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CUSTOMS REGIME

AND FREE TRADE TEATRIES →



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On July 3, 2019, the Government enacted Decree 1165 of 2019 which harmonizes and consolidates Colombia's current customs regulation. This regime seeks to ensure the safety of users and in turn, facilitate the procedures and operations involved in the customs regime.

The new customs regulation included rules that facilitate the understanding of customs regulations, thus contributing to the compliance and providing greater legal certainty to those involved in the different operations. To promote legal and fair trade, it has sought to take greater advantage of trade agreements and strategic markets; work has been done to further facilitate trade to improve the country's competitiveness, thus seeking foreign investment.

With Law 1879 of 2018, Colombia approved the WTO Trade Facilitation Agreement and it was subsequently approved by the Constitutional Court. Colombia's participation in this Agreement creates major commitments for the simplification, modernization, and harmonization of export and import procedures. It also seeks effective cooperation between customs authorities and other authorities in matters relating to trade facilitation and compliance with customs procedures, and also includes some provisions on technical assistance.

Colombia also acceded to the Information Technology Agreement in 2012, whereby States Parties agreed to eliminate tariffs on information technology products covered by the Agreement. High-tech products include computers, telecommunications equipment, semiconductors, semiconductor manufacturing and testing equipment, software, scientific instruments, and almost all parts and accessories of these products. Efforts continue to seek to expand the list of products covered by this Agreement, which is a great opportunity for investors.

The harmonization of customs regulation is particularly reflected in aspects such as the regulation of International Logistics Distribution Centres and International Commercial Societies, as well as in the procedural rules for the apprehension and confiscation of goods. Moreover, there is an inclusion of general provisions, such as the insertion of the limitation period for the collection action set out in the Administrative and Administrative Procedural Code.

Similarly, to ensure greater efficiency in trade operations, the aim is to strengthen the figure of Authorized Economic Operators as a reflection of reliable companies, reducing formalities, and providing some benefits. To strengthen this figure, the Government has decided that since 22 March 2020 permanent customs user figures and Highly Exporting Users will be removed. Currently, there are more than 80 Authorized Economic Operators who enjoy special treatments and approximately 245 applications pending approval.



Imports

The import process in Colombia consists of the introduction of goods of foreign origin into the Colombian customs territory, to remain there definitively or temporarily, in fulfillment of a specific purpose. Import is also considered to be the introduction of goods from a free zone or customs warehouse to the rest of the national territory.

Colombia has a free import regime for the introduction of goods and services into its territory. However, there are some restrictions applicable to certain goods:

- It is needed a permit from the Ministry of Agriculture and Rural Development, for certain agricultural goods such as poultry, oats, maize, sorgo, and starch.
- Quota limitations for products such as beef.
- For the introduction of fauna and flora, it is needed the use of a designated customs area.
- Imports of weapons and explosives are only authorized for defense authorities.

The import provisions of Decree 1165 of 2019 lay down the following modalities:

1. Ordinary import.
2. Import with franchise.
3. Reimport for passive processing.
4. Reimport in the same state.
5. Warranty compliance import.
6. Temporary import for re-export in the same state (short- and long-term import).
7. Temporary import for active processing.
8. Import for transformation and/or assembly.
9. Import by postal traffic and express shipments.
10. Urgent deliveries.
11. Travelers.
12. Samples with no commercial value.

The modalities most commonly used by importers will be explained below:

Ordinary Import

This is the most widely used mechanism by importers in Colombia, whereas, once all obligations and formalities have been fulfilled, the good may be received for free disposal indefinitely.

Obligations include, but are not limited to, the submission of import declarations, the cancellation of the corresponding customs taxes, the prior acceptance of licenses and good views granted by the competent authorities and the compliance with the customs valuation rules, which are carried out following the methods established by the General Agreement on Tariffs and Trade (GATT), the Decision 571, and the Andean Regulation adopted by Resolution 1684 of 2014, as amended by the Andean Community resolution 1828 of 2016.

Concerning licenses and conformity approvals, the Ministry of Trade, Industry and Tourism implemented the Single Window of Foreign Trade ("VUCE") which is the tool that allows channeling foreign trade procedures, both import and export. Its main objective is to reduce response times for obtaining conformity approvals, costs in filing applications, and new inquiries.

On the other hand, customs duties, under the new regulation, are understood to be all customs duties and all other duties, taxes or surcharges levied on importation or in connection with the importation of goods, except for surcharges whose amount is limited to the approximate cost of services provided or received by customs on behalf of another national authority.

Customs taxes include sales tax caused by the importation of goods into the National Customs Territory, which is subject to a rate of generally 19%. Some products are subject to the approval of the relevant competent economic sector authorities, for example:

 Animal health certificate (for live animals) and phytosanitary (for fruits, flowers, vegetables, tubers and aromatics)	Colombian Agricultural Institute – ICA
 Medicines, food, hygiene and grooming products, alcoholic beverages, cosmetics	National Institute of Drug and Food Surveillance – INVIMA
 Goods in the fisheries sector. Ornamental fish	National Aquaculture and Fisheries Authority – AUNAP
 Works of art and culture	Ministry of Culture
 Mining products and their derivatives. Precious stones, metals, and jewelry	National Mining Agency

Temporary import

Imports that are not intended to be final, and therefore are not intended to be freely available, may opt for a temporary import, either short-term or long-term, depending on its purpose.

Short-term temporary import

This modality allows the import of goods to serve a specific purpose that determines their short stay in the country. The maximum period of importation shall be six months from the release of the goods, which may be extended by the customs authority for another three months.

The importation of these goods shall not cause customs taxes for as long as it remains in the country. However, once the maximum term is due, the product must be exported.

For this type of importation, the customs authority requires the establishment of a guarantee in favor of the nation, up to 100% of the customs taxes corresponding to the imported goods, to ensure the fulfillment of the specific purpose justifying the short stay in the country.

Long-term temporary import

This modality allows the payment of customs taxes on imported capital goods, their parts and accessories to be deferred for a term of five years from the release of the goods in six-monthly quotas.

Import by postal traffic and express shipments

Under this mode it is possible to import by any mode of transport, mail shipments, shipments that arrive through the Official Postal Network and urgent shipments; as long as their FOB value does not exceed USD 2,000 and require agile delivery.

Likewise, the goods subject to this modality cannot exceed 50 kg, their measurements cannot exceed 1.50 mt in any of its dimensions, not 3 mt the sum of the length and the greatest contour, taken in a different direction from the length.

Temporary import for active processing of capital goods

This modality allows the temporary importation of capital goods, as well as their parts and spare parts, without customs taxes, as long as the goods are intended to be re-exported, after being subjected to repair or conditioning, within a period not exceeding six months.

The customs authority may be requested to authorize a longer period if it is sufficiently justified.

Authorized customs warehouses

The National Government has created qualified deposits, which may be of a public or private nature, in which it is allowed to store goods that come from abroad and whose legal import procedures have not been completed. Likewise, this regime allows carrying out preparation activities for distribution without the need to pay customs taxes, among which are: conditioning, handling, packaging, re-packaging, among others.

Goods entering a warehouse can remain for up to two months and offer the following benefits to entrepreneurs:

- They are an option for companies that need to store their goods without incurring real estate purchase or lease.
- They facilitate the processing of foreign trade procedures.
- They improve the company's cash flow by allowing customs taxes to be paid at the time of shipment of the product to the end customer.

Private deposits include those for the general regime and those for specific activities such as for the processing or assembly regime, industrial processing, international distribution, aeronautics, transients, and for urgent shipments.

International Logistics Distribution Centers

International Logistics Distribution Centers (CDLI) are public warehouses located at specialized ports, airports or logistics infrastructure, which can be used to store a wide range of products, including domestic goods, imported goods or goods in the process of completing a temporary import or processing and/or assembly, which will be distributed by re-embarkation, import or export.

One of the benefits of CDLI is that foreign goods can be stored for one year from the day they entered the national customs territory and extended for an equal term. Also, the importer shall not settle customs taxes during the storage term of foreign goods on the CDLIs.

Similarly, income from the disposal of foreign goods owned by foreign companies or persons without residence in the country, which has been introduced from abroad to International Logistics Distribution Centers, does not generate source income and is therefore not subject to income tax. The above benefits make distribution centers an excellent alternative for business development in Colombia.



Authorized Economic Operator

The Authorized Economic Operator (OAS) is a special authorization granted by the Directorate of National Taxes and Customs to exporters, importers, and customs agencies to facilitate the development of foreign trade operations, due to its recognition as a safe and reliable business entity.

Companies authorized as OAS have, among others, the following benefits:

- Consolidated payment of customs duties, sanctions, interest, and ransom values, which will allow users to make payment of these contributions within the first five days of each month for customs declarations authorized during the previous month or within the first three days of each fortnight, applicable to shipments delivered within 15 days before to the payment date.
- Elimination of guarantees to cover compliance with customs obligations.
- Customs clearance of goods at the customs declarant's premises.
- Use of special channels and mechanisms for the conduct of foreign trade operations before the relevant authorities.
- A decrease in the number of physical and documentary inspections for import operations varied out by the DIAN.

Likewise, these companies are beneficiaries of the advantages contained in the Mutual Recognition Agreements signed by Colombia. Currently these types of agreements exist with the countries of the Pacific Alliance (Chile, Colombia, Peru and Mexico) and soon with Costa Rica and the countries of the Andean Community (Peru, Colombia, Ecuador, Bolivia).

The Free Trade Agreements in Colombia

Colombia is part of numerous trade and preferential agreements that guarantee benefits for Colombian products that have access to certain foreign markets. These treaties include the Andean Community Agreement ("CAN"); the Bilateral Trade Treaty with Mexico; and the Agreement between the members of the CAN and MERCOSUR (Brazil, Argentina, Uruguay, Venezuela, Paraguay, Bolivia, Colombia, Ecuador, and Peru).

Colombia is also part of the Pacific Alliance, along with Chile, Mexico, and Peru. The Pacific Alliance is a mechanism of economic and trade integration, based on four pillars: free mobility of goods, services, capital and people and a cross-cutting axis of cooperation. As a result, Colombia is committed to actively supporting the achievement of objectives, specifically in building an area of integration to progressively move towards the free movement of goods, services, capital and people; promote greater growth, development and competitiveness of the economies of States Parties seeking to achieve greater well-being, overcoming socio-economic inequality and social inclusion of its inhabitants; and in turn the Pacific Alliance into a platform for political articulation, economic and trade integration, and world projection, with special emphasis on the Asia Pacific.

Some of the Pacific Alliance's technical groups seek to regulate provisions related to tariff liberalization, rules of origin, technical barriers to trade, sanitary and phytosanitary measures, as well as trade facilitation and customs cooperation. Other technical groups seek to provide clear, predictable rules and legal certainty to promote trade in services and investment, as well as seeking the development of common best practices in tax and tax matters.

Colombia has also concluded free trade agreements with the United States of America, Canada, Israel, the European Union, the European Free Trade Association (Norway, Switzerland, Iceland, and Liechtenstein), Mexico, Chile, the Central American Triangle (El Salvador, Guatemala), The Pacific Alliance, South Korea, the Caribbean Community ("Caricom"), and Costa Rica.

Export steps:

- 1 Process the Tax Registration document (RUT), as an exporter, before any DIAN or SuperCade office.
- 2 Obtain the customs tariff applicable to the product to be exported.
- 3 Obtain the applicable authorizations.
- 4 Perform the respective customs procedures, including submittal of the shipping authorization application, the entry to the primary zone, the shipment, the shipping certificate, and other elements required for the export.



Free trade agreements were currently signed with Panama and the United Kingdom, which are pending entry into force. Besides, Colombia has ongoing negotiations on free trade agreements with Japan, and Turkey.

On the other hand, the country has signed Double Taxation Agreements with Canada, Spain, Czech Republic, Switzerland, Portugal, India, South Korea, Mexico, Chile, Panama, and the Member States of the Andean Community of Nations.

It should also be noted that the Congress of the Republic of Colombia approved on October 4, 2018, Law 1939: "By which the 'agreement between the Republic of Colombia and the United Kingdom of Great Britain and Northern Ireland is adopted to avoid double taxation in relation to income and capital gains and to prevent evasion and elusion. The "Protocol" was signed in London on 2 November 2016, and is pending review before the Constitutional Court.

In addition, the agreements with Italy and France have already been signed and are close to completing their legislative process. Finally, Colombia also has bilateral investment treaties including Spain, China, India, Switzerland, Japan, Turkey and Peru.

Country	Effective date	Name of the Agreement
Mexico	FTA effective from 1995 Ammendment Protocol since 2011	FTA between the United States of Mexico and the Republic of Colombia
Chile	May 2009	FTA between the Republic of Colombia and the Republic of Chile-Additional protocol to the Agreement of Economic Complementation for an Extended Economic Region between Colombia and Chile (ACE 24), December 6th 1993. Signed in Santiago, Chile, November 27th 2006.
Northern Triangle	Guatemala: November 2009 El Salvador: February 2010 Honduras: March 2010	FTA between the Republic of Colombia and El Salvador, Guatemala and Honduras.
AELC	Switzerland: July 2011 Liechtenstein: July 2011 Norway: September 2014 Island: October 2014	FTA between the Republic of Colombia and the EFTA states.
Canada	August 2011	FTA between the Republic of Colombia and Canada
United States	May 2012	United States-Colombia Trade Promotion Agreement, attached letters and the understanding signed in 2006
Caribbean Community	January 1995	Agreement on Trade, Economic and Technical Cooperation between the Caribbean Community (CARICOM) and the Government of the Republic of Colombia
Mercosur	Effective between Colombia and Argentina: 20 December 2017 Effective between Colombia and Brasil: 20 December 2017 Effective between Colombia and Uruguay: 11 June 2018 Effective between Colombia and Paraguay: 29 January 2019	Acuerdo de Complementación Económica No. 72 Colombia Mercosur (Economic Complementa-tion Agreement)
European Union	July 2013	Trade Agreement between the European Union, Colombia and Perú
United Kingdom	Pending	Trade Agreement between the United Kingdom and the Republic of Colombia
Korea	June 2016	FTA between the Republic of Colombia and the Republic of Korea
Costa Rica	July 2016	Free Trade Agreement between Colombia and Costa Rica
Pacific Alliance	May 2016, effective date of the Additional Protocol of the Framework Agreement	Pacific Alliance
Comunidad Andina de Naciones (CAN)	October 1969	Acuerdo de Integración Subregional Andino (Andean Subregional Integration Agreement)
Israel	August 2020	FTA between Colombia and Israel

Free Trade Agreement with the United Kingdom

Once the UK implements Brexit and separates from the European Union, the COLOMBIA-European Union FTA will no longer be in force for trade relations with the UK, ensuring that the conditions of integration and preferential access are maintained to the market.

Colombia, Ecuador and Peru signed on 15 May 2019 the “Agreement on Trade Continuity between Colombia and the United Kingdom” seeking to maintain trade relations between states. Although it has not entered into force, the internal process for the ratification of this international instrument is in place.

One of the sectors that benefit most from the trade relationship with the UK is agriculture. In 2018, the main export products were bananas, coffee, flowers, avocados, and sugar.

The main imports were vehicles (4x4), medicines, agrochemical fertilizers (fungicides), chemicals, paints and dyes, and medical-surgical devices.

Anti-Dumping, Countervailing Measures and Non-Preferential Origin Investigations

More than 60 anti-dumping investigations have been initiated in Colombia in recent years. Most of them are against imports from China, but also against products from Mexico, South Korea, India, and Brazil.

For all purposes, products subject to anti-dumping duties and safeguards as of July 1, 2019 are: PVC profiles (3916.20.00.00), sodium citrate (2918.15.30.00), galvanized wire (7217.20.00.00), low carbon steel wire (213.91.90.10, 7213.91.10.10, 7227.90.00.11, and 7227.90.00.90), polished or galvanized laminated chains (7315.82.00.00), galvanized smoothmines (7210.49.00.00), high pressure decorative laminates (3921.90.10.00), radial tires for buses and trucks (4011.20.10.00), shovels, azadones, bars and zapapicos (8201.30.00.00), plasticizing DOP (2917.32.00.00), wooden boards (4412.31.00.00 and 441 2.32.00.00), tableware and loose pieces of earthenware and porcelain (6912.00.00.00 and 6911.10.00.00), intubation tubes (tubing) (7304.29.00.00), extruded aluminium profiles (604.21.00.00, 7604.29.10.00, 7604.29.20.00, 7608.10.90.00 and 7608.20.00.00), flexible PVC films and PVC rigid films (3920.43.00.00 and 3920.49.00.00), potato (2004.10.00.00), among others.

On 24 January 2019, the first research of subsidies by the Ministry of Trade, Industry and Tourism was initiated. This investigation is determining the existence, amount and effects in the domestic industry of alleged subsidies on imports of combustible alcohol (ethanol) originating in the United States of America.

Concerning non-preferential origin, Colombia provides that the importation of products subject to trade defense measures such as anti-dumping, countervailing or safeguard measures must submit a certification indicating the tariff classification, a declaration swearing under oath, certifying what is the actual country of origin. This evidence shall be issued before the submission of the import declaration before the Customs Authority.

Source: www.tlc.gov.co

Modernization of the customs regime

In Colombia, different measures have been taken to modernize the customs regime, implementing key instruments to improve Colombia's position as a more competitive country. There is even a commitment to implement the Electronic Computer Service within a maximum period of 2 years.

For example, the Customs Transit Declaration must be submitted through computer services and will only be deemed accepted once they assign a number and date, and authorize the declarant to print the Declaration. This is crucial for major cities such as Bogota.

Likewise, the DIAN may require, for the authorization of the customs transit operation, the use of electronic safety devices, monitoring and monitoring of goods.

In terms of guarantees this is relevant, since approval and/or cancellation must be processed, because otherwise, initiating the operation without the prior approval of a guarantee is considered to be a very serious customs infringement.

Likewise, the active and permanent interaction between actors in foreign trade operations, specifically for ports and free zones, is being sought, seeking to achieve greater efficiency.

At the same time, it is seeking to improve access to citizens' information. Therefore, the Contact Center service is being strengthened so that users can consult and request support for the use and application of customs regulations in electronic computer services. The above goes hand in hand with the provision of the service 24 hours a day, seven days a week.

A draft resolution is being processed seeking to implement electronic notification in matters relating to customs operations.

With the Platform of the Single Window of Foreign Trade ("VUCE") has as its main objective the reduction of response times for obtaining the compliance approval, costs in the filing of applications, and new consultations, among other procedures, both goods such as services derived from foreign trade operations, including an import module and an export module for the procedures required for different trade operations. The VUCE also has a Simultaneous Inspection System – SIIS module, in which inspections of control entities are carried out jointly and simultaneously. Work is currently underway to improve its interoperability, seeking to involve more government entities that are responsible for exercising control over foreign trade operations carried out in the national territory, such as the Directorate Maritime General (DIMAR) and Civil Aeronautics (AEROCIVIL).

Early Import Declaration and Advance Resolutions

Under the customs system there is the possibility to file import declarations in advance of the arrival of the goods no later than 15 days in advance. This mechanism was created as a facilitating means of dispatching imports in an average of 48 hours.

Similarly, advance rulings may be requested so that the Authority, prior to the importation of a good, at the request of exporters, importers, producers, after consideration of the documents provided, issues a decision on:

1. Tariff classification.
2. The application of customs valuation criteria.
3. Whether a good originates in accordance with the rules of origin established in the Agreements signed by Colombia that are in force, or in national legislation.
4. The application of refunds, suspensions or other exemptions from customs taxes.
5. If a good reimported after export for passive processing, it is eligible for duty-free treatment of customs taxes.
6. The application of a quota under a tariff quota.
7. Country of origin marking.
8. Any other matter agreed by Colombia under a free trade agreement or treaty.
9. Risk Management System

Similarly, the strengthening of the risk management system is being promoted to effectively exercise customs control, combating smuggling and, at the same time, facilitating international trade.

The risk management system will be fed from data on the persons involved in the logistics chain, payment and compliance with the obligations in tax, customs and exchange rate, as well as compliance with obligations and solvency to develop foreign trade operations.

The system shall provide a low, medium or high risk rating which will serve to issue favorable or unfavorable concept of customs users. This information shall be reserved under Section 112 of Law 1943 of 2018.

Based on the risk management system, the DIAN may:

- Automatically return pro-income and sales tax balances pursuant to Section 98 of Law 1943 of 2018.
- Give special treatment by granting the quality of authorized exporter or authorized economic operators.
- Establish an obligation to file the import declaration in advance.
- Determine the practice of documentary or physical customs inspection.
- Issue the release authorization.
- Determine non-clearance of customs transit, among others.

Regulatory Framework

Instrument	Subject
Decree 1165 of 2019	New customs regulation
Decree 2147 of 2016 and Decree 659 of 2019	Free Zone Regime
Decree 1750 of 2015	Anti-dumping duties
Decree 299 of 1995	Countervailing duties
Decree 3568 of 2011	Creation of the Authorized Economic Operator
Resolution 1649 2016	Provisions Concerning Special Import and Export Systems - Vallejo Plan
Decree 2153 of 2016	Customs tariff