ELANBiz InfoCard: Multi-lateral Trade Agreement among Colombia, Peru and the European Union

Update as of July 12, 2019

Why is the Trade Agreement with Colombia important for companies in the European Union?

Colombia is a strategic partner and represents one of the region’s most attractive markets and logistic centers. This, given that it has ports in the Atlantic and Pacific oceans; a stable democracy, as well as a robust economy. According to the World Economic Forum’s Global Competitiveness Report, it is one of the five fastest-growing Latin American economies along with Mexico, Chile, Panama and Costa Rica. Its 46 million inhabitants, not to mention the growing number of migrants with capacity for consumption in progress, make Colombia an attractive country for all kinds of business. For example, the number of cellphone lines surpasses its population number (by the end of 2018, more than 60 million phone lines were active). Furthermore, the purchases of motorcycles and motor vehicles has been characterized by its increase for the last several years.

According to official sources, Colombia is one of the most favored destinations for tourism and business trips, reaching a 22.2% increase, and 55.4% increase in hotel occupancy in 2018. The number of foreign tourists was 4,276,146 from Canada, the United States, Argentina, Chile, Mexico, Brazil, Australia, Spain, France, Germany, China and Korea (among others). The most traditional destinations are Bogota, Cartagena, Medellin and Cali. However, tourism growth in cities like Barranquilla, Bucaramanga, Manizales, and many more is an indicator of an increase in foreign investor trust.

The legal framework for the current Trade Agreement among Colombia, Peru and the European Union, which entered into force on August 1st, 2013, guarantees stability in trade relations, and fosters investments in the long run. This, given that beyond regulating the business of simple exchanges, it determines the conditions for the establishment of companies, branches, or distributors. It also sets the conditions for the conclusion of public procurement contracts pursuant to Law 816 of 2003, which equates foreign bidders with domestic ones.

Colombia exports commodities and natural products that contain no major industrial transformations. In turn, it consumes all kinds of products ranging from food to technology.
Colombia has concluded free trade agreements, becoming a wide access point for world markets, among which there is Canada, the United States, and the European Union.

As a novelty, it is very important to mention the creation of the Forum for the Progress and Development of South America (PROSUR). An international organism created in 2019 with the purpose of favoring integration in South America – as a replacement for the Union of South American Nations (Unasur) – which rises out of the will to “renovate and strengthen” South American integration in order to remove any ideological baggage from regional organisms.

With this organization, trade in Brazil, Chile, Argentina, Peru, Ecuador and other South American countries will be revitalized bringing good expectations for Colombia and its foreign investors.

What products benefit from this Agreement?

All industrial goods are covered by the Trade Agreement. However, many periods of tariff relief for European products were taken into account to prevent the impact that a fast market liberalization could have in Colombia, setting forth, in this way, the principle of asymmetry.

In the case of rubber and its by-products such as latex, the partial tariff relief was carried out and ended in 2018. For automobiles that do not run on diesel total relief has also ended.

This shows that for many manufactured products of great importance, full liberalization has already been achieved, or it’s nearly there¹.

Agricultural products also benefit from the Agreement. In this sense, even though tariff reductions apply to the majority of agricultural products, both countries agreed upon the establishment of temporary and/or tariff quotas. In the case of imports from the European Union, this applies to dairy products. During the transition period, it was agreed to implement a special safeguard measure on volume, which keeps quotas small and closed during a period between 12 and 17 years.

Some sensitive products such as corn and rice were excluded from the negotiation. On the contrary, other products were liberated from the moment the Agreement entered into force. This is the case for European wines, which enter the country free of tariffs since August 2013.

The complete, detailed information related to goods covered by the Agreement can be found in the Harmonized Commodity Description and Coding System SA 2007, as established by article 20 of Law 1669 of 2013 – “By which the Trade Agreement among Colombia, Peru, and the European Union and its Member States is approved” (please see link of interest at the end of this section).

Which tariffs apply to European products?

The Trade Agreement between the European Union and Colombia entered into force on August 1st, 2013, reason why the tariff liberalization process is still in progress. However, many European products are already benefitting from the Agreement. This is either because they enter the country free of tariffs or because a reduced tariff is applied. Thus, when initiating any kind of study related to the Colombian market, it is important to know the tariff heading for the product in order to determine to which tariff relief category it belongs. And to understand, in this way, what type of tariff the importer must pay when entering the country.

The categories for tariff relief can be seen in Annex 1 – Appendix 1 – Section A of the trade agreement (please see link of interest at the end of this section).

It is imperative to emphasize that article 22 of Law 1669 of 2013 establishes the “Elimination of customs tariffs”. This article sets forth everything referring to guidelines and conditions under which the parties must carry out tariff relief for various merchandises pursuant to the Trade Agreement.

Through the issuance of Decree 1636 of July 31st, 2013, and Decree 2247 of November 5th, 2014, commitments made by the Colombian government in relation to access to the market by virtue of the Trade Agreement were materialized. This agreement establishes, in detail, the annual list of tariff headings and subheadings for each of the products subject to tariff relief when some product is imported and enters the country (please see link of interest at the end of this section).

The Agreement foresees the progressive elimination of tariffs in accordance with the categories set in the following table:

<table>
<thead>
<tr>
<th>Category</th>
<th>Period until total tariff relief</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Immediate at the moment the Agreement enters into force</td>
</tr>
<tr>
<td>B</td>
<td>Progressive until January 1st, 2016</td>
</tr>
<tr>
<td>C</td>
<td>Progressive until January 1st, 2018</td>
</tr>
<tr>
<td>D</td>
<td>Progressive until January 1st, 2020</td>
</tr>
</tbody>
</table>
What is the “rule of origin” and what are the conditions with which European products must comply in order to benefit from the Agreement?

Annex II of the Trade Agreement establishes what will be considered products originating from each party. They are those products produced entirely in the European Union or in Colombia. They can also include materials that have not been entirely obtained there, as long as those materials have been subject to sufficient elaboration or transformation in the European Union or Colombia.

The information relevance lies on the fact that tariffs and restrictions applied to imports may change depending on the origin of imported products. The rules of origin (non-preferential) are used in the following cases:

- Implementation of trade measures and instruments, such as anti-dumping, safeguard measures, or exceptions to trade
- Implementation of marking or labelling provisions
- Public procurement
- Development of trade statistics

In a general way, goods are considered products originating from the European Union when, even using imported materials, they have experienced a leap in the tariff classification. In the same way, non-origin materials do not surpass a percentage between 20 and 50% of the ex-works price for the transformed product.

For example, the Annex foresees that women’s and baby’s clothes require a manufacturing process including spinning and weaving without embroidering the value of which does not exceed 40% of the ex-works price for the product.

Annex II of the Trade Agreement also includes provisions about cumulation of origin. Thus, materials originating in the European Union are considered to have originated in a signatory Andean Country when they are incorporated into a product obtained there. It will not be necessary for those materials to have been subject to sufficient elaboration or transformation in an Andean Country. In turn, materials originating in a signatory Andean Country will be considered as materials originating in the European Union when they are incorporated into a product obtained there.

When products originating from the European Union are imported to the signatory Andean Countries, and when products originating in the signatory Andean Countries are imported to
the European Union, they will benefit from the Trade Agreement by presenting a movement certificate EUR.1 (a sample of which can be found in Appendix 3) found in Annex II of the Trade Agreement (please see link of interest at the end of this document).

Origin may also be credited through an invoice statement, which must be issued by the exporter with the following statement “The exporter of the products included in this document (customs authorization No. …) states that, unless there is an indication to the contrary, these products have a preferential origin …”. This only applies for shipments valued in €6,000 or less. However, in the case of an authorized exporter, shipment values are not restricted².

In the same way, for the purposes of an integral identification of the conditions and rules of origin for the products in application of the Trade Agreement, there is the European Commission’s Implementing Regulation 740/2013 from July 30th, 2013, related to the exceptions to the rule of origin established in Annex II of the Trade Agreement. These exceptions apply within the quotas determined for products coming from Colombia (please see link of interest at the end of this document).

**What does the Agreement foresee in terms of Standardization, Conformity Assessment procedures and Labelling?**

The Agreement indicates that international rules will be the base for the elaboration of technical regulations, unless said international rules constitute an inefficient or inappropriate means to reach the legitimate goal sought.

The agreement also references the certification or the conformity assessment procedures. They are the way to determine if products, goods and services comply with the requirements set forth in mandatory rules or technical specifications. In these procedures, the Agreement allows for the facilitation of recognition of results issued by competent organisms through a multi-lateral certification agreement, and the conclusion of private agreements with certification organisms, which will help to homogenize evaluation standards.

Parties did not commit to require prior approval or labeling registration, except when it is convenient in order to protect human, animal or plant health. Which could be the case for pharmaceutical products. The incorporation of internationally recognized pictograms is allowed for labelling products.

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With respect to textiles and shoes, where, historically, there has been an unnecessary development of labelling, the information provided will be limited and, in case additional information is necessary, it will be done through non-permanent labels.

What does the Agreement foresee with regard to Sanitary and Phytosanitary Measures?

Sanitary and Phytosanitary Measures (SPM) are understood to be those rules that apply in order to protect the lives of people or animals, or to preserve plants from the risks derived from additives, pollutants, toxins or pathogens in food products. They also apply to protect a country from the damage caused by the entry, establishment or dissemination of parasites.

SPM have an outstanding place in the Agreement, given that they define the game rules applicable at a bilateral level in two essential fields: sanitary admissibility and defense for the national sanitary status.

The Agreement contains concrete provisions about harmonization of SPM rules and measures; key aspects for facilitating trade, defining the recognition of the sanitary status, and proceeding with regionalization and equivalence.

Harmonization is achieved through specific rules and procedures for domestic establishment inspection, and the verification of information, transparency, information exchange, as well as alternative and emergency measures which do not hinder trade flows. Harmonization is governed by the principles of special and differentiated treatment, technical cooperation, and an innovative procedure for technical consultations, as well as access to the dispute resolution provisions.

Among the SPM provisions, there is also the principle of shortlisting. These are the lists of other countries from which animal originated products can be imported based on the international Codex Alimentarius rules. Some of the criteria to keep in mind for the elaboration of these lists are:

- Legislation in the other country about animal originated products, use for veterinary medication and the preparation or utilization of animal feed;
- Organization of competent authorities from other countries and their supervision regarding legislation enforcement;
- Personnel training in the performance of official controls;
- Resources available to competent authorities;

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• Existence of control procedures and systems;
• Procedures to give notice regarding animal disease outbreaks;
• Hygienic production, elaboration, handling, storage conditions applied to animal originated products, among others.

Finally, one of the most outstanding aspects in the Trade Agreement in relation to SPM is the creation of the Sanitary and Phytosanitary Measures Sub-Committee (Subcomité de Medidas Sanitarias y Fitosanitarias) to solve problems that arise, to define sanitary priorities with the authorities in the countries home to both parties, in addition to following up and monitoring actions taken by both parties in this regard. This sub-committee is allowing a significant advancement for the consolidation of true access for agricultural and agro-industrial products to the Colombian market.

In the implementation of the Agreement, a division of responsibilities is highlighted, such as the coordination among competent authorities for each party. According to Annex VI, whenever there are exports to Colombia from Europe, the competent Colombian authority will be responsible for controlling production conditions and procedures which certify compliance with rules and requirements established by Colombian authorities.

In the Colombian case, surveillance and control will be performed jointly by the Colombian Agricultural and Livestock Institute (Instituto Colombiano Agropecuario – ICA) and by the National Institute for the Monitoring of Medicines and Food (Instituto Nacional de Vigilancia de Medicamentos y Alimentos – INVIMA). These institutions will be coordinated with the European Commission, in particular with the Directorate-General for Health and Food Safety (DG SANTE).

**How do services exports and investments benefit from the Agreement?**

The general rule is the parties’ commitment to granting a treatment no less favorable than that granted to domestic establishments and investors for those establishments and investors identified in the Agreement (Annex VII for commitments for establishment; Annex VIII for the commitments regarding cross-border service trade). Likewise, the parties commit to promote an attractive and stable environment for reciprocal investment.

The Agreement offers investors from both parties important opportunities in a wide range of areas, such as manufacturing industries, service industries, and energy production. Moreover, access to the market is provided and consolidated for cross-border services, and there is a guarantee for the establishment of key interest areas, such as financial services, professional services, maritime transport, as well as telecommunication services and distribution.
The Agreement contains a specific chapter where the parties commit to facilitating the temporary stay of people briefly visiting their country for business. The same treatment will be given to service providers who have been hired to render a service in the European Union for the final consumer (architecture, engineering, medical services, research and design, market research, trade fairs, tourism). The parties also commit to opening up current payments and capital flows, which will be doubly beneficial for the free movement of services, investments, and establishments.

What are the opportunities regarding public procurement?

Public administration has an important amount of resources designated as public expenditures to build important works, which entails an important attractive quality for potential investors. Its economic relevance is not only local, national or regional, it is also international, and can represent a significant part of the GDP.

Title VI of the Agreement is designated for public procurement. Annex XII incorporates a list of public procurement entities and organisms, which entails the following:

- Entities at the centralized level (ministries and others)
- Entities at the sub-centralized level and regional entities such as departments, the Capital District, or towns in Colombia.
- Procuring entities that are organisms governed by public law, such as central banks, or public energy companies.

Nevertheless, regulation to present bids for the sale of foreign goods or services with regard to public procurement are found in detail in the "Manual para el manejo de los Acuerdos Comerciales en Procesos de Contratación" (Guidelines for management of Trade Agreements in Procurement Procedures) created by Colombia Compra Eficiente, a public entity (please see link of interest at the end of this section).

In practice, public entities are obligated to apply trade agreements with the purpose of generating due reciprocity and national treatment for foreigners when they bid in public tenders for the purchase of goods or rendering of services.

Also, there are areas excluded from the Agreement, such as the acquisition and leasing of lands; services for tax or deposit agencies, or contracts for public employment. (For further information, please see Infocard for Public Purchases, also available in ELanBiz)

Links of interest
Text for the Trade Agreement among the European Union and Colombia/Peru:
(In this link you will find the agreement translated in all the European Union Languages)

Annex II of the Trade Agreement related to the definition of “origin products” and methods for administrative cooperation.

ABC for the Trade Agreement with the European Union

Manual para el manejo de los Acuerdos Comerciales en Procesos de Contratación

Harmonized Commodity Description and Coding System SA 2007
https://www.ecured.cu/Sistema_Armonizado_de_Designaci%C3%B3n_y_Codificacion_de_Mercanc%C3%ADas

European Commission’s Implementing Regulation 740/2013
http://www.tlc.gov.co/publicaciones/7475/normatividad

Decree No. 1636 of July 31st, 2013, by which commitments acquired by Colombia are established applying the Trade Agreement:

Unified Procedure for Importation of Products from the European Union to the Republic of Colombia
https://www.ica.gov.co/CMSPages/GetFile.aspx?nodeguid=ec25ce7a-e2fd-4b1b-ba1c-53be83a96ec5&lang=es-CO

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