



## Discussion paper 1 – Alcoholic Beverages

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*This discussion paper is provided as an update to the OECD in the context of the ongoing accession reviews of Colombia, following BIAC's 2014 statement on Colombia's business environment. The views expressed herein are based on inputs received from a number of BIAC members and do not necessarily reflect a final BIAC position. Additional issues may be raised at later stages throughout Colombia's accession process to the OECD.*

### I – Update of the main issue

The OECD Market Openness Report of Colombia from July 2014 reflected BIAC's concerns regarding Colombia's discriminatory practices vis-à-vis the spirits sector.<sup>1</sup> However, Colombia is still in breach of its commitments to the EU regarding the discriminatory practices of the monopolies, which came into effect upon entry into force of the FTA. Colombian law continues to distort the market through a discriminatory tax on imported distilled spirits through the application of an arbitrary breakpoint. The Colombian tax structure has been structured in a way that discriminates against imported spirits to put a preference on spirits that contain 35% alcohol-by-volume or less—the domestically produced *aguardiente* is only of an alcoholic content of 35% or less. This clearly prevents importers from operating and competing on a level and transparent playing field with local businesses and prevents the access of consumers to global products.

### II – How the issue impacts business

The WTO and EU FTA rules do not prohibit the establishment or existence of these monopolies—the existence of the monopolies does not in itself violate non-discrimination principles. However, the OECD MOR concludes, “if such monopolies engage in market-distorting behaviour and block market access to foreign suppliers, there is a scope for reform”. Article 336 of the Colombian Constitution confers the right to Colombian Departments to establish monopolies for the production and/or of introduction of spirits into the Department. Furthermore, a Department can choose to use its monopolistic power to control the introduction of spirits on its territory. When a Department exerts these two monopolistic activities, it often results in many anti-competitive, discriminatory and unfair practices. For spirits produced outside the Department (either from another Department or from abroad), the monopoly requires that importers negotiate “introduction agreements”. The Departments demand that certain terms be included in introduction agreements, sometimes engage in delaying tactics during the contract negotiations, may refuse ultimately to sign final contracts, and frequently unilaterally cancel contracts.

### III – Why it matters for trade policy

These practices are in contradiction with Colombia's obligations under the EU-Colombia FTA and the World Trade Organization (WTO), and run counter to the recommendations of the OECD as part of Colombia's accession negotiations. It is thus critical for the Colombian government to bring the practices of the departmental monopolies in line with its existing bilateral and multilateral obligations. The current status of the National Development Plan does not foresee any change in the legislation regarding these practices.

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<sup>1</sup> The report precisely outlines that “some *de facto* discriminatory market practices may need to be addressed” and concludes that “the Government should also review the effects of regulations in areas such as regional alcohol monopolies [...] to ensure the principle of national treatment is not compromised in practice”.