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1. The FTA network and your business

Colombia has signed FTAs with the United States, Canada, Switzerland, Liechtenstein, Honduras, Guatemala, El Salvador, Chile, Argentina, Brazil, Uruguay, Paraguay, Mexico, in addition to the countries of the Andean Community of Nations (Ecuador, Peru and Bolivia) and Venezuela. Further, in the near future, treaties with the European Union and South Korea will be a reality. Accordingly, it is fundamental for you to consider the opportunities and risks that go with these treaties and how they must be taken account of in your business. This is the time to consider the benefits that you can attain

with the FTAs as well as to define and implement alternatives in the face of the challenges that will come with stronger competition. It is necessary to establish concrete solutions within the network of FTAs that is being consolidated in Colombia.

With the establishment of a free trade zone as is negotiated within the majority of FTAs, comes the elimination of barriers to free trade within the scope of the markets and services which are, today, your main suppliers and clients.

10 PRACTICAL SUGGESTIONS ABOUT THE FTA'S IN YOUR BUSINESS

1. If your business consists of the production of goods, define the way in which your **raw materials** can be benefitted according to the agreement.
2. Each FTA can be a **new market** for the sale of your products.
3. Understand the essential character of **certificates of origin** as the sanitary, phytosanitary and technical aspects of the products to be able to import and export them. Always consider the possibility of obtaining a certificate of conformity.

4. Always keep in mind that at this moment, other countries are thinking of how to sell in Colombia. Do not ignore the local market; **antidumping and safeguards measures** always are an option.
5. If your business is in the services area, FTAs **expand your market**. Determine whether it is best to deliver your services from Colombia, travel abroad to attract your clients to Colombia, or establish a new business outside Colombia.



6. With electronic commerce, distances have shortened and the delivery of services is easier. FTAs have multiple benefits in the area of electronic commerce
7. FTAs help to cover the risk of doing business. Determine if your investment is covered by the FTA and what is the nature of the protection.
8. Sales to national and local governments can be an excellent business. Participation in the area of public purchasing has advantages and challenges.

FTAs guarantee transparency in the tendering processes.

9. Labor and environmental matters are essential in international trade. They not only mean business responsibility but they can also increase the profitability of your business

10. Intellectual property is an asset for your business. Manage it and protect it.

2. Access to the Colombian market

Each FTA establishes a means by which tariffs on imports entering the market are reduced. These are what are known as tariff deductions.

These deductions are applied in a gradual way during set periods after the date of coming into force of the FTA.

In the case of Colombia, in the various FTAs different categories of deductions have been established which run for total, automatic and immediate deductions (Category A) moving to gradual deductions of 5 years (Category B) and 10 years (Category C) and up until a few for longer periods, for example 18 years.

It is important to remember that 1th January of each year is the date on which the applicable level is set for the products under the FTA being utilized.

How to effectively utilize the benefits of an FTA

With fewer duties on imports you may choose to establish a purchase plan in accordance with the distinct free trade agreements. For these effects, always consult the Market Access Chapter of each treaty.

For the purpose of applying the tariff benefits of an FTA it is required that you:

- Identify the savings opportunities in your businesses external purchasing operations in the face of the particular applicable FTA..

- Implement the best customs practices to take advantage of all the benefits of these treaties.

- Use duty-free zones, temporary or long term imports, the Vallejo Raw Materials, Agro-industrial and Services Program. All these mechanisms are available to improve the efficiency of your foreign commerce operation. As an example, the FTA with the United States allows the use of all these mechanisms for the purpose of exports to that market.

GENERAL ADVICE WHEN YOUR PRODUCTS ARE SUBJECT TO QUOTAS

In the field of agriculture it is common to find that the FTA tariff benefits apply to determined products only within a quota. This means that those products imported that are within this volume receive a preferential tariff rate of zero percent. In general it is important to establish:

1. How the quota will be administered. For example will it be first come, first served, or through and Export Trading Company.
2. Define which supporting documents are required for the import: Certificate of Origin, Certificate of Assignment of Quota etc.

3. When shipping your product always make sure how much volume is left to complete the quota

4. In the event of an over-quota, always establish whether there is a deduction program applicable to the over-quota amounts.

5. Keep in mind that in a FTA, the allowable quota volume increases every year.



3. New changes in the rules of origin: Self-certification as an opportunity to simplify your procedures and a new business responsibility.

The rules of origin are requirements by which a product must comply in order to be considered as originating in the country from which they are exported and to be able to take advantage of the tariff benefits of each FTA.

Free Trade Agreements allow substantial reduction in customs taxes over goods which comply with the rules of origin. Always consult the Rules of Origin Chapter of each FTA as well as the Annexes with the specific rules of origin regulations.

- The correct determination and proper management of rules of origin in your business relates to various lines of services, from design, production and including your department of international trade.
- The possibility of applying a determined rule of origin to a product can change over time, according to change, for example, the origin of the “raw materials” or the production process. Maintain constant monitoring of these matters.

Towards the end of benefitting from these advantages, producers, exporters and importers must guarantee that their products are covered by corresponding Certificates of Origin. The FTA with the United States includes the possibility of carrying out a self-certification by producers, exporters and importers. There is no pre-set form required,

but for this it will be necessary that the form you use in your business include, among other things, the following:

- 1.** The name or corporate name of the producer and the exporter if different from the producer. It is important to include contact information.
- 2.** The name of the importer if this is who completes the Certificate of Origin.
- 3.** A description and the tariff classification of the product.
- 4.** Information which demonstrates that the merchandise is original, and;
- 5.** The date of the certification as well as the name and signature of whoever certifies the information.

Designate the person in your company who's responsible for producing these certificates. Likewise, if you, as an importer, are certifying the origin of the products, we recommend that you maintain sufficient supporting and back-up material to allow certification of previous origin with the producer and/or exporter. It is usual to include these responsibilities within agreements of purchase and sale.

The poor management of rules of origin and the certification of origin can subject your business to audits and penalties which, in many cases, could happen many years after the import in question took place.

4. Technical barriers to trade and sanitary and phytosanitary measures

Technical rules are found in the Technical Barriers to Trade Chapter of each FTA.

It is essential to consult the technical regulations at the moment of carrying out the import or export of your product.

In Colombia, this subject comes under the Ministry of Commerce, Industry and Tourism. However, a number of other public entities such as the Ministry of Public Health, the Ministry of Transportation, the Ministry of Mines, and Energy, the Ministry of the Environment and the Regulations Commission can produce technical regulations.

It is important to recall that, in the issuance

of a Technical Regulation, the principle of transparency, included in every FTA, has been complied with. Among other things, this principle requires that, in Colombia and other FTA member countries, those interested in or affected by such regulations may participate in the development of these regulations. For example, they may participate in discussions on the procedures for evaluating conformity.

In Colombia, the National Organization for Accreditation in Colombia (ONAC, for its Spanish initials) is the entity in charge of recognizing the technical competence and the appropriateness of the certification and inspection organs, assay and measurement laboratories which can bring to the top the evaluation activities for the conformity of technical regulations.*



Some FTA's, such as that with the United States, allow the acceptance of these procedures of evaluation in conformity with the practices carried out in other countries.

On the other hand, it is essential to establish what sanitary and phyto-sanitary requirements your product must comply with. The principles which regulate these matters are found in the Chapter on Sanitary and Phyto-Sanitary Measures. On the other hand, it is essential to establish what sanitary and phyto-sanitary requirements your product must

comply with. The principles which regulate these matters are found in the Chapter on Sanitary and Phyto-Sanitary Measures. Keep in mind that the sanitary and phyto-sanitary measures may only be applied when they are necessary to protect the health and life of people and animals or to preserve vegetation. They may not be used as a restriction to trade. The Ministry of Agriculture and Rural Development, the Colombian Agropecuarian Institute (ICA, for its initials in Spanish) and the National Institute for the Oversight of Medicines and Foods (INVIMA, for its initials in Spanish) are entities which should be taken into consideration when you are at the point of importing your products.

5. Trade remedies: How to establish if a safeguard or antidumping measure is necessary

An FTA implies greater competition for the products that your business produces and sells in Colombia. It is necessary to consider that every FTA entered into by Colombia has a chapter on Trade Remedies.

This chapter establishes the possibility of seeking a safeguard when the imports of a product arising as a result of the FTA are the cause of damage or threaten to damage your production in Colombia.

Likewise, all FTA's contemplate the possibility of initiating an investigation in the event products have been detected entering or threatening to enter Colombia at a price that is "dumping". It is also possible to initiate an investigation when these imports, at a "dumped" price, are holding back the possibility that a new business can initiate production.

Keep in mind that, if you wish to initiate a safeguard or antidumping investigation before the Ministry of Commerce,

Industry and Tourism, Commercial Practices Sub-Directorate, the following matters are important:

- 5.1. Follow the behavior of the imports.
- 5.2. Establish whether, because of these imports, you are losing market share, accumulating inventory, have to release employees or have not been able to increase price to market levels, among other factors.
- 5.3. An antidumping investigation does not reward delay. Choosing the right moment to initiate this kind of investigation is fundamental for its success.
- 5.4. Not every antidumping investigation culminates in the imposition of antidumping measures. Evaluate your market, consult your business association and act accordingly.

Given the network of FTAs, the trade remedies measures are the best and, in some cases the only, defense that your business has to defend the national market.

IF YOU ARE AN IMPORTER WHOSE PRODUCTS ARE SUBJECT TO AN ANTIDUMPING INVESTIGATION

The applicable sanctions in an antidumping investigation are severe and the process is extremely technical and juridical. This is why the eventual involvement of the importer in an antidumping process requires excellent assistance. The following are five important recommendations to consider in the event your products are, or may be, the subject of an investigation for dumping.

1. You must establish whether the imported product is found to be expressly included in the subheading being investigated.
2. The importer must prepare itself to complete the questionnaires sent by the investigating authority.

It is always important to properly manage the subject of confidential information under your control.

3. It is important to contact the producer in the exporting country with the aim of structuring a coordinated defense.
4. The importer must prepare itself for an eventual imposition of provisional measures.
5. It is important to argue the antidumping margins fixed by the Authority, whether they are provisional or definitive. The amount of these margins can have a major effect on the commercialization of the product and could eventually lead to its exit from the market.



6. Opportunities in the area of government procurement

The Government Procurement Chapter of an FTA establishes the basic principles and guarantees for public contracting. Its understanding requires establishing that public contracting for products or services, or both, can be regulated by an FTA.

For foreign companies, an FTA implies the possibility of competing on a level playing field in public tender processes.. This requires familiarity with the public contracting regime so as to establish the best structure in order to tender and to follow-up with what has been established under the FTA. Always consider the following elements:

- If the contracting entity is listed on the government procurement chapter of the FTA.
- Whether the contract amount exceeds the threshold established in the FTA. The threshold is the minimum amount of contracting above with the obligation to carry out public purchasing pursuant to the FTA rules arises.
- Other conditions existing under an FTA that will benefit you during the tendering process and the awarding of the contract.

For Contracting Entities: This implies respect for and coordination of conformity with the contracting threshold and the principles enshrined in each FTA. It is obligatory for every state, national, departmental and municipal entity, apart from those expressly excluded by such FTA, to establish if the respective contract is a “covered contract” under each FTA (Article 8.17, Decree 734 of 2012 which regulates the General Contracting Statute).

Finally, in the development of your business, it is important to consider the transparency tools and guarantees that FTAs such as the one with the United States, Canada, European Union or South Korea give to businesses who wish to tender. The chapter on Transparency in a FTA is a guarantee for your business with the Colombian state in matters such as corruption.

7. Distinct alternatives in the trade in services within a free trade agreement: Applying the normative tripod

Before beginning to supply services to Colombia, from Colombia or in Colombia, consult the most efficient tax structure for doing so and relate it to the chapter on Services in each FTA.

The services sector has experienced a pronounced development in recent years. Its share of the Colombian Gross Domestic product has grown at a constant pace as well its importance within the indicators of employment generation. Undoubtedly, it is a sector which will form a base for the country's economic growth and for which the country must appropriate to itself scenarios which allow it to increase.

From the legal point of view, the cross border supply of services should take into account a normative tripod which frames the new trends in the area of taxation and regulation. This tripod is constituted by internal legislation, Agreements on Double Taxation (CDI for its initials in Spanish) and FTAs.

In the area of cross border services, Colombian tax legislation regulates the applicable

treatment to (i) the import of services, (ii) the supply of services in the national territory by non-resident foreigners, (iii) the export of services, and (iv) the supply of services by Colombian residents outside the national territory.

For their part, FTAs divide the supply of services into four parts: (i) services which are supplied directly from the domicile of the supplier located abroad, (ii) services supplied in another country on a temporary basis, (iii) services which are supplied through branches and (iv) services which are supplied by means of the transfer of supplier's personnel to the other country.

Agreements on Double Taxation regulate services from a double perspective: (i) those services supplied through a permanent establishment and (ii) other professional services.



The trend towards the liberalization of trade, and particularly in the area of services, places before countries a procurement challenge that fiscal factors do not end up affecting the cross border supply of services. The great challenge for the Colombian government could be summarized on the one hand, as the correct coordination of internal legislation with international agreements and, on the other hand, in facilitating commerce in services while defending Colombia's economic competitiveness.

The Colombian government has taken notable efforts to eliminate those elements which affect the export of services, such as in the area of taxes on sales, and it is evaluating distinct aspects related to the country's economic competitiveness in the area of supply, export and import of services.

With the signing of the FTAs, it becomes fundamental to return to an analysis of aspects related to income tax and sales tax associated with the import and export of services, just as the tax treatment applies to the supply of services by non-residents of Colombia, and the supply of services by Colombia residents outside the national territory.

In the taxation area, current legislation regarding services, save some exceptions, is founded upon the principle of territoriality. As a general rule, all services supplied within the national territory generate income sourced in Colombia and taxable in Colombia.

They are levied with the tax on sales and are subject to a withholding which will vary depending upon the nature and characterization of the corresponding service. The export of services, when in compliance with Decree 1805 of 2010, is exempt from VAT. The supply of services by Colombian residents outside the country is not charged with VAT. The supply of services by foreigners in Colombian territory is considered Colombian sourced income for the purpose of income tax and is subject to VAT.

Taking into account the global income criteria, all services supplied by Colombian residents inside or outside Colombia form part of the base for the calculation and payment of Colombian income tax. Services supplied by Colombians outside Colombia, subject to taxation in other jurisdictions, are given the right to take a fiscal credit in Colombia of the value of the tax paid in the other countries. As a general rule, taxes paid in Colombia by suppliers of services from outside the country are given the right to corresponding fiscal credits in their countries.

Of the FTAs signed by Colombia, in those which regulate the supply of services, it is provided that Colombia may not require that a provider of services from the other party be obliged to establish or maintain a representation office or any other form of business in Colombia or be a resident of the country in order to supply the services.

Finally, it will be necessary to consider whether, in the FTA under which you wish to do business, there is a chapter on Financial Services, a chapter on Telecommunications or a chapter on Electronic Commerce.

8. A special regime for the protection of investors

With the new network of FTAs, the management of the investments of foreign businesses wishing to form in Colombia, and the investments of Colombian businesses wishing to begin operations outside Colombia, requires the consideration of the rules of the investment chapters of FTAs which apply in this area.

Because of all their effects, investment chapters in FTAs must be considered by businesses from the moment they begin their structuring and planning.

Probably only in the case of a risk or a controversy effectively occurring with the Colombian State, will there be a reconsideration of the theme of protection for investors and investments. However, a preliminary evaluation before you make your investment can help in the case of an eventual controversy. For this, the following must generally be considered, namely: (a) the definition given to investment in each FTA and (b) the notion of investor that is also included in each chapter on investment in a treaty



Likewise, it will be important to analyze each of the principles included in the chapter on investment of a FTA, and identify which guarantees the proper functioning of your investment: Expropriation and Indemnification, Transfer, Performance Requirements, among others.

If you have a Contract of Legal Stability with the Colombian State, this does not necessarily rule out the possibility that the chapter on Investment of a FTA may be applicable. Consult your guarantees and rights as an investor.

9. Aspects of the intellectual property area as regards the free trade agreement with the United States

In the subject of intellectual property it is important to consider the chapter on Intellectual Property Rights. Likewise, the chapter on Electronic Commerce, the chapter on Services and the Chapter on Sanitary and Phytosanitary measure in each FTA must be considered.

In the Intellectual Property Chapter of the FTA with the United States, Colombia agreed to ratify or adhere to a number of multilateral treaties, such as:

- The Convention on the Distribution of Carrier Signals of Programs Transmitted by Satellite;
- The Budapest Treaty on the International Recognition of the Deposit of Microorganisms for Procedural ends in the Subject of Patents;
- The Treaty of the OMPI on the Rights of the Author;
- The Treaty of the OMPI on Interpretation or Execution of Phonograms;
- The Treaty of Cooperation in the Subject of Patents and Amendment (in force in Colombia since 28 February 2001);

- The International Convention for the Protection of New Varieties of Plants (in force in Colombia since September 1996);

Likewise, within the FTA with the United States is a commitment to make reasonable efforts to ratify or adhere to the following agreements:

- The Treaty on Patent Rights;
- The Hague Agreement Concerning the International Deposit of Industrial Designs;
- The Protocol Concerning the Madrid Arrangement Relating to the International Registry of Trademarks;

Colombia, in compliance with the FTA with the United States, is moving forward with the following initiatives: (i) adhering to the Madrid Protocol, (ii) strengthening the protection for clinical data of pharmaceutical and agricultural products, and (iii) additional protection of intellectual property by means of strengthening criminal law. The Madrid Protocol benefits Colombian exporters through the possibility of registering their trademarks worldwide directly in the Colombian trademarks office

With the FTA it is necessary to establish how all these new international instruments in the area of intellectual property will benefit your business.



10. The implementation of each fta within your business

Chapter/Section	United States	Canada	Chile	EFTA	CAN - Mercosur	Honduras, Guatemala, Salvador	México	Venezuela	EU	South Korea
Market Access	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rules of origin	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Custom Facilitation	✓	✓	✓	✓	✓	✓	✓	No	✓	✓
Sanitary and Phytosanitary Measures	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Technical Barriers	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Trade Remedies	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Government Procurement	✓	✓	✓	✓	No	✓	✓	No	✓	✓
Transparency	✓	✓	✓	✓	No	✓	✓	No	✓	✓
Trade in Services	✓	✓	✓	✓	No	✓	✓	No	✓	✓
Financial Services	✓	✓	No	✓	No	No	✓	No	✓	No
Telecommunications	✓	✓	No	✓	No	No	✓	No	✓	✓
Investment	✓	✓	✓	✓	No	✓	✓	No	✓	✓
Intellectual Property	✓	No	No	✓	No	No	✓	No	✓	✓
Labor	✓	✓	✓	✓	No	No	✓	No	✓	✓
Environment	✓	✓	✓	✓	No	No	✓	No	✓	✓
Temporary Entrance of Business People	No	✓	✓	✓	No	✓	✓	No	✓	✓
Electronic Commerce	✓	✓	✓	✓	No	✓	No	No	✓	✓

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