Free Trade Implementation Activity (FTIA)

February–April 2015 Quarterly Report

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Introduction

During USAID Facilitando Comercio's third quarter of implementation, activities under all components gained traction. Decision-making within DIAN (Colombia's tax and customs authority) and MinCIT (Ministry of Trade, Industry and Tourism) allowed the project to better define scope of activities and move forward with design and implementation. Key decisions included: DIAN's agreement on the subject-matters for its inspector training program, MinCIT's Foreign Trade Office prioritizing the single window's simultaneous inspection modules, and MinCIT's Technical Regulations Office's commitment to the Standards Alliance Program. These important stakeholder developments are detailed in the following section of the report according to the corresponding activity.

One factor that remains pending is Colombia's new customs code, which contains several trade facilitation commitments made under the Colombia Trade Promotion Agreement (CTPA). DIAN continues to make revisions on sections pertaining to express shipments, risk management, and the sanctions regime. One of the main reasons the code's finalization has stalled is because of high opposition from the private sector regarding the sanctions regime, particularly concerns about fines being disproportionate to the offense. While DIAN is making progress in reaching consensus, the delay has kept them from implementing a number of CTPA commitments. Once DIAN finalizes the customs code, it will undergo ministerial review, and then be submitted for presidential signing. Once signed, DIAN will have six months to draft pertinent regulations.

Another drawn-out issue that caused the project to alter its strategy towards improving customs clearance times, is DIAN's decision to continue working with its current customs management system - MUISCA. At the onset of the project, DIAN intended to purchase a new system. That purchase stalled for several months and resulted in a unified institutional decision to continue making improvements to the MUISCA system that has deeply entrenched problems – severely limited data interchange capabilities, lacks traceability, and it does not support the full import operation. The USAID predecessor project made several recommendations to improve the customs IT system, which the current project stood ready to implement, some of which included developing operational models outside of MUSICA, as was the case for express shipments. Because of DIAN's decision to continue investing in MUISCA and with minimal financial and labor resources, the project has determined it is unviable to support any substantive improvements to DIAN's system that could lead to impact.

Despite, the challenges posed by the customs code and customs system, USAID Facilitando Comercio has been working to define supporting processes and procedures for trade facilitation measures and strengthen DIAN's institutional capacity and human capital through trainings and awareness building on international best practices. Part of this effort has included formalizing commitments with the U.S. Customs and Border Protection (CBP) agency to provide training to DIAN in the following quarter on risk profiling for express shipments, sharing of best practices with respect to valuation and advance rulings, and assisting with an inspector on-the-job training methodology.

USAID Facilitando Comercio's strategy to position itself as an objective stakeholder between DIAN and the private sector, has allowed the project to gather inputs from the private sector, gather information from real operations – ranging from procedures at DIAN's central office to field operations at the ports – to build awareness on problematic deficiencies in the customs operation and counter local practices with international best practices amongst DIAN's high-level decision-makers. Awareness-building and changing perceptions is a lengthy process, but the project is making progress on changing valuation practices, limiting the role of the inspector at the border, addressing misconceptions on advance rulings, and the need to do away with burdensome import documentation as is highlighted with the new minimum descriptions decree (See Activity1.1).

The following sections of the report outline all project activities according to the work plan components and provides the current status of implementation. The report also includes a summary of our monitoring and evaluation indicators 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.

In April 2015, Analdex (Colombia's Foreign Trade Association) held its annual importer conference. DIAN's Director General, Santiago Rojas, presented its strategy for trade facilitation, prioritizing five key areas customs will be working on – 1) customs code and regulations to support compliant traders, such as a reformulated methodology for Colombia's authorized economic operator (AEO) program and its extension to importers; 2) risk management's integration across DIAN's operations and systems; 3) time-release studies and improved clearance procedures, such as those related to valuation 4) IT systems and tools from MUISCA to scanners at ports; and 5) contraband and undervaluation - targeting it efficiently and effectively.

USAID Facilitando Comercio is working on several of these initiatives as is highlighted below and will continue to offer assistance to DIAN on a demand-driven basis.

ACTIVITY 1.1 DEVELOP INSPECTOR TRAINING PROGRAM

In March 2015, the International Trade Centre released its report findings on non-tariff barriers to trade in Colombia[1]. A total of 730 companies were surveyed, of which 40 percent indicated they faced challenges when importing into Colombia—mostly due to inspections at the border by DIAN. Out of eight trade barriers identified, 51 percent attributed problems to inspections, followed by 20 percent attributing it to conformity assessments, and 17 percent to technical requirements. These findings are in line with the project's qualitative assessments of customs' operations at the border and with the time-release studies done in 2012-13.

DIAN is well aware that lack of training for inspectors has attributed to subjective inspection practices at the border. But despite the lack of training, DIAN continues to hold the inspector responsible for a wide range of duties. Throughout the reporting quarter, USAID Facilitando Comercio worked with DIAN to help focus its training needs. This entailed numerous meetings with DIAN's Technical Division, Foreign Trade Division, and training school to evaluate the existing training material (developed in-house by DIAN and the World Customs Organization – WCO's courses), and its suitability for the inspector's role at the border. Under the project's

[1] http://www.intracen.org/itc/market-info-tools/non-tariff-measures/colombia/

discretion, much of the material available to the inspector was too technical and did not follow a standard learning methodology.

In discussions with DIAN and the private sector, two main issues that continued to arise as problematic at the border were the inspector's subjective evaluation of minimum descriptions on the import documentation and the determination of value. As noted by the predecessor USAID project, the minimum descriptions for Colombia are much more detailed than international standards. The inspector verifies detailed and extensive descriptions against the merchandise received and if he or she doesn't consider the merchandise to fall within the written description, the inspector can suspend clearance. Also, if there is a description in the declaration, the inspector can spend over an hour searching through the merchandise to ensure there is a match. The need to reform this practice was included in the project's assessments. DIAN took note of this and has issued a new decree in April 2015 (*Resolución 057*[2]) simplifying the minimum descriptions and eliminating the possibility of seizing the goods for inadequate descriptions. The private sector will now have 30 days to remedy the description and if done voluntarily, will not be fined.

The other main issue is the inspector's determination of customs value at the border. Inspectors at the border use indicative prices for control purposes during the inspection process. DIAN's price reference database, however, is not exhaustive and updates are not done systematically. When merchandise is not listed in the database, it is not uncommon for inspectors to also reference pricing via the Internet. Although, DIAN's central office does not commend this, it is a known practice at the border. When the declared value is called into question, the importer has five days to adjust its price, present additional documentation, or post a bond. When a bond is used, DIAN conducts a post-clearance verification by its audit unit (*fiscalizacion*). The audit unit has become inundated with valuation cases and is often not able to thoroughly conduct these verifications, resulting in cases getting filed without an audit.

Given how problematic this has become, DIAN reached a consensus on training needs in April and prioritized training for the inspector on customs valuation. USAID Facilitando Comercio will develop an online course on valuation for the inspector, defining scope of inspector's intervention based on best practices and DIAN regulations. The project will also develop an online course on tariff classification and an on-the-job training methodology based on CBP's practice.

With clear indications on the scope of the trainings, USAID Facilitando Comercio worked with DIAN's training school to issue the enrollment announcement for inspectors to participate in the training program as a pilot. This also included a survey for inspectors and their supervisors to provide feedback on what they consider the main challenges to be at the border and to self-evaluate their understanding of key concepts. The information captured in the surveys will form part of the project's baseline data. Once the enrollment period concludes in mid-May, the project will have the results of the survey.

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[2] http://www.mincit.gov.co/documentos.php?id=345

USAID Facilitando Comercio also initiated interviews with inspectors at the Bogota airport and conducted a focus group with post-clearance auditors to capture on-the-job realities, from workloads to deficiencies in properly documenting an inspection's findings. The project will continue with this effort throughout the month of May before moving on to course development.

Lastly, as part of the project's work on advance rulings (see activity below), Argentinean customs presented on valuation practices at the border. USAID Facilitando Comercio used this opportunity to engage in extensive dialogue with DIAN's Customs Director and DIAN's Technical Director on the need to limit the inspector's role in determining value. Discussions centered on the need for a robust risk management system to support undervaluation targeting and the need to refocus valuation on methods rather than commercial pricing.

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. At the onset of the project, MinCIT and DIAN anticipated issuing a decree to implement advance rulings in case the customs code was delayed. Although, both entities expected the code to be finalized by the May 15th deadline, this will not be the case and the initiative to implement via a decree lacked political will. The issuance of advance rulings has been incorporated into the updated customs code, and the project is working with DIAN on developing internal processes and procedures to support its implementation.

1.2.1 Technical Training for Issuing of Rulings

USAID Facilitando Comercio has developed activities in three areas prioritized by DIAN: 1) developing an IT tool (document management and workflow) to manage the requests and issuance of rulings to ensure accuracy and timeliness; 2) developing application forms and ruling formats for valuation and origin (tariff classification was completed by the predecessor project); and 3) improving technical capacity and operational practices related to valuation.

The project mapped the process for tariff classification resolutions and internal consultations made from ports to determine whether that same process could be adopted for advance rulings. Main findings include: opaque and prolonged processes, lack of real-time tracking, duplication of data entry, poor management controls, limited interaction with the requester, and inadequate management and custody of samples that are not subject to laboratory analysis. This assessment reinforced the need to develop a new and automated process for advance rulings. The project developed a proposal for a new process, incorporating other customs agencies' best practices, and is also analyzing the best document management tool that DIAN can acquire to support the rulings program. In the next quarter, the project expects to finish validating the proposal, and initiate the implementation phase upon obtaining the approval required from DIAN´s IT division.

The project also held a one-week long workshop on implementation best practices and a training on the scope of valuation and origin rulings. Thirty DIAN officials participated in discussions on ruling requirements, scope, third party application, validity periods, management of confidential information and public availability. After the workshop, the project developed proposed forms and templates for the request of advance rulings on valuation and origin, which are currently

under revision by DIAN´s technical unit. As DIAN moves forward with developing the program, they will require additional assistance to validate processes and technical guidance on issuing rulings, particularly valuation rulings. CBP will assist with part of that effort during a two-day workshop in May.

Before making definitive decisions on valuation practices, DIAN wants to evaluate other customs agencies' practices. This has included training from Canada's Border Services Agency (CBSA) through a direct cooperation agreement between DIAN and CBSA and will include a review by CBP scheduled for June. For this quarter, at the request of DIAN, USAID Facilitando Comercio conducted a four-day workshop on Argentina's customs (AFIP) practices with the head of its risk management office. The focus was on a comprehensive risk management system to evaluate undervaluation risk rather than solely focusing on a price reference database as is the case with DIAN. AFIP also highlighted its practice to make valuation methods public prior to the particular merchandise arriving in country.

1.2.2 Implement Appeals Process for Advance Rulings

Under the new customs code, DIAN's Legal Counsel Office will manage the rulings appeals process. USAID Facilitando Comercio began to engage Legal Counsel to develop a training plan that would allow a group within the division to have competencies over tariff classification, valuation and origin matters. The training plan was kicked-off with an introduction to advance rulings, where issues like appeals (first and second instances), amendments, and annulments were discussed jointly with DIAN's Technical Division, which will be in charge of issuing the rulings. This was then followed by initiating technical training on tariff classification for the 16 officials from Legal Counsel that will specialize in ruling appeals. Once the DIAN officials conclude the WCO's e-learning course on the harmonized system, USAID Facilitando Comercio will hold an information exchange workshop with presentations from the private sector on classification resolutions that were emitted by DIAN and required reconsideration. This is scheduled for June 2015.

ACTIVITY 1.3 IMPROVE RISK MANAGEMENT SYSTEM

DIAN is receiving extensive training on risk management from the International Monetary Fund. CBSA also began to engage DIAN on commercial targeting, but that assistance has stalled due to changes in leadership within DIAN's risk management division. DIAN also requested assistance from USAID Facilitando Comercio with a focus on profiling for express shipments. The project is aware that currently these type of shipments are not profiled and 100 percent are scanned, with 10 percent being chosen for random inspection. DIAN has not shared a clear action plan for implementing a comprehensive risk management system to support express shipments, but for now has expressed interest in understanding how CBP profiles these shipments.

USAID Facilitando Comercio has requested collaboration from CBP to conduct a targeting workshop with practical exercises focused on express shipments. This will be conducted in May, and following that workshop, the project will push for clear action items. Given new leadership within the division, the project anticipates being able to better determine the scope of assistance in the next quarter.

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 (SIIS) capacity. The VUCE's SIIS for containerized exports at seaports is currently operating. MinCIT wants to expand this to include airports and other types of cargo. Similarly, it wants to develop SIIS for imports. USAID Facilitando met with MinCIT to discuss ways to support its development and could potentially play a role in the future once MinCIT concludes its bidding process for the development of the module. In March, SIIS Imports become a Presidential National Interest Project, with implementation indicators being reported to the president's office.

1.4.1 Help DIAN Integrate into VUCE

With MinCIT's goal to expand exports by 2018, the ministry is pressuring DIAN to integrate into the VUCE platform to streamline the export inspection process. MinCIT has offered financial support to DIAN to develop web-service applications given that DIAN has very limited personnel to dedicate to any IT system-related reform. USAID Facilitando Comercio is also exploring its potential involvement in the development of the applications required and offered DIAN to begin vetting external candidates that could support the project. Towards the end of the quarter, the initiative was delayed by DIAN, as they sought internal approvals to be able to work with external consultants. The outcome of those approval requests are pending.

1.4.2 Assist MinCIT with Port Community System Planning

This activity is no longer included in the project's work plan as noted in the previous quarterly report.

1.4.3 Assist MinCIT in Developing National Committee on Trade Facilitation

As one Colombia's commitments made under the World Trade Organization's Trade Facilitation Agreement (TFA), USAID Facilitando Comercio is working to support the reactivation of Colombia's national committee on trade facilitation (NCTF). While the committee is already formed and organized by MinCIT's Trade Relations Office, it currently doesn't meet on a regular basis. MinCIT is interested in joining efforts with our project to engage the committee in trade facilitation discussions, but is not interested in leading its own agenda items for the time being.

USAID Facilitando worked with MinCIT to gather trade associations, ProColombia (Colombia's export promotion agency), and DIAN in a public-private roundtable to discuss the scope of advance rulings. The project highlighted international best practices of other programs and its use to facilitate trade. The private sector was interested in clarifications related to binding rulings for the party that requested the ruling versus its use by third parties, and how confidential information was treated. They were also interested in understanding the scope of the valuation rulings, which the project emphasized was not about determining a price, but rather an adequate valuation method. Same for the permanent valuation adjustment; the project noted the application of the adjustment could be included in the ruling, but not the specific percentage of the adjustment. The private sector was interested in knowing next steps for DIAN to implement its advance rulings program. DIAN shared that they were evaluating related processes and the need to make the tool

available online – from the request to the ruling and any modifications. Lastly, Colombian exporter, Manitoba, highlighted its experience in requesting an advance ruling for tariff classification from CBP. They noted the ease of communication when CBP requested additional information, how all was done via e-mail, allowing Manitoba to have a response within 15 days of the request. This allowed the company to make strategic business plan decisions to prioritize other export markets for the time being until they can make alterations to its product.

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 carrying out the commitments under CTPA's origin chapters. One of those commitments includes accepting electronic certifications of origin by May 15, 2015. DIAN had several doubts about how to regulate this. USAID Facilitando Comercio guided DIAN through definitions ("importer knowledge") and regulations supporting CTPA Article 4.15 and how it's been applied in Peru and the US. DIAN is drafting regulations for electronic certifications to be included under Decree 730 "*Cumplimiento a los Compromisos Adquiridos en el TLC*."

DIAN's origin unit has also requested assistance to continue improving origin verification capacities, particularly on regional value content and accounting practices. The project has been working to identify experts that could provide this training to DIAN and expects to initiate workshops in the next quarter.

ACTIVITY 2.2 IMPROVE PRIVATE SECTOR COMPLIANCE

ProColombia, after finalizing its yearly planning, asked the project to assist with guiding the private sector through the short-supply mechanism negotiated in the CTPA. ProColombia and MinCIT have identified textile companies that may be able to benefit from making a commercial availability request to the Office of Textile and Apparel (OTEXA). ProColombia and MinCIT suspect companies find the process too technical and cumbersome, given that since the CTPA entered into force three years ago, Colombians haven't made any requests to take advantage of this mechanism. USAID Facilitando Comercio has started working with ProColombia to define the project's assistance and determine whether individual companies will be assisted or whether the Government of Colombia will make the requests. This activity is anticipated to be fully rolled-out in the following quarter.

Component 3: Improve Technical Standards and Compliance

USAID Facilitando Comercio, MinCIT's Office of Technical Regulations, ICONTEC (Colombian Institute of Technical Standards and Certification) and ANSI (the American National Standards Institute) held its first teleconference in February to discuss the draft work plan that ANSI and MinCIT had exchanged in 2014. MinCIT and ICONTEC requested additional time to coordinate national priorities and much of the focus of the first meeting was directed at carrying out the Code of Good Practice Conference noted below.

The project has met with other offices within MinCIT, ProColombia and the director of ASOSEC (association of conformity assessment entities), to gauge technical assistance needs, gathering further details on those already identified in the draft work plan and additional areas of assistance that could benefit from the program. The definition of work plan activities will be discussed with ANSI and MinCIT during the conference in May with the pressing need to initiate activities soon.

ACTIVITY 3.1 CONDUCT WTO CODE OF GOOD PRACTICE WORKSHOP

Much of the quarter was dedicated to coordinating logistics and liaising between ANSI and MinCIT for the conference, which will be held May 12, 2015. The conference agenda was directly coordinated between ANSI and MinCIT, with ANSI leading the effort in identifying all US speakers. Additionally, USTR engaged in the planning of the conference and put forward an agenda for a Technical Barriers to Trade Committee Meeting at the end of the conference. The results of the conference will be provided in the following quarterly report.

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. Potential assistance in the future could include working with DIAN and Analdex to do a time-release study that quantifies the private sector's and customs' interventions in the process to address the role all the players have in lowering cargo clearance times to 48-hours. This request was put on the table as a possibility following Santiago Rojas' address at Analdex's conference.

4.1 GUIDE DIAN THROUGH DRAFTING REGULATIONS

DIAN continuous to revise customs code text and will not move forward with regulation drafting until it's finalized. DIAN has expressed interest in receiving assistance from the project on regulations supporting trade facilitation measures. The project stands ready to work with DIAN on this initiative.

4.2 IMPROVE EXPRESS SHIPMENT OPERATION

USAID Facilitando Comercio has been working with DIAN's customs code drafters over the last six months to make improvements to the express shipment operation. Over the last quarter, the project has mostly focused on articles related to verification zones – clear parameters within a facility where the private operator and DIAN can verify shipments arrived and report discrepancies. DIAN has also been working closely with CLADEC (the express shipment trade association) to reach agreement on requirements and obligations of private operators.

DIAN is moving closer to mandating all express shipments arriving to Colombia be handled in a privately operated facility versus the possibility of using the DIAN operated warehouse. The project has been adamant about not limiting competition and the need for equal treatment amongst operators - large multinational operators with facilities at the airport and the smaller operators that do not have a facility but manage the greater volume of express shipments arriving into Colombia. USAID Facilitando Comercio submitted the latest round of revisions to the text at the end of the quarter.

Appendix A. Monitoring & Evaluation Indicators

During the project's third quarter, workshops on advance rulings and valuation were carried out. USAID Facilitando Comercio trained a total of 90 people; 87 percent of which were government

officials. Private companies and trade associations representing the food & beverage, plastics, and poultry industries also participated. The high interest in advance rulings resulted in the project surpassing its target for Key Result 1.5. Another important achievement was the modification to minimum descriptions for import declarations as noted under the Common Indicators.

Indicator results through the end of April 2015 are reflected below in Table A-1 through A-4. The full monitoring and evaluation report, containing all indicators will be presented in the project's annual report.

Table A-1

USAID Common Indicators

Common Indicator	Y1- Q1 Target Results Total	Y1- Q3 Results				Comments
Number of participants in USG-supported trade and investment capacity building training.	200		W	M	**Total**	• Workshop on Advance Rulings • Workshop on Argentina's Customs Administration's valuation best practices
		Public	42	36	**78**	
		Private	6	6	**12**	
		Total	**48**	**42**	**90**	
Number of legal, regulatory, or institutional actions taken to improve implementation or compliance with international trade and investment agreements as a result of USG assistance.	5	1				In the 2013 time-release study for Bogota airport, the project highlighted the need to reform the minimum description requirements for import declarations. The recommendation was reflected in the resolution 057 emitted by DIAN and MinCIT in April 2015.
Number of institutions/ organizations undertaking capacity/competency strengthening as a result of USG assistance.	3	Public			4	Public: DIAN, MinCIT, ProColombia, PTP Private: trade associations for the food & beverage, plastics, and poultry industries, along with law firms specializing in customs operations.
		Private			8	
		Total			12	

Table A-2

Development Objective Indicator

Common Indicator	Year 1 (2014-15) Target Results	Y1- Q3 Results	Comments
Total Public, Private and Community dollars mobilized by USG assistance for development purposes	10,000 USD	2,493.56	This includes DIAN's contributions to the trainings and field work.

Table A-3

Project-specific Indicators

Indicator	Date Source (frequency)	Baseline	Target Y1	Results Y1 -Q3	Comments
COMPONENT 1					
Key Result 1.5: Advance Rulings Improved					
No. of officials trained on advance rulings	Training logs Monitoring and progress reports	0	15	DIAN's Technical Division Men: 27 Women: 26 DIAN's Legal Counsel Men: 8 Women: 8 MinCIT, PTP, ProColombia Men: 2 Women: 7 **Total**: **78**	• Workshop on Advance Rulings • Workshop on Argentina's Customs Administration's valuation best practice

Table A-4

Additional Monitoring and Evaluation Indicators

Indicator	Date Source (frequency)	Baseline	Target Y1	Results Y1 -Q3	Comments
Objective: Contribute to Colombia´s competitiveness and trade environment, so that more people can reap the benefits of open trade					
Key Result 1.5: Advance Rulings Improved					
No. of private sector outreach activities to promote advance rulings	Participants list Monitoring and progress reports	1	0	1	Workshop on Advance Rulings Turnout: 6W; 6M No. firms and associations: 8