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# **Free Trade Implementation Activity (FTIA)**

**November–January 2015 Quarterly Report**

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# Introduction

This report covers the Free Trade Implementation Activity's (FTIA) second quarter of implementation. FTIA, also known as USAID *Facilitando Comercio* moved from work planning to kicking-off several initiatives with its main counterparts – the Colombian tax and customs authority (DIAN) and the Ministry of Trade, Industry and Tourism (MinCIT). During this period, DIAN's Director General solidified technical assistance priorities allowing the project to fully engage with the customs office and relevant divisions within DIAN to begin developing an inspector training program, and to start working on the implementation of an advance ruling mechanism, which has an implementation deadline of May 15, 2015.

As the Colombia Trade Promotion Agreement (CTPA) enters its third year, many commitments made under the Trade Facilitation and Rules of Origin chapters continue to be worked on with DIAN incorporating supporting directives into a new customs code. The customs code, which has been undergoing revisions since 2012, was stalled for most of 2014 requiring a constitutional court decision which was given in late November and allowed DIAN to move forward with modifying text. Throughout the quarter, DIAN has continued to finalize text, and requested the project's assistance in reviewing sections pertaining to express shipments, as is noted below in Activity 4.2 DIAN also requested guidance on issues pertaining to rules of origin and CTPA commitments (Activity 2.1). DIAN expects to finalize all text in the next quarter so that the decree can be signed by President Santos and customs can begin drafting pertinent regulations. Both MinCIT and DIAN have confirmed that commitments, such as advance rulings, will be implemented through a separate decree if the customs code is not final by May 15, 2015. In the meantime, the project continues to assist DIAN with the practical implementation aspects of this trade facilitation tool (Activity 1.2).

While advancements were made for key activities, overall project implementation was stalled by the need to have unified buy-in from multiple deputy directors working in different divisions and operating as silos (e.g. DIAN's Legal Counsel and Professional Competencies). Similarly, MinCIT's Technical Regulations office was not able to give a green light on Standard Alliance activities until a new director was named and was able to coordinate with other interested stakeholders. Thus, the project was not able to make any progress on Component 3. Another hindering factor has been a slow response from US Customs and Border Protection (CBP) to confirm collaboration on a number of activities where government-to-government assistance would be most beneficial, such as risk management.

Although, these factors affected the speed of implementation, USAID *Facilitando Comercio* does not anticipate major implications that would keep the project from achieving its core objectives. The project knows there is limited capacity to receive technical assistance – particularly within

DIAN – and will push for high-level involvement from the Customs Director or General Director when major decision-making is required. USAID Facilitando Comercio is also actively coordinating with other donors to ensure efforts are complimentary rather than duplicative. This has been the case with Canada’s Border Service Agency (CBSA), which is providing significant technical assistance in the areas of origin, valuation, and risk management. The project communicates regularly with CBSA to keep abreast of activity implementation and any relevant implications on the technical assistance USAID Facilitando Comercio is designing.

The following sections of the report outline all project activities according to the work plan components and provide the current status of implementation. The report also includes a summary of financial execution in Appendix A.

# Component 1: Strengthen Customs Policies and Enforcement Practices

Technical Assistance under Component 1 is centered on improving operational and technical aspects of customs and trade, particularly as it relates to imports. Activities are also intended on improving border management transparency and importer compliance.

## **ACTIVITY 1.1 DEVELOP INSPECTOR TRAINING PROGRAM**

DIAN's Director General asked the project to prioritize developing an inspector training program in an October 2014 meeting, during which commitments were made by DIAN to ensure the training would be sustainable. These commitments included: making the pilot training program mandatory, ensuring inspectors are allotted the necessary time to participate in the training, selecting inspectors with an expected career trajectory, minimizing job rotation, and allocating a budget to the future implementation of the program.

To initiate this activity, it required forming a working group made up of members from DIAN's Technical Division, Foreign Trade, Personnel and Competencies, and the Training Academy. While the formation of this working group was slow to gain traction, USAID Facilitando Comercio was able to secure buy-in from all of the relevant divisions by late December. Since then, the working group has met regularly to discuss selection criteria for pilot participation and has conducted a review of existing training materials.

DIAN's Academy currently has some training material for the customs operation that has been developed internally and is now made available through a training platform. Material has been developed according to the core functions of the import and export process, and for some technical concepts, such as valuation. But not all core technical concepts have yet been developed and not all material follows a standard methodology. Most importantly, the existing material is not developed for a specific role within the customs operation. For example, an inspector at the border is given the same training material as one of DIAN's headquartered technical experts on valuation.

One of the ongoing discussions with DIAN's working group has been the selection of the technical subject-matter to be developed taking into account existing material and the role and responsibility of the inspector. While DIAN would rather give priority to developing material on new concepts not already available through its training platform, the project has been adamant about the need to adapt material to the training needs of an inspector in order to be able to conduct daily tasks. Two subject-matter priorities put forward thus far by DIAN's Technical Division are valuation and sample handling.

Given time restrictions, USAID Facilitando Comercio will most likely only develop one subject-matter course, along with an introductory module summarizing duties and responsibilities, an on-the-job training methodology, and a training of trainers e-course. The definition of the subject-matter will undergo validation in the following reporting quarter, as well as the gathering of baseline information on inspector's knowledge of key concepts and main challenges hindering the inspection process at the border. To support the development of material, the project will contract a curriculum development firm; the evaluation of proposals to assess technical scope and qualifications is already underway.

## **ACTIVITY 1.2 IMPLEMENT ADVANCE RULING SYSTEM**

Article 5.10 of the CTPA obligates Colombia to issue advance rulings prior to imported goods entering the country at the request of the exporter, importer or producer by May 15, 2015. The issuance of advance rulings has been incorporated into the updated customs code, and DIAN is eager to move forward with implementing the internal process to be able to support the trade facilitation mechanism by the May deadline.

### **1.2.1 Technical Training for Issuing of Rulings**

USAID Facilitando Comercio met with the three units of DIAN's Technical Division – tariff classification, valuation and origin – that will be responsible for emitting resolutions to review technical assistance needs. Priority was given to i) developing an IT tool (document management and workflow) to manage the requests and issuance of rulings to ensure accuracy and timeliness; ii) developing application forms and ruling formats for valuation and origin (tariff classification was completed by the predecessor project); and iii) improving technical capacity and operational practices related to valuation.

DIAN issues rulings on tariff classification for goods already in the market and has an established process for doing so. The project began analyzing the internal process within the Technical Division to understand whether a similar process could be used for advance rulings and found that from reception through the emission of a resolution, it is all done manually and tracked across four different systems/tracking tools. This has resulted in poor management control and in some cases having multiple resolutions emitted for the same good. By inquiring further within DIAN and the private sector, the project learned that an importer can request a tariff classification multiple times in hopes of receiving a favorable ruling without DIAN being able to track this effectively. Additionally, the database being used for all emitted resolutions is not accessible by the ports, allowing non-compliant importers to use resolutions that have been revoked. These institutional weaknesses emphasize the need to implement a document management tool for advance rulings and also reinforce the need to continue building technical capacity.

Given all the demands on DIAN's IT department, the Director of Customs requires a strong justification to push for the incorporation of a document management and workflow application. USAID Facilitando Comercio was asked to map the process for tariff classification resolutions to identify bottlenecks and institutional vulnerabilities in order to measure time savings with an improved process and system. This will be undertaken in the following quarter, along with the adoption of forms and templates for the request and emission of advance rulings.

DIAN has also requested assistance with improving technical and operational aspects related to valuation analysis and wants to better understand US, Canada, and Argentina's practices. Much emphasis has been given on understanding the use of an importer database rather than a price database to better control undervaluation. Currently, DIAN inspectors at the border are responsible for determining correct valuation and it is not uncommon to reference a price database or conduct an internet search. Understanding that the inspector does not have any formal training on valuation methods, DIAN is considering strengthening pre-and post-clearance controls, which would also improve clearance times at the border.

USAID Facilitando Comercio has been coordinating with CBP to engage a valuation expert who can provide an overview of CBP practices, including advance rulings on valuation, and has also extended an invitation to Argentinean customs. The project also coordinated with CBSA, which has a technical assistance project with DIAN under the context of its bilateral free trade agreement. CBSA trained DIAN on valuation methodologies, and post-entry control practices. USAID Facilitando Comercio will work on advance rulings for valuation and explore post-entry practices further.

### **1.2.2 Implement Appeals Process for Advance Rulings**

Under the new customs code, the appeals process will be managed by DIAN's Legal Counsel Office. DIAN's Technical Division requested the project's assistance in beginning to engage Legal Counsel to provide training and guidelines to be able to rule on appeals and assist with implementing an appeals process. Many working in Legal Counsel are unfamiliar with the technical aspects of advance rulings and are unaware of its inclusion in the new customs code.

The project held a meeting with the director of Legal Counsel to propose a training program and information exchange between Legal Counsel and the Technical Division. Legal Counsel committed to participating and the project was able to move forward with developing a first year training work plan that includes: i) an awareness building workshop on the relevance of advance ruling as a trade facilitation mechanism, and best practices of implementing a transparent appeals process, ii) virtual courses on the harmonized system, and iii) information exchange workshops between Legal Counsel and the Technical Division to train on relevant legal and customs matters. USAID Facilitando Comercio is developing the first workshop which will be held in March.

### **ACTIVITY 1.3 IMPROVE RISK MANAGEMENT SYSTEM**

Following the October 2014 meeting with DIAN's Director General, the project was asked to focus its risk management assistance on developing an express shipment risk management model. The project held a follow-up meeting with the head of DIAN's Risk Management office to define the project's specific interventions, in which DIAN asked for a better understanding of CBP's profiling practices before moving forward with specific technical assistance requests. USAID Facilitando Comercio has reached out to CBP and is awaiting confirmation of potential collaboration opportunities.

### **ACTIVITY 1.4 IMPROVE SINGLE WINDOW FOR FOREIGN TRADE**

MinCIT, the leading ministry behind Colombia's national single window platform for foreign trade (VUCE) has been working on expanding its simultaneous inspection capacity to include

exports at airports and containerized imports at sea ports. Securing financing and long-term planning for these initiatives has varied according to changing priorities and the delay of pertinent sections of the customs code. Additionally, MinCIT's VUCE team has been participating in a non-intrusive inspection committee, which is overseeing the incorporation of scanners into the clearance process as noted below.

#### **1.4.1 Help DIAN Integrate into VUCE**

DIAN's Foreign Trade division is also participating in the non-intrusive inspection committee and will be operating the scanners jointly with POLFA at Colombia's main sea ports. DIAN expressed interest in receiving technical assistance from the project regarding best practices for incorporating non-intrusive methods into the clearance process (e.g. methodology for container selection, training for customs officials on use, integration with risk management, and multi-agency coordination through the VUCE). While DIAN will be one of the principle operators, MinCIT VUCE's team has been leading the initiative. The request from DIAN to assist with this was made late in the quarter and follow-up meetings with DIAN and MinCIT are needed to better define next steps.

#### **1.4.2 Assist MinCIT with Port Community System Planning**

After meetings were held with MinCIT to discuss the project's level of assistance in helping the ministry prepare for the development of a port community system (PCS), MinCIT reviewed its 2015 budget and determined they would not be able to move forward with this initiative due to insufficient funds. MinCIT preferred to prioritize the expansion of the VUCE's simultaneous inspection module for exports at airports and requested assistance from the project to undertake the activity. USAID Facilitando Comercio reviewed this request with USAID and the Embassy and it was considered outside the scope of the project and not a priority. Consequently, this activity will be suspended, however, regular communication with MinCIT continues and should new requests related to the VUCE or PCS emerge, they will be considered and validated with USAID.

#### **1.4.3 Assist MinCIT in Developing National Committee on Trade Facilitation**

In November the World Trade Organization's Trade Facilitation Agreement (TFA) advanced to a new phase allowing member countries to begin ratifying the agreement. Once two-thirds of members have done so, the agreement will enter into force. One of the TFA commitments is to establish a national committee on trade facilitation (NCTF). Throughout the quarter, USAID Facilitando Comercio has communicated with MinCIT's trade agreement office to inquire about the reactivation of Colombia's trade facilitation committee, and while formal reactivation may be delayed until Colombia ratifies the agreement, MinCIT is interested in engaging in public-private dialogue efforts. The first committee meeting will be organized in coordination with USAID's Facilitando Comercio's work on advance rulings in March 2015 and will be focused on promoting the private sector's participation in its implementation.

# Component 2: Strengthen Ability to Meet CTPA Rules of Origin Requirements

Technical assistance under this component is focused on practical and operational aspects of origin verification. As the CTPA enters its third year, the importance of origin compliance continues to reinforce the need to build technical capacity within DIAN and the Colombian private sector.

## **ACTIVITY 2.1 IMPROVE ENFORCEMENT OF RULES OF ORIGIN BY DIAN**

DIAN's technical division has the responsibility of conducting origin verification to ensure goods entering Colombia with preferential tariff treatment duly qualify and that CTPA commitments under the Rules of Origin chapter are being adhered to. USAID Facilitando Comercio was asked to assist with i) best practices for the implementation of a simplified electronic certification and managing refund claims for goods exported to Colombia, which qualified for preferential treatment and were not claimed as originating at time of import, ii) training on international accounting practices, and iii) training on the production process and commercial account management for key sectors in order to better understand global supply chains and improve origin verifications.

USAID Facilitando Comercio assisted DIAN's origin unit with learning about the Peruvian regulations and experience in implementing an electronic certification and the management of duty refund claims under the United States – Peru Trade Promotion Agreement. Through this assistance DIAN was able to define key concepts related to electronic certification, which will be incorporated into the customs code or the CTPA Decree 730, as well as the information that will be required for requesting a refund. The project was also able to help DIAN clarify that refund requests could be done based on origin criteria and supporting documents versus conducting a full origin verification.

Throughout the quarter, DIAN has been defining the key sectors they want to better understand to improve the origin unit's technical capacity. Pharmaceutical and apparel products were originally considered crucial, but as the quarter ended, DIAN was reconsidering these sectors and preferring to focus on remanufactured goods and auto parts. In the following quarter, the project will confirm the sectorial focus and work with the US Embassy's Foreign Commercial Service (FCS)

office to ensure there is coordination on training for remanufactured goods as this continues to be a sector of importance for FCS.

## **ACTIVITY 2.2 IMPROVE PRIVATE SECTOR COMPLIANCE**

USAID Facilitando Comercio held a meeting with ProColombia (formerly Proexport) to inform the international affairs office of the project's scope and interest in working on strengthening origin compliance for the private sector. In 2013 when CBP conducted verifications in Colombia, the main issue observed was poor book-keeping. The project proposed developing training workshops with ProColombia on international accounting practices and the importance of internal audits in order to be able to self-certify under the CTPA. ProColombia was concluding its yearly training planning at the time of the meeting and follow-up to better define collaboration is pending.

# Component 3: Improve Technical Standards and Compliance

USAID Facilitando Comercio began coordinating with the American National Standards Institute (ANSI) and USAID/Washington to resume activities under the Standard Alliance Program at the onset of the project. The draft work plan that had been finalized in 2013 by ANSI required a new round of validation, which the project initiated. However, for much of the first two quarters of the project, the main counterpart – MinCIT’s Office of Technical Regulations was without a permanent director. Additionally, ICONTEC underwent leadership changes during this period.

MinCIT named its new director in November 2014 and USAID Facilitando Comercio was able to hold its first meeting to review the work plan in mid-December. Between December and January, MinCIT worked with ICONTEC and the FTA Promotion Office to review technical assistance needs and will share their combined comments in an upcoming teleconference with ANSI in February. The work plan is not expected to change significantly, but depending on what activities get finalized, USAID Facilitando Comercio will adapt its activities below to reflect areas of intervention. Thus, the activities that are in the project’s first year work plan are listed below without progress reported.

## **ACTIVITY 3.1 CONDUCT WTO CODE OF GOOD PRACTICE WORKSHOP**

Commencement pending confirmation of conference agenda and scheduling by MinCIT.

## **ACTIVITY 3.2 ASSIST WITH U.S. FOOD AND DRUG ADMINISTRATION’S (FDA) FOOD SAFETY MODERNIZATION ACT (FSMA) COMPLIANCE**

Commencement pending Standard Alliance work plan finalization.

## **ACTIVITY 3.3 COORDINATE BETWEEN ICONTEC AND U.S.-BASED STANDARDS DEVELOPERS**

The full development of this activity is pending work plan finalization.

# Demand-Driven Technical Assistance

USAID Facilitando Comercio has set aside resources for demand-driven technical assistance to be able to respond to CTPA commitments. This currently includes drafting regulations once the customs code is approved and assisting DIAN improve the express shipment operation in order to comply with CTPA stipulations.

## **4.1 GUIDE DIAN THROUGH DRAFTING REGULATIONS**

In November 2014, Colombia's Constitutional Court cleared the way for the customs code to move forward with the approval process. DIAN has continued to revise text as discussions with the private sector persist over the sanctions regime. Formal deadlines to finalize text and submit it for presidential signing have not been set, but DIAN is pushing to conclude with its internal review by March 2015. Once the customs code is signed, DIAN will have six months to draft relevant regulations. The project expects to assist DIAN with this effort.

## **4.2 IMPROVE EXPRESS SHIPMENT OPERATION**

As DIAN pushed to finalize the customs code in the last months of 2014, debates within DIAN and with the express shipment trade association (CLADEC) were being had regarding the need for a verification zone (e.g. a security-controlled area for private operators to conduct verifications and file discrepancy reports) within the express shipment facility. DIAN's Customs Director requested the project's assistance in looking at other country practices to evaluate how it had been defined and regulated. In December 2014, in a joint effort with CLADEC, the project assisted with a site visit to Santiago, Chile where multiple express shipment companies operate under one shared facility.

Currently, DIAN operates one of the warehouses in Bogota where the highest volume of shipments are received—more than the typically large operators such as DHL and FedEx. One of USAID Facilitando Comercio's recommendations under the predecessor project was to privatize this facility and require the private operator to have systems in place that allow the operation to be streamlined. This would mean having a private entity manage the facility, but allowing DIAN to also operate within it to conduct verifications and inspections.

The model in Chile was used to evaluate how the facility is regulated and to also review operational requirements imposed on the private operator by the Chilean customs authority (e.g. IT system, tools, security). What became clear for DIAN after the visit was that it should limit its

duties to the clearance of goods rather than also trying to operate a facility as they are currently doing – and with little capacity to manage the volume being received. This resulted in DIAN drafting new sections of the customs code pertaining to the verification zones and general facility operational requirements, which DIAN then asked the project to review. The analysis of the new text and any subsequent recommendations will be discussed with DIAN in February.

Following the Santiago, Chile trip, DIAN also requested the project's help in developing an information system to support the express shipment operation. DIAN will be postponing the purchase of a new customs management system (CMS) until approximately 2016 and meanwhile, the express shipment operation is conducted across four fragmented IT systems. In Chile, the trade association, Atrex, developed the IT system that is used by the private operators and Chilean customs to manage the operation. DIAN is interested in exploring something similar that will eventually feed into its CMS. USAID Facilitando Comercio will evaluate the possibility of assisting DIAN with this effort after it holds meetings with DIAN's IT department in February.

# Appendix A. Financial Reporting

Table A-1 illustrates project expenditures according to the budget's main line items in the reporting period. As discussed with USAID, the project had a lower burn rate in the first six months of the project than what was originally expected at the proposal and budget development stage. This was mostly due to the project's commencement date coinciding with the beginning of President Santos' second administration and the changing of key leadership positions within DIAN and MinCIT, which resulted in a longer work plan validation period and much hesitance to initiate technical assistance without key decision makers at the table.

As USAID Facilitando Comercio moves into its third quarter, most work plan activities have gained momentum and will result in a higher burn. It's important to note, however, that due to a lag between technical assistance and the submission of final deliverables and payments executed, the entire financial commitment of an ongoing activity may not be fully reflected within the same quarter.

Table A-1  
*Budget Expenditures (\$USD)*

Category	Budget	Billed through December 2014 (a)	Estimated January 2015 Billings (b)	Estimated Accruals through January 2015 (a+b)	Budget Remaining
Technical Assistance Labor	1,679,350.69	192,176.44	38,000.00	230,176.44	1,449,174.25
Travel/ Transportation	176,738.36	8,297.82	500.00	8,797.82	167,940.54
Allowances	179,905.50	30,366.86	6,600.00	36,966.86	142,938.64
Furniture and Equipment	22,301.60	13,424.97	7,863.00	21,287.07	1,014.53
Participant Training/ Workshops/ Conferences	23,500.00				23,500.00
Other Direct Costs	538,239.93	50,890.22	18,000.00	68,890.22	469,349.71
General and Administrative Expenses	79,958.26 (8.5% of total costs)	8,753.21	2,801.86	11,555.07	68,403.19
<b>Total Costs</b>	<b>2,699,994.34</b>	<b>303,908.62</b>	<b>73,764.86</b>	<b>377,673.48</b>	<b>2,322,320.86</b>