

Colombia

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

In Colombia, in terms of imports, the existing procedures allow presentation of import documentation before the arrival of the goods within the national Customs territory. At Customs, users must present the above documentation in digital format so that it can be processed. Colombia has established procedures for the electronic payment of duties and taxes (mainly VAT) collected by the National Tax and Customs Directorate (DIAN), which are accrued at the time of import. At the time of export, there is no collection of duties or taxes, except for the coffee contribution rate for export of coffee which is collected by the “Federación Nacional de Cafeteros de Colombia” (National Colombian Coffee Federation).

Additionally, in terms of imports Colombia has a clear separation between the release and the final determination of Customs duties and tax fees. If the importer opts for an advance import declaration procedure, the final determination of Customs duties and taxes (mainly VAT) is made before the arrival of the merchandise and based on the digitized information provided by the importer. If the importer opts for an ordinary import procedure, the final determination of Customs duties and taxes (mainly VAT) is made at the time of arrival of the merchandise and based on the digitalized information provided by the importer or, in exceptional cases, as quickly as possible after the arrival of the goods.

In Colombia, as a condition for the release of the merchandise, is the following are required: (a) the payment of Customs duties and taxes determined before or upon arrival of the merchandise and a guarantee for the amount that has not yet been determined in the form of a bond, deposit or other appropriate means provided for in Customs regulations (for cases such as a dispute over the customs value or a tariff classification, for example). (b) a guarantee in the form of a bond, deposit or other appropriate means provided for in the country's laws and regulations (for cases such as a temporary import for re-export in the same state, or the modality of urgent deliveries, for example).

In cases where an infraction has been detected which requires the imposition of monetary sanctions or fines, Colombian Customs regulations require a guarantee for the sanctions and fines that may be imposed.

The guarantee provided above will be released when it is no longer necessary.

All of the above is regulated in Decree 1165 of 2019 with its subsequent modifications, specifically, in its Articles 11 to 31. It is also found in Articles 2 *et seq.* of Resolution 46 of 2019 with its corresponding modifications. The link to these articles can be found above in the response to Article 1 of the TFA.

On the other hand, regarding risk management, and as explained in more detail in the case study for Article 8, Colombia has adopted a risk management system for Customs control. This is regulated in Articles 582 *et seq.* of Decree 1165 of 2019.

In terms of streamlining import processes, Colombia maintains a control scheme prior, simultaneous and subsequent to the release of merchandise that seeks to ensure compliance

with Customs regulations. It should be noted that selectivity used in these control schemes is based on a previously structured risk scheme. This is regulated by Article 578 *et seq.* of Decree 1165 of 2019.

It is important to mention that from 2017 onwards (with the exception of 2018), Colombia has calculated and published the average period necessary for the release of merchandise periodically and in a uniform manner, using tools such as, among others, the Time Release Study of the World Customs Organization (referred to in this Agreement as the "WCO") on the time required for release. In the following link you will find the studies of merchandise average clearance times and the methodology used:

[Estudio de tiempos de despacho de mercancías \(dian.gov.co\)](http://www.dian.gov.co)

Regarding trade facilitation measures for authorized operators, Colombia has established trade facilitation measures in relation to import, export or transit formalities and procedures for Authorized Economic Operators (AEO).

The criteria specified to access the status of AEO will be related to compliance, or the level of risk of non-compliance, with the requirements specified in Customs' regulations corresponding to said Customs users.

The above is regulated in Articles 22 and 23 of Decree 1165 of 2019; Decree 3568 of 2011 and various related resolutions and Circulars. This legal information can be found at the following link:

<https://www.dian.gov.co/aduanas/oea/inicio/Paginas/marconormativo.aspx>

On the other hand, regarding urgent shipments, Colombia does not have a precisely defined modality of urgent shipments in the context of Article 7 of the TFA. However, in Colombia there is the modality of "urgent deliveries", which is an expedited modality for merchandise that enters the country as aid for victims of catastrophes or accidents, or as a response to satisfy a pressing need (Article 263 Decree 165 of 2019). Additionally, Colombia has a "postal traffic and urgent shipments" modality which is subject to a value limit (no more than USD 2000), weight limit (no more than 50 kg), quantity limit (no more than 6 units), and size limit (no more than 1.5m in any of its dimensions nor 3m as the sum of the length and the largest contour taken in a different direction from the length). It must also not be prohibited by the Universal Postal Union Agreement, or other relevant laws – Art. 253 Decree 1165 *ibidem*.

Finally, with regard to perishable goods, Colombian Customs regulations state that the release of perishable goods be carried out in the shortest possible time under normal circumstances; and exceptionally, outside Customs working hours. In Colombia, measures have been adopted to adequately store perishable goods pending release. This is regulated in Articles 491, 717, 737 and 745 of Decree 1165 of 2019.

Relevant government agencies:

- Dirección de Impuestos y Aduanas Nacionales -DIAN. (National Tax and Customs Directorate). Customs Authorities.
<https://www.dian.gov.co/aduanas/Paginas/Inicio.aspx>
- Ministerio de Comercio Industria y Turismo. (Ministry of Commerce, Industry and Tourism)
<https://www.mincit.gov.co/>
- INVIMA Instituto Nacional de Vigilancia de Medicamentos y Alimentos. (“National Institute for the Surveillance of Medicines and Food”)
<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 .
<https://www.sic.gov.co/reglamentos-tecnicos>
- Ministry of Defense (importation of war material).
<https://www.mindefensa.gov.co/iri/portal/Mindefensa>
- Ministry of foreign relations.
<https://www.cancilleria.gov.co/>
- Ministry of Justice. Single Normative Information System (“Juriscol”).
<https://www.suin-juriscol.gov.co/>
- Andean Community.
<https://www.comunidadandina.org/>
- World Customs Organization.
<http://www.wcoomd.org/>
- World Trade Organization.
<https://www.wto.org/>
- ALADI Asociación Latinoamericana de Integración.
<https://www.aladi.org/sitioaladi/>
- Ministry of Health and Social Protection / National Narcotics Fund (“Fondo Nacional de Estupefacientes”).
<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”).
<https://www.andi.com.co/>
- The National Association of Shipowners and Maritime Agents (Spanish abbrev. “ASONAV”).
<https://www.asonav.org>
- National Trade Council ((Spanish abbrev. “CGN”).
<https://cgn.org.co/>
- Colombian Federation of Logistics Agents in International Trade (Spanish abbrev. “FITAC”).
<https://fitac.net/>
- Latin American Conference of Express Transport Companies (Spanish abbrev. “CLADEC”).

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

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

CASE STUDY

ORDINARY IMPORT PROCESS.

Within the operation of the import process, the following parameters shall be established:

Arrival of the merchandise to the national customs territory: In order for the merchandise to enter the DIAN computer systems to start the nationalization process, merchandise must first enter the airline warehouse and the relevant transport documents and cargo manifest must be released. Within the practice of the ordinary import process, let's take as an example the nationalization of computers, which begins with presentation and acceptance of the import declaration in the DIAN computer system.

Once the import declaration indicating the nationalization of computers has been accepted, the import declaration is submitted to banks, canceling the corresponding Customs taxes that may apply, either through electronic payment or in bank branches.

After submitting the import declaration to banks, the Customs user (import declarant) must submit the import declaration of the merchandise for selectivity through the DIAN computer systems, where they must enter the statement acceptance number and the label generated by the bank. In accordance with the risk profiling systems (types of merchandise, subheadings, origin, declarants and importers), in charge of the Sub-Directorate of risk analysis and programs (coordination of risks of tax, customs and exchange compliance), the system will show selectivity to determine the type of inspection to perform.

- Automatic selectivity (the declarant goes directly to the customs warehouse or free zone for the withdrawal of the merchandise)
- Documentary selectivity (the customs inspector performs verification of supporting documents)
- Physical selectivity. (The customs inspector carries out documentary and physical inspection of the merchandise to determine that what has been declared corresponds to what has been physically verified in the corresponding customs warehouse).

The next business day after submitting the merchandise declarations to selectivity, this import declaration is included in a random distribution and will be assigned to the inspector empowered to act in the free zone warehouse where the merchandise is located.

For our practical case, if the selectivity assigned is PHYSICAL, the inspector will go to the warehouse facilities where the merchandise is located (computers), within the indicated hours. (the need for such physical presence would have been previously communicated by customs).

The physical verification of the merchandise (computers) will begin, where the inspector must take into account aspects such as:

- Tariff subheading (it is important to clarify that for this type of merchandise the Tax law grants a tax benefit depending on the value of the computers as follows: 0% VAT for the importation of personal desktop or laptop computers, whose value does not exceed fifty (50) UVT (\$42412: 1 UVT). VAT of 19% shall accrue for other computers that are not included in the abovementioned tax benefit).

- Minimum descriptions (serial, reference, model brand, etc.), which allows individualization of the merchandise, a description that must be in accordance with what is indicated in box 91 of the import declaration.

Once the merchandise has been verified, the inspector will validate the supporting documents attached to the import declaration, including:

- Commercial invoice (which describes the type of merchandise, quantity, negotiation terms, payment conditions and values. These must be in accordance with what is declared).

- Andean declaration of value.

- Transport document which must show the data of the consignee (importer, owner of the merchandise), weight of the merchandise and must specify for our practical case that the merchandise that is entering the country are computers. Additionally, this document has the cargo manifest number, granted by the carrier, and the respective date, which allows the accounting of storage terms, that is, the time that the importer has to present his import declaration and obtain the respective clearance.

- Freight invoice and insurance.

- Mandate if applicable (this occurs when the importer carries out his nationalization through a customs broker, who is in charge before of carrying out the entire customs process before DIAN).

Once the physical and documentary inspection has been completed, the inspector proceeds with the respective action through an official minute that will be reflected in the DIAN computer system, reflecting the respective action carried out. This action can be one of the following:

- A release (if conform in the physical and documentary verification).

- A suspension (if there are errors in the description of the merchandise, supporting documents)

- A rejection (if it is impossible to verify the merchandise, or if there are other processing errors that are not included in the grounds for suspension).

POST DISPATCH AUDIT:

The powers of control and supervision are exercised by the Sectional Directorate of Tax and Customs of the department or municipality of the domicile of the importer, or were the merchandise is physically located.

Customs control fulfills three essential functions:

- Collection of taxes and customs duties that originate from the importation of merchandise (VAT and customs tariffs).

- Requests for compliance with sanitary, phytosanitary or zoosanitary measures upon importation.

- Simultaneous or subsequent controls in the customs process from the arrival of merchandise to the national customs territory, until its nationalization and subsequent delivery to the importer.

Likewise, this customs control is applied without prejudice to the special provisions and to those resulting from international agreements or treaties to which Colombia has adhered or adheres, and the protection of intellectual property.

The control carried out by the DIAN customs inspection group for computer imports is based on verifying the merchandise, taking samples, verifying the data contained in the import declarations and the authenticity of the supporting documents, reviewing the accounting and other records of Customs users, inspecting the means of transport, and carrying out investigations previously allowed by the Customs regulations.

These measures apply to the entry, permanence, transfer, circulation, storage and exit of goods; to the cargo units, means of transport and the people involved in foreign trade operations.

ESTABLISHMENT AND PUBLICATION OF AVERAGE RELEASE TIMES FOR IMPORT CLEARANCES:

The deadline for carrying out the Customs inspection is the day after the declarant requests the Customs inspection of the merchandise, as established in article 183 of Decree 1165 of 2019. The inspection must be carried out continuously and be completed no later than the day after the inspection is requested, except in situations where a longer period is required, for which an extension of the inspection procedure may be authorized.

The information of import declarations that will be verified by the inspector in physical or documentary form is supplied to the declarants through the DIAN computer systems (Siglo XXI) and through publications via the Internet ([https://fitac.net /](https://fitac.net/)) and applications used by the free zone.