

LIST OF GUATEMALA
Annex I: Explanatory Notes

1. The Schedule of a Party to this Annex sets out, pursuant to Articles 10.09 (Reservations and Exceptions) and 11.07 (Reservations), a Party's existing measures that are not subject to some or all of the obligations imposed by:

- (a) Articles 10.03 (National Treatment) or 11.03 (National Treatment);
- (b) Articles 10.04 (Most-Favored-Nation Treatment) or 11.04 (Most-Favored-Nation Treatment);
- (c) Article 11.05 (Local Presence);
- (d) Article 10.07 (Performance Requirements);
- (e) Article 10.08 (Senior Management and Boards of Directors); or

2. Each Schedule entry sets out the following elements:

- (a) **Sector** refers to the sector for which the entry is made;
- (b) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 10.09 (Reservations and Exceptions) and 11.07 (Reservations), do not apply to the listed measure(s);
- (c) **Measures** identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the **Measures** element:
 - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and
 - (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and
- (d) **Description** sets out commitments, if any, for liberalization on the date of entry into force of the Agreement, and the remaining non-conforming aspects of the existing measures for which the entry is made.

3. In the interpretation of a Schedule entry, all elements of the entry shall be considered. An entry shall be interpreted in light of the relevant provisions of the Chapters against which the entry is made. To the extent that:

(a) the **Measures** element is qualified by a liberalization commitment from the **Description** element, the **Measures** element as so qualified shall prevail over all other elements; and

(b) the **Measures** element is not so qualified, the **Measures** element shall prevail over all other elements, unless any discrepancy between the **Measures** element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the **Measures** element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. In accordance with Articles 10.09 (Reservations and Exceptions) and 11.07 (Reservations), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the law, regulation, or other measure identified in the **Measures** element of that entry.

5. Where a Party maintains a measure that requires that a service provider be a citizen, permanent resident, or resident of its territory as a condition to the provision of a service in its territory, a Schedule entry for that measure taken with respect to Article 11.03 (National Treatment), 11.04 (Most-Favored-Nation Treatment), or 11.05 (Local Presence) shall operate as a Schedule entry with respect to Article 10.03 (National Treatment), 10.04 (Most-Favored-Nation Treatment), or 10.07 (Performance Requirements) to the extent of that measure.

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Annex I

Sector:	All Sectors
Obligations Concerned:	National Treatment (Article 10.03 Investment)
Measures:	Decree No. 118-96 that amends Decree Nos. 38-71 and 48-72, Articles 1 and 2
Description:	<p><u>Investment</u></p> <p>Only the following persons may be granted title to, rent, or use state-owned lands in the Department of El Petén:</p> <p>(1) Guatemalans by birth who do not own rural real estate anywhere in the country that exceeds 45 hectares; and</p> <p>(2) Guatemalans by birth who do not own industrial, mining or commercial enterprises.</p> <p>Enterprises owned 100 percent by Guatemalans by birth that meet the requirements set out in the preceding paragraph may be granted title to, rent, or use state-owned lands in the Department of Petén.</p>

Sector:

All Sectors

Obligations Concerned:

National Treatment (Article 10.03 Investment)

Measures:

Ley de Titulación Supletoria, Decree 49-79, Article 2

Description:

Investment

Only Guatemalans by birth and enterprises that are majority owned by Guatemalans by birth may take adverse possession of real estate.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.03 Investment)

Measures: Constitución Política de la República de Guatemala, Article 122
Ley Reguladora de las Áreas de Reservas Territoriales del Estado de Guatemala, Decree No. 126-97, Article 5

Description: Investment
Foreign nationals require an authorization from the Oficina de Control de Areas de Reserva del Estado to acquire ownership of the following state-owned land:

- (a) real estate located in urban zones; and
- (b) real estate for which rights were registered in the General Property Registry before March 1, 1956 in the following locations:
 - (i) a 3-kilometer-long strip of land along the ocean;
 - (ii) 200 meters around the lakeshores;
 - (iii) 100 meters on either side of the navigable rivers; and
 - (iv) 50 meters around any spring that serves as a source of water for the population.

Only the Government may rent state-owned land described above to enterprises organized under Guatemalan law.

Sector:

All Sectors

Obligations Concerned:

National Treatment (Article 10.03 Investment)

Measures:

Constitución Política de la República de Guatemala, Article 123

Description:

Investment

Only Guatemalans by birth and enterprises 100 percent owned by Guatemalans by birth may own or possess real property located within 15 kilometers of the borders.

Foreign nationals may, however, own or possess urban real estate and real estate for which rights were registered in the General Property Registry before March 1, 1956 within the 15 kilometer area.

Sector: All Sectors
Obligations Concerned: National Treatment (Article 10.03 Investment)
Measures: Código de Comercio, Decree No. 2-70, and its amendments contained in Decree No. 62-95, Article. 2

Description:

Investment

For an enterprise organized under foreign law to be established in Guatemala, in any form, it must allocate an assigned amount of capital for its operations in Guatemala, and execute a guarantee in favor of third parties in an amount not less than the equivalent in quetzales of US\$ 50,000, which must remain in effect for the duration of the enterprise's operations in Guatemala.

Sector:	Forestry
Obligations Concerned:	National Treatment (Article 10.03 Investment)
Measures:	Constitución Política de la República de Guatemala, Article 126
Description:	<u>Investment</u> The exploitation and renewal of all forestry resources shall correspond exclusively to Guatemalan natural or legal persons.

Sector:	Professional Services – Notaries
Obligations Concerned:	National Treatment (Article 11.02 Services) Local Presence (Article 11.05 Services)
Measures:	Código de Notariado, Decree No. 314, Article 2
Description:	<u>Cross Border Trade in Services</u> To practice as a notary public, an individual must be a Guatemalan by birth domiciled in Guatemala.

Sector:	Professional Services
Obligations Concerned:	National Treatment (Article 10.03 Investment) Local Presence (Article 11.05 Services)
Measures:	Código de Comercio, Decree No. 2-70, Article 213
Description:	<u>Investment</u> An enterprise organized under the laws of a foreign country that supplies a professional service that requires a legally recognized university degree, certificate, or diploma may not be established in Guatemala. However, such an enterprise may supply its services in Guatemala through a contract or other relationship with an enterprise established in Guatemala.

Sector: Professional Services

Obligations Concerned: National Treatment (Article 11.03 Services)
Most Favored Nation Treatment (Article 11.04 Services)
Local Presence (Article 11.05 Services)

Measures: Constitución Política de la República de Guatemala, Article 87
By-Laws of the University of San Carlos of Guatemala, Articles 83 and 85

Description: Cross Border Trade in Services
The only individuals who may practice liberal professions in Guatemala are those certified in the universities of Guatemala legally established or incorporated in the University Of San Carlos of Guatemala and those covered by international treaties accepted by Guatemala, as long as there is reciprocity.
Those graduated from foreign universities require the license given by University of San Carlos of Guatemala to practice professions in Guatemala.

Sector: Professional Services

Obligations Concerned: Most Favored Nation Treatment (Article 11.04 Services)
Local Presence (Article 11.05 Services)

Measures: Agreement on the Practice of Graduate Professions and Recognition of Graduate Studies, in effect since July 7, 1962. (Signatories: Guatemala, El Salvador, Honduras and Costa Rica) Articles: 1, 3, 4, 6, 9 and 10

Description: Cross Border Trade in Services
A Central American by birth who has obtained a professional license or equivalent academic degree in one of the Party-States to the Agreement on the Practice of University Profession and Recognition of University Studies ("the Agreement") that legally authorizes him or her to practice a university profession, shall be admitted to engage in those activities in the other signatory countries to the Agreement, as long as he or she satisfies the same requirements and formalities that are required of national university graduates by the laws of the country where he or she wishes to practice the profession in question. The foregoing provision shall apply as long as the interested party retains nationality in one of the countries in Central America.

Sector:	Enterprises to Services – Customs Agents
Obligations Concerned:	National Treatment (Article 11.03 Services) Most Favored Nation Treatment (Article 11.04 Services) Local Presence (Article 11.05 Services)
Measures:	Resolución 85-2002 del Consejo de Ministros de Integración Económica Central American Uniform Customs Code (CAUCA) (Signatories: Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica)
Description:	<u>Cross Border Trade in Services</u> A natural person who wishes to be authorized as a customs agent must be a national of one of the signatories of CAUCA and must be domiciled in the country where he or she will engage in the activity. A legal persons that wishes to be authorized as a customs agent must be domiciled in the country where it will engage in the activity.

Sector: Performing Arts

Obligations Concerned: National Treatment (Article 11.02 Services)
Local Presence (Article 11.05 Services)

Measures: Ley de Espectáculos Públicos, Decree No. 574, Articles 36, 37, and 49
Acuerdo Ministerial No. 592-99 del Ministerio de Cultura y Deportes, Article 1

Description: Cross-Border Trade in Services
Prior authorization from the Dirección de Espectáculos is required to contract with foreign groups, enterprises, or artists.
In order for foreign artists or artist groups to perform in Guatemala, they must have a consent letter from any of the legally recognized non-governmental artist unions in the country.
In mixed performances, made up of one or more films and variety shows, preference will be given to Guatemalans if the circumstances of the cast, schedule, and contract so allow.

Sector: Tourism Services - Tour Guides

Obligations Concerned: National Treatment (Article 11.02 Services)
Local Presence (Article 11.05 Services)

Measures: Acuerdo No. 219-87 del Instituto Guatemalteco
de Turismo - Funcionamiento de Guías de
Turismo, Article 6

Description: Cross-Border Trade in Services
Only Guatemalans by birth or nationals of a foreign country
that are residents in Guatemala may provide tour guide
services in Guatemala.

Sector:	Specialty Air Services
Obligations Concerned:	National Treatment (Article 11.03 Services)
Measures:	Ley de Aviación Civil, Decreto No. 93-2000, Article 62
Description:	<u>Cross Border Trade in Services</u> In the operation of specialty air services by Guatemalan operators, all personnel performing aeronautical duties on board the aircraft must be Guatemalans by birth. However, the Dirección General de Aeronáutica Civil may authorize foreign nationals to perform such duties for a period not to exceed three months, counting from the date of authorization. The Dirección General de Aeronáutica Civil may extend this period if it determines that there are no such trained personnel in Guatemala.

Sector: Air Transportation Services
Obligations Concerned: National Treatment (Article 11.03 Services)
Measures: Ley de Aviación Civil, Decreto No. 93-2000,
Article 73
Description: Cross Border Trade in Services
Air services exploited exclusively inside the Guatemalan territory, it is reserved to companies established in Guatemala.

Sector: Road Transportation of Passengers and Cargo
Obligations Concerned: Most Favored Nation Treatment (Article 11.04 Services)
Measures: Ley de Transportes, Decreto 253, Article 4.
Protocolo al Tratado General de Integración
Económica Centroamericana, Articles 15 and 28.
Acuerdo Gubernativo 135-94, Articles 3,9 and 10.
Reglamento del Servicio de Transporte de
Equipos de Carga.

Description: Cross Border Trade in Services
Public cargo or passenger transportation services may be provided by both national and non-national individuals. Notwithstanding nothing automotive vehicle with foreign tags or plates may transport passengers and commercial cargo between points within national territory. Trailer or semi-trailer vehicles registered in any of the Central American states that enter the country temporarily are exempt form the preceding disposition.

Sector: Land Sea and air transportation and road transportation of passengers and cargo

Obligations Concerned: Most Favored Nation Treatment (Article 11.04 Services)

Measures: Tratado Multilateral de Libre Comercio e Integración Económica Centroamericana, Article XV. (Países miembros: Guatemala, El Salvador and Nicaragua)

Description: Cross Border Trade in Services
Land vehicles registered in one of the signatory countries shall receive the same treatment in the territory of the other States as accorded the vehicles registered there, for the duration of their stay.
Companies in the signatory countries dedicated to providing automotive transportation services for passengers and goods within Central America above cited shall receive national treatment in the territory of the other countries.

Sector:

Road Transportation of Cargo

Obligations Concerned:

Most Favored Nation Treatment (Article 11.04 Services)

Measures:

Resolución 65-2001 aprobada por el Consejo de Ministros Responsables de la Integración Económica y Desarrollo Regional del 16 de marzo de 2001

Description:

Cross Border Trade in Services

A mechanism for reciprocal and non-discriminatory treatment for cargo international transportation by road services is established between the six member-states of the Tegucigalpa Protocol (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama), which includes the following:

- a. Full freedom to transit territory via land cargo transportation for goods from Panama destined for any Central American country, and from any Central American country to Panama.
- b. Freedom to transit implies a guarantee of free competition in contracting for transportation, without prejudice to the country of origin or destination, and national treatment for transportation from all States in the territory of any of them, with the origins and destinations indicated above.

Sector:

Manufacturing

Obligations Concerned:

Performance Requirements (Article 10.07
Investments)

Measures:

Ley de Zonas Francas, Decreto 65-89 Article 25

Description:

Investment

The industrial user established in a free trade zone pursuant to this Law may export a maximum of 20% of its total production into national customs territory.

LIST OF GUATEMALA
Annex II: Explanatory Notes

1. The Schedule of a Party of this Annex sets out, pursuant to Articles 10.03 (Reservations and Exceptions) and 11.07 (Reservations), the specific sectors, sub-sectors, or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

- (a) Articles 10.03 (National Treatment) or 11.03 (National Treatment);
- (b) Articles 10.04 (Most-Favored-Nation Treatment) or 11.04 (Most-Favored-Nation Treatment);
- (c) Article 11.05 (Local Presence)
- (d) Article 10.07 (Performance Requirements);
- (e) Article 10.08 (Senior Management and Boards of Directors); or

2. Each Schedule entry sets out the following elements:

- (a) **Sector** refers to the sector for which the entry is made;
- (b) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 10.03 (Reservations and Exceptions) and 11.07 (Reservations), do not apply to the sectors, subsectors, or activities listed in the entry;
- (c) **Description** sets out the scope of the sectors, subsectors, or activities covered by the entry; and
- (d) **Existing Measures** identifies, for transparency purposes, existing measures that apply to the sectors, subsectors, or activities covered by the entry.

3. In accordance with Articles 10.09 (Reservations and Exceptions) and 11.07 (Reservations), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.

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Annex II

Sector:	Aboriginal affairs
Obligations Concerned:	National Treatment (Article 10.03 Investment and Article 11.03 Services) Most Favored Nation Treatment (Article 10.04 Investment and Article 11.04 Services) Local Presence (Article 11.05 Services) Performance Requirements (Article 10.07 Investment) Boards of Directors and Senior Management (Article 10.08 Investment)
Description:	<u>Cross Border Trade in Services and Investment</u> Guatemala reserves the right to adopt or maintain any measure denying investors of the other Party and their investments, or service providers of the other Party, any rights or preferences provided to aboriginal peoples.
Existing Measures:	Constitution Political of Republic of Guatemala, Articles 66 to 69.

Sector: Social Services

Obligations Concerned: National Treatment (Article 10.03 Investment and Article 11.03 Services)
Most Favored Nation Treatment (Article 10.04 Investment and Article 11.04 Services)
Local Presence (Article 11.05 Services)
Performance Requirements (Article 10.07 Investment)
Boards of Directors and Senior Management (Article 10.08 Investment)

Description: Cross Border Trade in Services and Investment
Guatemala reserves the right to adopt or maintain any measure with respect to the provision of public law enforcement and correctional services, to the extent that they are social services established or maintained for reasons of public purpose as well as: income security or insurance, social security or insurance, public education, public training, health, and child care.

Sector: All sectors

Obligations Concerned: National Treatment (Article 10.03 Investment and 11.03 Services)
Most Favored Nation Treatment (Article 10.04 Investment and 11.04 Services)
Local Presence (Article 11.05 Services)

Description: Cross Border Trade in Services and Investment
Guatemala reserves the right to adopt or maintain any measure related to the exclusive right to authorize investments in the issue of currency, as well as to formulate and implement policies aimed at creating and maintaining exchange rate and lending conditions that are favorable to the orderly development of the national economy.

Sector: Professional Services

Obligations Concerned: National Treatment (Article 11.03 Services)
Most Favored Nation Treatment (Article 11.04 Services)
Local Presence (Article 11.05 Services)

Description: Cross Border Trade in Services
Guatemala reserves the right to adopt or maintain any measure that restricts the cross-border provision of professional services.

Existing Measures: Constitution Political of Republic of Guatemala, Article 90
Law on Obligatory Professional Association, Decree 62-91

Sector: Construction Services

Obligations Concerned: National Treatment (Article 11.03 Services)
Most Favored Nation Treatment (Article 11.04 Services)
Local Presence (Article 11.05 Services)

Description: Cross-Border Trade in Services
Guatemala reserves the right to adopt or maintain any measure that restricts the cross-border provision of construction services.

Sector: Road transportation services

Obligations Concerned: National Treatment (Article 11.03 Services)
Most Favored Nation Treatment (Article 11.04 Services)
Local Presence (Article 11.05 Services)

Description: Cross Border Trade in Services
Guatemala reserves the right to adopt or maintain any measure restricting the cross border provision of services in the sector of road transport services of goods.

Sector: Telecommunications

Obligations Concerned: Most Favored Nation Treatment (Article 11.04 Services)

Description: Cross-Border Trade in Services
Guatemala reserves the right to adopt or maintain any measure related to the clearance system for international telephone traffic between the signatories to the Telecommunications Treaty.

Measure: Treaty on Telecommunications and its Protocol (Signatories: Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua)

Sector: Matters Related to Disadvantaged Populations

Obligations Concerned: National Treatment (Articles 10.03 Investment and Article 11.03 Services)
Most Favored Nation Treatment (Article 10.04 Investment and Article 11.04 Services)
Local Presence (Article 11.05 Services)
Performance Requirements (Article 10.07 Investment)
Boards of Directors and Senior Management (Article 10.08 Investment)

Description: Cross-Border Trade in Services and Investment
Guatemala reserves the right to adopt or maintain any measure that grants rights or preferences to socially or economically disadvantaged populations.

Sector: Services provided to the companies

Obligations Concerned: National Treatment (Articles 10.03 Investment and Article 11.03 Services)
Most Favored Nation Treatment (Article 10.04 Investment and Article 11.04 Services)
Local Presence (Article 11.05 Services)
Performance Requirements (Article 10.07 Investment)
Boards of Directors and Senior Management (Article 10.08 Investment)

Description: Cross-Border Trade in Services and Investment
Guatemala reserves the right to adopt or maintain any measure related to the establishment and operation of the companies that dedicated themselves to the production and exportation of goods or services, under a fiscal and customs regime of exception
For major certainty the companies that want to take refuge in a special regime for the manufacture of products or services providing destined for the exportation, will have to comply with the dispositions that regulate the matter. There being understood by services providing; the supply of prime matters, inputs, machineries and spare parts necessary for the production of goods destined for the exportation.

Sector: Financial Services

Obligations Concerned: National Treatment (Article 10.03 Investment and Article 11.03 Services)
Most Favored Nation Treatment (Article 10.04 Investment and Article 11.04 Services)
Local Presence (Article 11.05 Services)
Performance Requirements (Article 10.07 Investment)
Boards of Directors and Senior Management (Article 10.08 Investment)

Description: Cross Border Trade in Services and Investment
Guatemala reserves the right to adopt or maintain any measure related with the establishment of banks as well as the services provided of activities banking or no banking, include the insurances.

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Annex III: State to Reserves Economic Activities

Sector:	Communications – Postal Services
Obligations Concerned:	National Treatment (Article 11.03 Services) Local Presence (11.05 Services)
Existing Measures:	Código Postal, Decreto Número 650, Artículo 41. Acuerdo Gubernativo 289-89, Artículo 1, Reglamento para el Servicio Público de Transporte y Entrega de Correspondencia Postal Prestado por Particulares.
Description:	<u>Cross Border Trade in Services and Investment</u> No company, corporation or individual will be able to redeem the service of post office with regard to the epistolary mail, but for express authorization of the Executive Organism, under the conditions that he himself determines. It is authorized to the Ministry of Communications, Transport and Public Works so that, previous the requisites that the ZIP code determines and those that the present regulation establishes, be able to grant authorizations to individuals for the service of the public service of transport and delivery of postal mail.

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Annex IV: Non Discriminatory Quantitative Restrictions

Sector: Services Road Transport of Cargo

Existing Measures: Acuerdo Gubernativo 135-94, Artículo 6, Reglamento del Servicio de Transporte de Equipos de Carga.

Description: Cross Border Trade in Services
A shipping company, his legal representatives or his agents will not be able to hire the services with only one owner of land transport more than 10 % of the equipment of cargo that every shipping company, his legal representatives or agents deposit or extract from the country during a month.
It is excepted of the previous disposition, the shipping companies, his legal representatives or his agents, when they deposit or extract from the country less than 100 units of equipment of road a month.

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Annex V: Most Favored Nation Treatment

Guatemala excludes the application of Articles 10.04 and 11.04 (Most Favored Nation Treatment), from the treatment granted under existing agreements or agreements signed subsequent to the effective date of this Agreement, in matters concerning:

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

Articles 10.04 and 11.04 (Most-Favored Nation Treatment) does not apply to any present or future international cooperation program to promote economic development.

