators, to identify the key bottlenecks disallowing faster release of goods and the responsible actors; the results of such a study should be made available to the public to increase awareness and incentivise improvements. The WCO’s TRS Guide can be a useful starting point.

− Consider ways for improving the exchange of information between customs and other control authorities and port operators to optimise the movement of cargo from the moment of arrival, through inspection and warehousing to final release and clearance; invest in the necessary infrastructure, including specialised inspection areas and equipment;

221. The **use of internationally harmonised standards** is increasingly pursued by regulatory authorities and standard setting bodies; however this still rests on a discretionary regulatory framework and could lose steam if it was no longer supported by political momentum. Moves to reinforce and consolidate that regulatory framework in order to emancipate it from the political agenda would be clearly desirable. Furthermore, infrastructure and capacity remain central challenges for Colombian standardisation, metrology, conformity assessment and accreditation. In particular, insufficiently developed laboratory and testing facilities restrain industry capacity to expand globally by meeting requirements and demand for certified products worldwide.

**Policy Options**

- Consolidate the regulatory framework governing the standardisation and certification in Colombia. In particular, promote the mandatory character of the best-practices for elaboration of technical regulations, practiced in the Ministry of Trade, Industry and Tourism, for all government entities adopting technical regulations. Specific attention should be paid to the provisions requiring regulatory authorities to consider internationally harmonised measures as a basis for their technical regulations. Monitor the conformity with these provisions, including in the context of the RIA accompanying the regulations, would ensure the policy’s efficiency in favour of Colombia’s market openness and international competitiveness.

- Reinforce the national laboratories policy and pursue efforts to expand and upgrade existing laboratory capacity; pay particular attention to sanitary and phytosanitary testing capacity at the local level.

- Promote industry awareness about the benefits of certification and ensure sufficient capacity is available to meet any increase in certification demands resulting from awareness campaigns.

- Consider engaging in further dialogue and capacity-building programmes with interested trading partners to support the harmonisation efforts in particular sectors (e.g. in the automotive sector, agricultural and food sector, etc.).
Colombia has taken steps in the right direction to streamline conformity assessment procedures and reinforce accreditation. However, these efforts are still at early stages and have not yet fully produced results. The accession of the Colombian accreditation agency to the main international accreditation networks should bring a very welcome boost to the efforts for overcoming the cost implications of regulatory divergence for domestic and foreign business alike.

Policy Options

- Capitalise on ONAC’s recent accession to full membership in ILAC and pursue efforts as regards IAF.

- To increase public scrutiny and help ensure that no specific interest groups drive ONAC’s decisions, consider inviting interested stakeholders to selected sessions for consultation. The recent decision to publish online minutes from the ONAC’s Executive Board meetings is very welcome.

- Step up activities to increase the number of accredited laboratories and certification bodies domestically and in Colombia’s main trading partners.

- Consider ways of reducing the need for repeated certification of products present in several markets, including through reliance on supplier’s declaration of conformity

Colombia has adopted an aggressive policy of intellectual property rights (IPR) protection in recent years as a part of the country’s strategy to improve investment climate and attract foreign investors. This is reflected in the inclusion of advanced IP provisions in Colombia’s trade and investment agreements, ratification of a number of international IP treaties, improvement of the functioning of the IP-related institutions and heightened enforcement efforts, among other initiatives. As a result, Colombia’s legal framework for IP protection is well developed, especially given the country’s per capita income levels. Enforcement however still remains problematic, with optical disk and digital piracy at endemic levels and low capture rates, and the use of IP instruments in the country low. Few remaining legal changes notwithstanding (required under the country’s recent FTAs), with the increasing sophistication of the legal framework, the focus should gradually shift towards improved enforcement, institutional capacity-building, and IP promotion. Only then, and in junction with robust innovation policy, will the laws on the books credibly contribute towards greater IP use and IP generation in the economy.

Policy Options:

- Develop further the institutional capacity to deal with IP-related issues:
  - Equip SIC with the required financial resources and political autonomy to enable it to play a more active role in IP protection and promotion. In particular, consider carving out the IP office from SIC to create an independent institute and equip it with regional offices.
  - Improve the coordination among public entities involved directly and indirectly in IP promotion. For example, ensure that other entities have access to and are trained in using IP tools at the disposal of SIC (e.g. trademark registry) and consider equipping CIPI with more political clout. Provide adequate recourse channels for right holders that have been prejudiced by the lack of coordination in IP matters.
Allocate sufficient resources to the processing of industrial property applications by the PTO and pursue further automation, standardisation, and simplification efforts to ensure timely processing, and avoid a renewed applications backlog problem.

- Increase the efficiency of enforcement efforts:

  - Ensure greater priority is given to prosecuting IP infringements to reduce impunity and the large physical and digital market for counterfeit and copyright infringing goods.

  - Train appropriately and increase IP awareness of enforcement authorities (e.g. how to identify infringing materials and what to do next). Consider organizing training on the regional level (e.g. jointly with local Chambers of Commerce to reduce costs), and avoid re-allocation of trained officials to IP-unrelated tasks to reduce knowledge leakage.

  - Implement remaining legal changes required to combat IP infringements more effectively (e.g. the bill on limited Internet Service Providers liability). In particular, inform the public debate on the costs and benefits of required policy changes to facilitate the discussion in the Congress.

  - Pursue further initiatives to strengthen the capacity of the judicial system to deal with IP infringements. For example, consider ways in which the conduct of IP cases could be made more efficient (e.g. via a more frequent use of guarantees to allow an infringement case to conclude even if a simultaneous case against the validity of the underlying right is taking place). In collaboration with interested universities, help set up specialised IP Law courses to facilitate access for local judges and prosecutors.

  - Make statistics-gathering on IP infringement cases more consistent to increase traceability of effectiveness of enforcement efforts. For example, empower the National Statistics Office (DANE) to supervise and consolidate the statistics on IP-related investigations, and associated court rulings, gathered by various agencies (e.g. the National Police, Attorney General’s Office).

- Increase IP promotion activities in the country:

  - Pursue further public-awareness campaigns to sensitise the public about the damages caused by IP infringements as well as potential penalties involved.

  - Consider creating regional offices for the PTO to facilitate capacity-building and IP promotion among enterprises outside of the capital.

  - Consider reducing renewal fees for industrial property or providing further discounts to small and medium sized enterprises and universities to increase the number of resident applications.

224. To-date, Colombia displays a good record of compliance with international rulings on trade and investment matters, with one case pending in the WTO Dispute Settlement Mechanism. Given the pressure from a strong peso, the Government will need to stand firm against demands for protection to the domestic industry and focus its efforts on boosting its structural reform agenda to enhance both productivity and competitiveness of the economy.
Policy options

- Resist pressure from industries affected by the domestic currency appreciation to increase protection via trade and trade-related policies, and prioritise reforms that would improve the industry’s competitive standing without undermining international rules (e.g. investment in infrastructure, combatting illicit trade, etc.).

- Strengthen the ability of Colombian trade bodies to play a pro-active advocacy role vis-à-vis other government bodies, and to monitor compliance on a national and sub-national level.
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ANNEX 1

Annex Figure 1. Overview of the evolution of mining and non-mining exports in Colombia (% change), 2001-2013

Note: Mining exports correspond to oil and derivatives, coal, and other metals, while non-mining exports corresponds to agricultural and manufacturing goods, and other goods exports.
Source: Banco Central de la República, 2013.

Annex Figure 2. The relationship between total imports (in mln USD) and the real exchange rate

Source: Banco Central de la República, 2013.
Annex Figure 3. Frequency of MFN tariff rates in Colombia, 2006, 2010 and 2011

Note: Figures indicate the percentage of the number of tariff lines.
Source: WTO and Colombian Government.
Annex Figure 4. Evolution of Colombia’s bilateral real exchange rates with selected countries
Annex Figure 5. Colombian non-mining exports to selected countries

In thousands

<table>
<thead>
<tr>
<th>Country</th>
<th>Total</th>
<th>Andean Community</th>
<th>Canada</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Triangle</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>China</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Switzerland</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mexico</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>European Union</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>United States</td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>
Annex Table 1. Registration costs, validity terms and approval lead times for medical devices in Colombia, 2013

<table>
<thead>
<tr>
<th>Country</th>
<th>Product classification (according to risk)</th>
<th>Registration costs</th>
<th>Approval lead time (Time to Market)</th>
<th>Registration validity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colombia</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>IVD</td>
<td>1,572,000</td>
<td>807</td>
<td>3 - 4 months</td>
</tr>
<tr>
<td></td>
<td>MD Class I and IIa</td>
<td>1,788,150</td>
<td>918</td>
<td>1 month</td>
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<tr>
<td></td>
<td>MD Class IIb and III</td>
<td>2,023,950</td>
<td>1039</td>
<td>3 - 4 months</td>
</tr>
<tr>
<td></td>
<td>Biomedical equipment</td>
<td>2,043,600</td>
<td>1049</td>
<td>3 - 4 months</td>
</tr>
<tr>
<td>Mexico</td>
<td>Average Class I, II and III</td>
<td>12,915</td>
<td>960</td>
<td>12 - 14 months</td>
</tr>
<tr>
<td></td>
<td>IVD</td>
<td>1,485</td>
<td>270</td>
<td>12 - 18 months</td>
</tr>
<tr>
<td></td>
<td>MD Class I</td>
<td>1,155</td>
<td>210</td>
<td>12 - 18 months</td>
</tr>
<tr>
<td>Argentina</td>
<td>MD Class II</td>
<td>1,485</td>
<td>270</td>
<td>12 - 18 months</td>
</tr>
<tr>
<td></td>
<td>MD Class III</td>
<td>1,925</td>
<td>350</td>
<td>12 - 18 months</td>
</tr>
<tr>
<td></td>
<td>MD Class IV</td>
<td>2,800</td>
<td>510</td>
<td>12 - 18 months</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>MD Class I</td>
<td>10</td>
<td></td>
<td>6 - 10 months</td>
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<tr>
<td></td>
<td>MD Class II</td>
<td>25</td>
<td></td>
<td>6 - 10 months</td>
</tr>
<tr>
<td></td>
<td>MD Class III and IV</td>
<td>50</td>
<td></td>
<td>6 - 10 months</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Administrative costs</td>
<td>100</td>
<td>12.55</td>
<td>1.5 month</td>
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<td></td>
<td>Administrative costs plus substantial analysis</td>
<td>500</td>
<td>62.75</td>
<td>1.5 month</td>
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<tr>
<td>Venezuela</td>
<td>IVD, MD All risk classes</td>
<td>107</td>
<td>17</td>
<td>3 - 4 months</td>
</tr>
</tbody>
</table>

Source: Businesses consulted in the courts of the review.
Annex Figure 6. The Andean Community Price Band System (APBS) in Colombia, 1996-2013

Palm Oil
- International CIF price
- Floor price
- Ceiling price

Soya Oil
- International CIF price
- Floor price
- Ceiling price

White Rice
- International CIF price
- Floor price
- Ceiling price

White Sugar
- International CIF price
- Floor price
- Ceiling price

Brown Sugar
- International CIF price
- Floor price
- Ceiling price

Pork Meat
- Pork Mean International CIF price
- Pork Mean Floor price
- Pork Mean Ceiling price
**Chicken**

- **International CIF price**
- **Floor price**
- **Ceiling price**

*Source: Andean Community and Agronet database.*
Annex Figure 7. Extra variable duty applied under the Andean Community’s Price Band System (APBS), 1996-2013

Source: Authors calculations based on the data from the Andean Community and Agronet database.
Annex Figure 8. Discount on tariff base for The Andean Community’s Price Band System (APBS), 1996-2013

Source: Authors calculations based on the data from the Andean Community and Agronet database.
Annex Table 2. The effect of a recent tax reform on taxation of different types of vehicles in Colombia

<table>
<thead>
<tr>
<th></th>
<th>VAT Prior to the reform</th>
<th>VAT After the tax reform</th>
<th>Consumption tax</th>
<th>Total tax</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cars below the value of USD 30,000 FOB</td>
<td>25%</td>
<td>16%</td>
<td>8%</td>
<td>24%</td>
<td>-1%</td>
</tr>
<tr>
<td>Four-by-fours below the value of USD 30,000 FOB</td>
<td>20%</td>
<td>16%</td>
<td>8%</td>
<td>24%</td>
<td>4%</td>
</tr>
<tr>
<td>Cars and four-by-fours equal to or greater than the value of USD 30,000 FOB</td>
<td>35%</td>
<td>16%</td>
<td>16%</td>
<td>32%</td>
<td>-3%</td>
</tr>
<tr>
<td>Pick Ups below the value of USD 30,000 FOB</td>
<td>16%</td>
<td>16%</td>
<td>8%</td>
<td>24%</td>
<td>8%</td>
</tr>
<tr>
<td>Pick Ups equal to or above the value of USD</td>
<td>16%</td>
<td>16%</td>
<td>16%</td>
<td>32%</td>
<td>16%</td>
</tr>
</tbody>
</table>

Source: ANDEMOS, Law 1607 of 2012.
### Annex Table 3. Products covered by non-automatic licenses in Colombia

<table>
<thead>
<tr>
<th>Products included in the list drawn up by the Higher Council for Foreign Trade</th>
<th>Authorized entity</th>
<th>Type of products covered</th>
<th>Number of tariff subheadings</th>
<th>Justification</th>
<th>Legal measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Products imported by the National Narcotic Drugs Council</td>
<td>National Narcotic Drugs Directorate</td>
<td>Narcotic drug precursors</td>
<td>31</td>
<td>National security; health protection</td>
<td>Resolution No. 012 of 2003; and Decrees No. 1.097 of 2004 of the MCIT and No. 3.990 of 2010</td>
</tr>
<tr>
<td>Defence industry inputs</td>
<td>INDUMIL</td>
<td>153</td>
<td>National security</td>
<td>External Circulars No. 045 of 2005 and No. 06 of 2010 Circular No. 60 of 2006</td>
<td></td>
</tr>
<tr>
<td>Can only be imported by the National Narcotic Drugs Fund</td>
<td>National Narcotic Drugs Fund</td>
<td>105</td>
<td>Security</td>
<td>Decree No. 3.803 of 2006</td>
<td></td>
</tr>
<tr>
<td>Goods imported as foreign capital investment. Donations in favour of persons or entities of public or private law. Goods purchased in free zones by making foreign payments. Imports of goods in payment of a debt owed by a foreign to a Colombian enterprise. Household effects, traveller's baggage, accompanied or unaccompanied. Certification of goods as required by the customs regulations</td>
<td></td>
<td>n.a.</td>
<td>To improve control of these operations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Imports with tariff exemption</td>
<td>Ministry of Mining and Energy and Colombian Institute of Geology and Mining for goods for exploring for minerals and hydrocarbons. ICA for imports of inputs needed to produce vaccines; Ministry of Health for the exemption of drugs, vaccines, etc., if imported by the private sector</td>
<td>Donations to the official sector; technical, educational and laboratory equipment for the education sector. Drugs, serums vaccines, equipment for medical and dental treatments and laboratory equipment for the health sector. Raw materials and products for the fertilizer industry; paper for printing scientific and cultural journals and reviews. Vehicles imported by returning Colombian diplomats. Fire-extinguishing equipment imported by fire brigades. Imports for the country's prison system; goods for exploring for minerals or petroleum</td>
<td>n.a</td>
<td>Sectors having priority and strategic importance for national economic and social development</td>
<td>Decrees No. 255/92, No. 1.659 of 1964, No. 2.148 of 1991, No. 540 of 2004, No. 562 and No. 1.570 of 2011 and Laws No. 322 of 1996, No. 74 of 1958 and No. 633 of 2000</td>
</tr>
</tbody>
</table>
Annex Table 3. Products covered by non-automatic licenses in Colombia (continued)

<table>
<thead>
<tr>
<th>Description</th>
<th>Responsible Authority</th>
<th>Description</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Imports Committee’</td>
<td>Any defective, used or rebuilt goods, and remaindered or surplus goods, waste and scrap</td>
<td>Environmental security and public health</td>
<td>Decrees No. 3.803 of 2006 and No. 2.680 of 2009</td>
</tr>
<tr>
<td>Imports by official entities, except for petrol and urea</td>
<td>Imports Committee</td>
<td>Any goods</td>
<td>Purchases for State entities</td>
</tr>
<tr>
<td>Imports under annual licences for the mining and petroleum industry, for the armed forces and for the Colombian Aviation Industry (CIREC)</td>
<td>Ministry of Mining and Energy and the Colombian Institute of Geology and Mining</td>
<td>..</td>
<td>National security</td>
</tr>
<tr>
<td>Goods imported under the temporary admission procedure and finally imported outright</td>
<td>–</td>
<td>Capital goods</td>
<td>In accordance with the customs regulations. Taking into account that at the end of temporary admission the goods will generally be used</td>
</tr>
</tbody>
</table>