

Colombia

ARTICLE 2: OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE, AND CONSULTATIONS

Section 2.1.2.1.14 of Decree 1081 of 2015 (modified by article 1 of Decree 270 of 2017) enforces a publication delay of draft norms of 15 calendar days on the website of the entity that develops the norm (either decrees that regulate laws or resolutions that regulate the decrees). In the case of Customs, the Ministry of Finance (MF) is the entity that usually publishes the decrees, and the National Tax and Customs Directorate (DIAN) is the one that publishes the resolutions (the latter regulate the decrees of the MF). Due to the aforementioned, Colombia complies with the provisions of numbers 1.1 and 1.2 of Article 2 of the TFA.

It should be noted that Colombia fully accepted paragraph 1.3 of Article 2 of the TFA, which reads: *“1.3. Changes to duty rates or tariff rates, measures that have a relieving effect, measures the effectiveness of which would be undermined as a result of compliance with paragraphs 1.1 or 1.2, measures applied in urgent circumstances, or minor changes to domestic law and legal system are each excluded from paragraphs 1.1 and 1.2.”*

Relevant government agencies:

- Dirección de Impuestos y Aduanas Nacionales -DIAN. (National Tax and Customs Directorate). Customs Authorities. Link.

<https://www.dian.gov.co/aduanas/Paginas/Inicio.aspx>

- Ministerio de Comercio Industria y Turismo. (Ministry of Commerce, Industry and Tourism) Link.

<https://www.mincit.gov.co/>

- INVIMA Instituto Nacional de Vigilancia de Medicamentos y Alimentos. (“National Institute for the Surveillance of Medicines and Food”) Link.

<https://www.invima.gov.co/>

- ICA Instituto Nacional Agropecuario. (National Agricultural Institute). Link.

<https://www.ica.gov.co/>

- SIC Superintendency of Industry and Commerce – Technical regulations - certificates of compliance with technical standards. Link

<https://www.sic.gov.co/reglamentos-tecnicos>

- Ministry of Defense (importation of war material). Link

<https://www.mindefensa.gov.co/irj/portal/Mindefensa>

- Ministry of foreign relations. Link

<https://www.cancilleria.gov.co/>

- Ministry of Justice. Single Normative Information System (“Juriscol”). Link

<https://www.suin-juriscal.gov.co/>

- Andean Community. Link

<https://www.comunidadandina.org/>

- World Customs Organization. Link

<http://www.wcoomd.org/>

- World Trade Organization. Link

<https://www.wto.org/>

- ALADI Asociación Latinoamericana de Integración. Link

<https://www.aladi.org/sitioaladi/>

- Ministry of Health and Social Protection / National Narcotics Fund (“Fondo Nacional de Estupefacientes”). Link

<https://www.minsalud.gov.co/salud/MT/Paginas/fondo-nacional-de-estupefacientes-fne.aspx>

Relevant private agencies and industry groups:

- National Association of Industrials (Spanish abbrev. “ANDI”). Link

<https://www.andi.com.co/>

- The National Association of Shipowners and Maritime Agents (Spanish abbrev. “ASONAV”). Link

<https://www.asonav.org>

- National Trade Council (Spanish abbrev. “CGN”). Link

<https://cgn.org.co/>

- Colombian Federation of Logistics Agents in International Trade (Spanish abbrev. “FITAC”). Link

<https://fitac.net/>

- Latin American Conference of Express Transport Companies (Spanish abbrev. “CLADEC”). Link

<https://cladec.org.co/>

- Colombian Association of Flower Exporters (Spanish abbrev. “ASOCOLFLORES”). Link

<https://asocolflores.org/es/>

- Association of the Automotive Sector and Its Parts (Spanish abbrev. "ASOPARTES").
Link <https://asopartes.com/>
- Colombian Federation of Road Freight Transporters (Spanish abbrev. "COLFECAR").
Link <https://www.colfecar.org.co/>

CASE STUDY

CASE STUDY (FOR ARTICLES 1 AND 2 OF THE TFA)

A case study related to the implementation of Article 1 of the TFA (AFC in Spanish) was the issuance of Resolution 46 of 2019 by the General Director of DIAN, through which decree 1165 of 2019 was regulated.

Resolution 46 was issued on July 19, 2019 and published on the same day in the Official Gazette of Colombia (Edition No.91030 of the same date). It was signed by the General Director of DIAN days before and had previously been reviewed and approved by three of the entity's directorates: Legal, Customs and Customs & Tax Control. These directorates, in turn, collaborated with their different sub-directorates. In the case of the Customs Directorate, for this particular case it requested the intervention of its sub-directors of Foreign Trade, Customs Technical, Authorized Economic Operator and Customs Registration and Control. The draft resolution was initially made by this directorate, and more specifically from the Foreign Trade Sub-directorate. It should be noted that this sub-directorate no longer exists due to a regulatory change. As of October 2021, its functions have been divided into two new sub-directorates: (i) Customs Operation and (ii) Foreign Trade Service and Facilitation. For the preparation of draft Resolution 46, the provisions contained in sections 2.1.2.1.1 and Decree 1081 of 2015, with their corresponding subsequent modifications, were taken into account. Below, we present the most relevant provisions:

1. Supremacy of the Constitution, the law and the principles that govern the public function in Colombia when the draft resolution is prepared.
2. Prohibition of creating legal offenses, sanctions, fines, rates or contributions in the draft. This is based on the principle of legality.
3. Legal publicity. The draft Resolution 46, once approved by the Customs Directorate, Legal Directorate and Tax & Customs Control Directorate, is submitted for public consideration for a period of 15 calendar days, where users submitted various written comments, which were addressed by DIAN. After the aforementioned term and once the adjustments are made by DIAN, the next stage is to fully review the draft resolution to ensure that there are no ambiguities or contradictions.
4. Once the project has been reviewed with the approval of the three directorates, it is sent to the General Director for approval and forwarded to the DIAN Notifications Area for its corresponding numbering and subsequent submission to the Official Gazette for formal publication.
5. Once officially published on July 19, 2019, Resolution 46 was published by DIAN a few days later on its official website. This was replicated by multiple websites, including unions and

associations such as those indicated above in our October 2022 Comments to Article 1 of the TFA.

Finally, Resolution 46 of 2019 was partially modified by Resolution 039 of May 7, 2021. Both resolutions have been the subject of multiple queries from users in Colombia and abroad in relation to the foreign trade operations they regulate. These have been addressed, for the most part, through the PQRS system indicated above (about 1000 queries addressed in relation to Resolution 039. 2019 during the year 2022).