**Legal Gap analysis on the Uniform Customs Code of Central America and its regulations and recommendations for implementing the Trade Facilitation Agreement of the World Trade Organization and other best practices**

**Regional Central American Project to support the implementation of the Trade Facilitation Agreement**

**World Bank Group**

***December 2017***

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**The original version of this document was prepared in Spanish. This document is a translation of the original Spanish version of the report “*Análisis de Brechas Legales sobre el Código Aduanero Uniforme Centroamericano y su reglamento y Recomendaciones para implementar el Acuerdo de Facilitación de Comercio de la Organización Mundial del Comercio y otras buenas prácticas*.”**

# Presentation

The World Bank Group (WBG) is providing technical assistance to the Central American region (Costa Rica, Guatemala, El Salvador, Honduras, Nicaragua, and Panama), under the Project to Support the Implementation of the Trade Facilitation Agreement (TFA) of the World Trade Organization (WTO) in Central America. This project is being executed in close coordination with the Central American Economic Integration Council of Ministers (COMIECO), the Central American Economic Integration Secretariat (SIECA), the governments of each country, and the private sectors of the region.

The six countries of Central America ratified the TFA and have demonstrated their commitment to move toward greater trade facilitation in the region. One of the pressing needs to be met with this project was revising the Uniform Central American Customs Code (CAUCA IV) and its RECAUCA regulation to align them with the objectives of the TFA and other international best practices. With the Gap Analysis of CAUCA IV and RECAUCA against the TFA, the WBG aims to support the region with several goals. (1) The first is to establish the basis for the reform of a modern normative framework that is consistent with the best international standards, especially with the TFA. (2) The second objective is to improve the transparency and efficiency of customs management. (3) The third is to improve and strengthen coordination with the other border control agencies. (4) The fourth objective is to establish a reference to harmonize administrative procedures and simplify procedures, to streamline business processes, improving their efficiency and fiscal and customs controls.

We express our gratitude to the officials of the governments of Costa Rica, Guatemala, El Salvador, Honduras, Nicaragua and Panama, to COMIECO, to SIECA, to the Customs Committee composed of the directors of customs, and to the Central American Economic Integration Consultative Council (CCIE), which represents the private sector federations of Central America. All these officials and private sector representatives devoted valuable time and dedication to the consultants and our internal experts to collect the information needed to carry out this analysis.

We thank our partner, the International Monetary Fund, for their valuable contribution to this effort and for the excellent inputs provided by the resident specialist for Central America of the Regional Technical Assistance Center of Central America, Panama and the Dominican Republic (CAPTAC-DR), Selvin Antonio Lemus Martínez.

This work has been an extensive and profound effort, and we are pleased to have a document that will serve as a reference to the Central American region in its constant efforts to facilitate trade. The original document of this analysis is the product of the dedication of the team of IOS Partners Inc., led by Robert Hans and María Gabriela Sosa, supported by international experts Silvia Anzola, Luis Ricardo Lopez, Pedro Souss, Anthony Cambas, and Ana Guiselle Herrera. We also thank the staff of the representations of the WBG in Central America, for the logistical support and coordination that made the field work possible.

Our internal WBG team in charge of the review and strategic direction of the study, co-led by Mayra Alfaro de Morán and William John Gain, counted on the advice of Arsala Deane and the consultants: Brian O’Shea, legal advisor, Juan Luis Zúñiga, customs advisor, Nataly Lovo, consultant for trade and Gabriela Montenegro, senior consultant for trade, who coordinated our technical work. The team had the strategic guidance of Marialisa Motta, Manager of the Global Practice of Trade and Competitiveness for Latin America and the Caribbean, and Jose Guilherme Reis, Trade Manager of the Global Practice of Trade and Competitiveness.

Likewise, this document has been reviewed internally by consultants Fernando Ocampo and Antonio de la Ossa, whom we also thank for their valuable comments.

We hope this document will become a reference tool that will be useful to the Ministries of Commerce and Economy and to the General Directorates of Customs in the revision of the Central American Customs Code and its Regulations, and in developing other national and regional instruments that will facilitate the implementation of trade facilitation mechanisms in Central America.

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# Glossary of Terms

In this report, the CENTRAL AMERICAN AGREEMENTS include an analysis of COMRIEDRE Resolution 65, Resolution 01 dated July 27, 2011 on the Procedure for the Review, Analysis, and Solution of Non-Tariff Barriers for Central America Intraregional Trade, Regulation 271-2011 on Sanitary and Phytosanitary Measures and Procedures*[[1]](#footnote-2)*, the Central American Strategy for Trade Facilitation and Competitiveness, with Emphasis on Coordinated Border Management, and the details of the Central American Digital Platform, all within the context of the TFA.

**AEO** – Authorized Economic Operator

**ALADI** – Asociacion Latinoamericana de Integración (Latin American Integration Association)

**CADTP** – Central America Digital Trade Platform (Plataforma Digital de Comercio Centroamericana/PDCC)

**CAFTA-DR** – Central America, Dominican Republic, and the United States of America Free Trade Agreement

**CAUCA** – Código Aduanero Uniforme Centroamericano (Uniform Central American Customs Code)

**CBM** – Coordinated Border Management (Manejo Coordinado de Fronteras/MCF)

**CBP** – United States Customs and Border Protection Agency

**CCIE** – Consejo Consultivo de Integración Económica Centroamericana (Central American Economic Integration Council)

**Central American Strategy** – COMIECO Agreement 01 of 2015, the Central American Strategy for Trade Facilitation and Competitiveness, with emphasis on Coordinated Border Management

**Chile Agreement** – Free Trade Agreement between Chile and Central America

**COMIECO Agreement 2015** – COMIECO Agreement 01 of 2015, the Central American Strategy for Trade Facilitation and Competitiveness, with emphasis on Borders.

**COMRIEDRE 65** – Resolution 65-2011 (COMRIEDRE) Regulations to the International Customs Transit System (Declaration Form and Instructions)

**Customs** – Customs Service

**Customs Authority** – Customs employee, under CAUCA Article 4

**DM** – Declaración de Mercancías (Declaration of Goods)

**DUA** – Declaración Única de Aduanas (Unified Customs Declaration)

**DUT** – Declaración Unica de Tránsito (Unified Transit Declaration)

**EEC** – European Economic Community

**EFTA** – European Free Trade Association

**EFTA-CA** – EFTA-Central America Free Trade Agreement

**EU-CAAA** – European Union – Central American Association Agreement (free trade agreement)

**FAUCA** – Formulario Aduanero Unico Centro Americano (Unified Central American Customs Form)

**GCF** – Gestión Coordinada de Fronteras (Coordinated Border Management)

**ICAO** – International Civil Aviation Organization

**IMO** – International Maritime Organization

**IOS** – IOS Partners, Inc., an international economic development and financial advisory services firm

**ISCM** – Integrated Supply Chain Management

**ISTA** – Iniciativa de Seguridad en Tránsito Aduanero (Argentina Security Initiative for Customs Transit)

**IT** – Information Technology

**ODECA** – Organizaciôn de Estados Centroamericanos (Organization of Central American States)

**RECAUCA** – Reglamento al Código Aduanero Uniforme Centroamericano (Regulations to the Uniform Central American Customs Code)

**Regulation 271** – Regulation 271-2011 on Sanitary and Phytosanitary Measures and Procedures

**Resolution 01 of 2011** – Resolution 01 of July 27, 2011 on the Procedures for the Review, Analysis and Resolution of Non-Tariff Barriers for Central American Intraregional Trade

**Resolution 338** – Resolution 338 / 14 Central American Sanitary and Phytosanitary Directive to Facilitate Trade of Shipments and Merchandise

**RKC** – Revised Kyoto Convention

**ROCARS** – Road Cargo System

**SAFE Framework** – WCO Framework of Standards to Secure and Facilitate Trade

**SIECA** – Central American Secretariat for Economic Integration

**SPS** – Sanitary and Phytosanitary

**SPS Agreement** – WTO’s Agreement on applying SPS Measures

**Tegucigalpa Protocol** – Tegucigalpa Protocol to the Charter of ODECA

**TFA** – WTO Trade Facilitation Agreement (Acuerdo de Facilitación del Comercio/AFC)

**TIM** – The International Transit of Merchandise platform

**UPU** – Unified Postal Union

**WBG** – World Bank Group

**WCO** – World Customs Organization

**WTO** – World Trade Organization

# Introduction

As part of implementing the WTO Trade Facilitation Agreement (TFA) for the Central American region, several efforts are underway to determine necessary changes to the Uniform Central American Customs Code (CAUCA) and Regulations to the Uniform Central American Customs Code (RECAUCA). These regulatory bodies, and the resolutions issued in conformity with and for the execution of the CAUCA and RECAUCA guidelines, constitute the main regional standard for trade and the Central American Customs regimen. CAUCA and RECAUCA have not been updated since 2008. It is presumed that they need to be updated to properly implement the TFA, especially to achieve the goals agreed to by the countries in the region.

The first phase of this consultancy consisted of preparing a comparative matrix of regional legal instruments, laws and national regulations, and free trade agreements signed by the Central American countries. The regulations were classified according to TFA articles.

This document reports the results of our analysis of CAUCA, RECAUCA, regional resolutions issued by COMIECO that complement or are applied in alignment with CAUCA and RECAUCA, and certain international agreements signed by the region with other countries or regions, including the Revised Kyoto Convention (RKC). The purpose of this analysis was to identify and describe the legislative gaps between CAUCA and RECAUCA (on one hand) and the TFA (on the other). To determine how well CAUCA and RECAUCA align with the TFA, we interpreted TFA provisions in accordance with pertinent international best practices, such as World Customs Organization (WCO) guidelines, and in support of the region’s specific modernization and integration goals. We drew the modernization and integration goals from the most recent regional initiatives, such as the Central American Strategy for Trade Facilitation and Competitiveness with emphasis on Coordinated Border Management (CBM) and the Central America Digital Trade Platform (CADTP).

To identify gaps and recommend CAUCA and RECAUCA reforms needed for effective compliance with the TFA, we have taken as a baseline the RKC, the SAFE Framework, and regional goals.

|  |
| --- |
| Methodological Framework  Methodological framework for the analysis of the Central American regulation under the WTO Trade Facilitation Agreement (TFA), international best practices such as the WCO Revised Kyoto Convention and the SAFE Framework, and the Central American trade facilitation goals |
| TFA  RKC & SAFE  Goals  CAUCA  RECAUCA  COMIECO Resolutions |

The method is intended to achieve several objectives:

1. Clearly determine the changes needed for effective compliance with the TFA. We have analyzed both the literal text of the TFA standards and the underlying guidelines for effective compliance sought by the TFA. We use both as a baseline for identifying any gaps in CAUCA and RECAUCA. Although we consider many of the TFA standards “best endeavor,” we have taken these regulations as mandates for effective compliance with the TFA.
2. Identify the region’s specific integration, modernization, and trade facilitation goals relevant to TFA provisions.
3. Determine to what degree CAUCA / RECAUCA can and should implement TFA provisions: Throughout this report, we identify activities (e.g., single window or border agency cooperation) that should be carried out in coordination and cooperation with other border authorities or are typically implemented by authorities other than Customs.

Due to the legal nature and the scope of application of CAUCA and its regulation, the provisions in this instrument apply directly to customs. This regional instrument regulates relations between customs and the private sector (importers, exporters, operators, customs agents, couriers, etc.); the relationship between customs and other border control agencies, in terms of coordination and cooperation, for example; the cooperation relationship between customs in the region and with third countries.

In consultation with the officials of the Central American governments and SIECA, we determined that CAUCA and RECAUCA could not achieve this objective. Extending the obligations of the TFA to other border control agencies could be achieved through a regional instrument parallel to CAUCA, applicable to all the agencies that intervene at the border.

**Guide to Understanding the Report Contents and Sequence**: four points need to be clarified to make the report easier to read and understand:

1. Use of the term “gap” within this analysis: “Gap” is used to indicate a distancing, difference, or insufficiency in applying the TFA provisions’ principles and objectives. Gaps should therefore not be taken literally from the TFA text, but rather from the guidelines or objectives for effective implementation.
2. Failure to specifically apply national standards: IOS and WBG consultants visited the countries to learn how regional standards are applied. Although the situation of the countries regarding the practical application of the regional regulations, the guidelines of the TFA and the best international practices were known, no specific reference is made to the national regulations in this report. In effect, the analysis focuses on CAUCA and RECAUCA as community instruments in terms of harmonization, standardization and common practices for delving deeper into trade integration and modernization.
3. Separation of General Analysis and Transit-Related Analysis: Since CAUCA and RECAUCA refer mostly to import and export processes, while transit is fundamentally regulated by other subsidiary norms, such as COMRIEDRE Resolution 65, the analysis of the TFA articles has been separated into General analysis and Transit-related analysis. The General analysis mainly covers imports, exports, and other regimens, while the Transit-related analysis covers everything related to international and domestic transit.
4. Content analysis based on each TFA article:

Content analysis and Scope of TFA Standards, according to official WTO texts and sources.

Analysis of Regional Regulations and Goals: This section includes an analysis of CAUCA, RECAUCA, and any resolutions issued under them, that are pertinent to the specific subjects of the TFA articles. An analysis of the agreed goals based on the Central American Strategy for the Facilitation of Trade and Competitiveness with an Emphasis on CBM, the CADTP, etc., is also included.

Analysis of International Agreements and international best practices related to the matter, to analyze the sources and underlying goals, and to identify any inconsistencies between them, and CAUCA and RECAUCA.

Gap identification: This section identifies the specific gaps between the TFA, and CAUCA and RECAUCA standards. Likewise, inconsistencies between CAUCA and RECAUCA regulations are identified with respect to international agreements and international best practices.

Recommendations: This section draws conclusions about appropriate ways to eliminate gaps, correct inconsistencies, and propose substantial modernizations to regional standards.

This is the latest version of the Gap and Recommendation Analysis. It reflects recommendations from experts of the WBG and the observations, comments, and suggestions expressed by delegates of the countries and SIECA who attended the workshop held June 5 - 6, 2017 in San Jose, Costa Rica.

# Article 1. Timely and Easily Accessible Publication of Information Pertinent to All Interested Parties

Section 1.1 clearly obligates the countries to publish promptly and in an easily accessible manner all information relevant to all public or private individuals or companies with any interest in customs and international trade matters.

This standard specifically targets:

* The executive branch in general, and specifically, trade-related entities or agencies, tax administration, and parties responsible for information management and dissemination.
* All organizations involved in border activities.

This section specifically obligates all government entities to publish the following information:

1. Import, export, and transit procedures (including procedures at ports, airports, and other points of entry) and the required forms and documents;
2. Types of fees and taxes of any kind applied to imports or exports, or in connection thereto;
3. Fees and charges levied by, or on behalf of, government organizations on imports, exports, or transit, or in connection thereto;
4. Standards for classifying or assessing products for customs;
5. Generally applicable laws, regulations, and administrative provisions related to the rules of origin;
6. Restrictions or prohibitions on imports, exports, or transit;
7. Provisions on sanctions for violating import, export, or transit formalities;
8. Appeal or review procedures;
9. Agreements, or parts of agreements, with any country or countries for imports, exports, or transit; and
10. Procedures for administration of tariff contingencies.

Section 1.2 is a standard aimed at having versions posted on the Internet, where the information referred to in Section 1.1 is quickly and easily understood through the use of guides, along with the forms and documents required for foreign trade processes, and contact information to obtain additional information.

Section 1.3 refers to the provision of the information referred to in Section 1.1, by government entities, within a reasonable period of time, when an interested party requests information about any point referenced in Section 1.2.

This regulation also suggests creating regional information mechanism, instead of a national one, when dealing with member countries or countries in the process of joining a regional customs union.

Section 1.4 obligates the counties have to inform their Facilitation Committees of where the information, referenced in sections 1.1 and 1.2, has been published.

## Analyzed Regulations

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| Tegucigalpa Protocol: Article 10  CAUCA  RECAUCA  Central American Strategy  CAFTA-DR: 5.1 and 3.10  EU-CAAA: 120 and 339  RKC: 9.1 |

## Analysis of Central American Regulations and Goals

Neither CAUCA nor RECAUCA meets the requirements of sections 1.1 and 1.2 of Article 1 of the TFA. Only the Tegucigalpa Protocol contains a general mandate stating that information on customs procedures and resolutions should be published.

Although the Tegucigalpa Protocol mandate has not been developed by any Central American regional legislation, the countries of the region have established and developed the practice of publishing internal and regional regulations on their websites in accordance with international agreements and best practices.

Consultation mechanisms have only been regulated at the national level (as in Costa Rica, for example) but are not provided for in CAUCA or RECAUCA. RECAUCA only provides for consultation mechanisms for AEOs.

Occasionally, some information relevant to the interested parties is published as new or important news on countries’ websites. This does not occur systematically because there is no provision for the specific dissemination of information to interested parties and within a specific time frame (although some countries in the region have provisions for publishing general information).

The Central American Strategy does not identify the absence of clear and timely information as a gap or lack, nor does it mention strategies or plans to align to the TFA.

## International Agreements

Article 5.1 of the CAFTA-DR clearly obligates countries to publish, both physically and on the Internet, all their customs, legal and administrative regulations. It also obligates countries to create and maintain consultation mechanisms to respond to requests for information from stakeholders. The CAFTA-DR establishes a precise mandate for the Central American countries of what the TFA establishes as a standard of best endeavor.

Article 339 of the EU-CAAA also clearly obligates member countries to publish not only their legal and administrative rules but also legal decisions, administrative procedures, and rulings on any trade-related matter that goes beyond what was foreseen in the TFA. The Agreement requires that measures be available through the appropriate notification to WTO or through an official, public, and free access website.

## International Best Practices

The RKC establishes the need to publish all relevant information clearly, efficiently, and rapidly:

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| Revised Kyoto Convention—General Annex  Chapter 2. Information of general application  Standard 9.1. The Customs shall ensure that all relevant information of general application pertaining to Customs law is readily available to any interested person.  The first provision (Standard 9.1) stipulates that the Customs must ensure that relevant information of general application is readily made available to all interested parties. The interested parties are trade and industry groups, forwarding agents, freight forwarders, shipping agents and major companies who transact business regularly with the Customs.  Information of general application should also be furnished to other national authorities who are associated with the movement of goods to and from a Customs territory and who work in partnership with the Customs in the clearance of goods, i.e. the port, civil aviation, health and other authorities. Information on Customs requirements that is of interest to the general public, namely travellers and persons who send or receive postal articles, should be easily available.  Such information would include the tariff classification of goods, rates of duty and taxes, valuation of goods for Customs purposes, information relating to exemptions, prohibitions and restrictions, Customs administrative arrangements and requirements, and any other pertinent information which will be of interest to the relevant interested parties.  The information is usually made available:   * at appropriate Customs offices; * at strategic locations where it is likely to be needed. For example, information on Customs formalities and exemptions from duty and tax allowed to travellers may be made available on ships, aircraft, international trains, or at places of international arrival and departure; * in embassies and trade missions abroad, with supplies of notices for intending exporters and visitors in a variety of languages if necessary; * by display in public offices such as major post offices, tourist centres, etc.; * in publications such as the Customs tariff, official gazettes, bulletins and public notices; * by publication in relevant newspapers and journals or by the issue of press releases; and * through regular magazine-type publications or newsletters produced by administrations for the trade to provide news and articles on major developments and changes.   Section 2.1. Quality of information  It is important that Customs administrations not only make available a wide variety of information, but also that it is of high quality. Administrations should seek to ensure that the information which it makes available is accurate, relevant and prompt.  Section 2.2. Clarity of information  Public Notices, whether in paper or electronic form, should be:   * written in plain language, easy for the intended reader to understand; * clearly laid out, using large print and flow diagrams where relevant; * logically presented, clearly illustrating procedures or requirements; * specific to one particular topic or procedure (classification, valuation, preference etc); * up-to-date, prompt and relevant to important issues; - issued in response to identified user needs; * easily available at, for example, ports and airports (for travellers), in local Customs offices, from Helplines/Helpdesks, sent automatically by subscription, routinely issued to trade representative bodies; and * published in other languages where appropriate.   Note: Emphasis added. |

In turn, these regulations originate in the Revised Arusha Declaration, which establishes in its Article 3:

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| Revised Arusha Declaration  3. Transparency  Customs clients are entitled to expect a high degree of certainty and predictability in their dealings with Customs. Customs laws, regulations, procedures and administrative guidelines should be made public, be easily accessible and applied in a uniform and consistent manner. The basis upon which discretionary powers can be exercised should be clearly defined. Appeal and administrative review mechanisms should be established to provide a mechanism for clients to challenge or seek review of Customs decisions. Client service charters or performance standards should be established which set out the level of service clients can expect from Customs.  Note: Emphasis added. |

## Identified Gaps

Specifically, with respect to subsection 1.1. of the TFA, there is a clear gap in CAUCA and RECAUCA. None of these regulatory bodies establishes the obligation in this subsection, which is a gap with the TFA.

Because CAUCA and RECAUCA do not obligate countries to publish information, each country individually has partially complied with this mandate through bilateral or multilateral signed agreements.

In identifying this gap, we reviewed the relevant internal rules of each of the countries. Relevant regulations, procedures, and other information are generally published on the website. However, there are some deficiencies with respect to the TFA general guidelines and international best practices:

* There is no uniform regulation about the deadline by which these standards, procedures, and other relevant information should be published.
* The published information is difficult to access. It has to be searched for on the website, which usually takes considerable time.
* The internal regulations do not provide mechanisms for communicating urgent information for distribution to interested parties within an appropriate timeframe.

In relation to sections 1.2 and 1.3, the absence of regulation in CAUCA and RECAUCA constitutes a gap related to effective implementation of the TFA and RKC, and a lack of alignment with international best practices, especially with WCO recommendations and the Arusha Declaration.

CAUCA and RECAUCA provide nothing regarding the obligation referenced in Section 1.4.

## Recommendations

It is desirable that CAUCA should contain a rule that includes not only the mandate of the TFA but also to a stipulation that it should be uniformly met in the region. This could lead to a rule in RECAUCA or a regional resolution that establishes:

* The minimum information that must be published;
* The information must be clear, concise, and complete allowing easy interpretation by the operator and not giving space to different interpretations;
* Provision for ongoing review and updates of the published information;
* Provide a fast and efficient mechanism to communicate news and any information that should be known urgently by the interested parties, using electronic means, such as email, Internet or widely disseminated communication networks;
* All the above must be done through technological means;
* Promote the uniform compliance of countries in terms of publication of information;
* That it be informed within the legally established deadlines and that the legal consequences of its noncompliance be determined;
* That there is a consultation mechanism that works using the most recent technological advances and that can only be performed in an exceptional way through non-electronic means. This consultation mechanism should be created so customs can quickly understand and process the queries and publish them in electronic format;
* Customs administration will establish maximum deadlines to respond to inquiries within an acceptable period, considering the urgency of each case and following the best international practices;
* Consultations already published electronically should be part of a database that all users can visit. This will prevent customs from having to answer the same question several times. This database should be regularly reviewed and updated; and,
* The technological tools used should be left to agreements of a non-legal level, allowing countries to adapt rapidly to technological advances.

According to the SAFE Framework, customs and other government entities operating at the border should coordinate border processes efficiently.

## Gaps and Technological Recommendations

The deficiency exists in interoperability and not in interconnectivity. Technology must comply with the minimum aspects of information exchange, electronic access, and confidentiality. The exchange of information must take place through the interoperability of the systems of the different agencies that intervene in the borders. Interoperability implies strategic, technological, semantic and administrative coordination between these systems. The information must be transmitted in text format, not images.

### 1.1 Publication

Web technology exists and is available to all institutions involved in the foreign trade process. The limitation is not a lack of technology, but the absence of a definition of what are the basic requirements and format of the information that must be presented to the public in web portals. The CADTP links this article to its strategic concepts “integration of procedures and control at national and regional levels.”

Other sources that complement the mandate of the TFA are:

* Central American Strategy, which focuses on governmental and non-governmental institutions to unify efforts to manage the implementation and compliance of COMIECO Resolutions; and,
* SAFE Framework / OMA: Rules 5 (Communication) and 6 (Facilitation): focuses on technological aspects of the integrated supply chain management (ISCM) related to modern technology in inspection equipment, risk analysis systems, advanced electronic information, and automated selectivity systems.

### 1.2 Information Available Over the Internet

In CAUCA, only “Article 11. Risk Management” mentions the use of electronic tools, but not the use of the Internet.

RECAUCA mentions it for very specific issues but never establishes the general guidelines:

* **Article 181. Requirements for the authorization of certifiers**. It directly identifies the requirements for the authorization of the certifiers, who can submit contact information on their website;
* **Article 309. Publication of the anticipated resolutions**. The competent authority shall publish the final advance rulings on its website;
* **Article 618. Participation**. The participation of the general public in the auction by electronic systems or electronic means via the Internet establishes the use of electronic invitations for participation in a public auction.

### 1.3. Inquiries from Interested Persons

Article 1.3 refers to how traders, governments or other interested persons can obtain specific information on importation, exportation or transit. This provision applies to customs and all agencies that intervene in the border.

Members will establish one or more “information services” to respond to “reasonable” requests for information on the issues listed in Article 1.1 of the TFA and to requests for the required forms and documents.

The TFA also establishes that member countries of a customs union or those that participate in a regional integration mechanism may opt to participate in a regional information service instead of establishing a national information service.

Members will respond to these requests and requests within a “reasonable” time frame.

There are no provisions in CAUCA or RECAUCA that explicitly refer to establishing national or regional information services for publishing information or responding to requests for information.

Although SIECA maintains a very updated and comprehensive portal of the legal instruments of the Central American Economic Integration, neither CAUCA nor RECAUCA refers to national or regional information services that apply to import, export or transit.

### 1.4 Notification

Article 1.4 refers to notifications from WTO member countries to notify the Trade Facilitation Committee, the measures related to Article 1.1, as a general obligation of transparency. This provision establishes that the notification must refer to the official publication of the legal instrument and provide the Internet address referred to in Article 1.2 and the contact information services referred to in Article 1.3.

Internet notifications are a complex issue since they require mutual interaction at national and regional level. The CADTP can serve as a structure, but parameters must be defined to publish and exchange information in a uniform, timely, safe and clear manner.

It is not up to CAUCA or RECAUCA to define the technological tools, but the minimum parameters to guarantee efficient, fast and safe communication.

# Article 2 - Opportunity to Formulate Observations, Information Prior to Entry into Effect and Consultations

Section 2.1 is a rule of best endeavor that refers to regulatory projects and the need for all people and entities involved with customs and foreign trade to be consulted before any changes are made in the relevant regulations (legal and administrative regulations). This means that representatives of the different executive agencies (especially those related to foreign trade, those involved at the border and the tax area) and the legislative power are urged to provide:

* + 1. Opportunities and an appropriate time frame for traders and other interested parties to comment on proposals to introduce or modify laws and regulations of general application relating to the movement, release, and dispatch of goods, including goods in transit.
    2. For the publication of new or modified laws and regulations of general application relating to the movement, release, and dispatch of goods, including goods in transit, or otherwise, make them publicly available as soon as possible before its entry into force, so that traders and other interested parties may have knowledge of them.

Subsection 2.1.3 excludes from paragraphs 1.1 and 1.2 changes in duty rates or fees, measures having relief effects, measures whose effectiveness would be undermined due to compliance with paragraph 1.1 or 1.2, measures to be applied in urgent circumstances, or minor amendments to domestic law and the legal system.

Section 2.2. encourages that customs and other border entities provide for regular consultations between their border agencies and traders, or other interested parties within their territory.

## Analyzed Regulations

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| Official Recommendations of the OECD Council on Regulatory and Governance Policy (2012)  Tegucigalpa Protocol  CAUCA  RECAUCA  Central American Strategy  CAFTA-DR: 5.1 and 3.10  EU-CAAA: 120 and 339  RKC: 2.3 and General Agreement Guidelines, Chapter 8. |

## Analysis of Central American Regulations and Goals

The rationale of Item 2.1 originates in the 1993 Arusha Declaration and 2012 OECD Recommendation of the Council on Regulatory Policy and Governance, specifically in Recommendation No. 2:

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| OECD 2012 Recommendation of the Council on Regulatory Policy and Governance  Recommendation 2  The Council… RECOMMENDS that Members: ….  2. Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.  Note: The text is verbatim from the OECD 2012 Recommendation of the Council on Regulatory Policy and Governance. |

Section 2.2 refers to more specific information than the information provided in Section 1.3, insofar as it relates to more specific topics of each stakeholder.

### Section 2.1

CAUCA and RECAUCA do not provide for the convenience or obligation for interested parties to be informed, or to consult or comment on customs regulations, laws, or general administrative provisions. Nor do they provide for the timely and efficient publication of the customs regulations referred to in subsection 2.1.2.

As for the other governmental entities to which the TFA refers, no regional resolutions covering the subject were found.

### Section 2.2

CAUCA and RECAUCA do not provide for regular consultations between traders and Customs or between traders and other border agencies

In reference to both subsections, CAUCA or RECAUCA are not the appropriate instruments to force any government entity other than customs, much less the legislative branch, to comply with the TFA’s best practice rule. In other words, CAUCA, and therefore the RECAUCA, could only impose this rule on customs, not on entities at the border.

The Central American Strategy contemplates nothing expressly related to the two sections of this article.

## International Agreements

CAFTA-DR coincides with the guidelines recommended by the TFA:

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| CAFTA-DR  Chapter 5. Customs Administration and Trade Facilitation  Paragraph 3  To the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that it proposes to adopt and provide interested persons the opportunity to comment prior to their adoption.  Note: The text is verbatim from the CAFTA-DR. |

The EU-CAAA establishes a stronger obligation than the TFA and CAFTA-DR. EU-CAAA Article 120 specifically requires governments to publish the regulations and provide appropriate and regular consultation mechanisms for the private sector:

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| EU-CAAA  Part IV. Trade  Chapter 3. Customs and Trade Facilitation  Article 120. Relations with the business community  The Parties agree:  (a) to ensure that all legislation, procedures and fees and charges are made publicly available, as far as possible through electronic means, together with necessary additional information.  The Parties shall make publicly available relevant notices of an administrative nature, including requirements and entry procedures for goods, hours of operation and operating procedures for customs offices and points of contact for information enquiries;  (b) on the need for timely and regular consultations with representatives of interested parties on customs related legislative proposals and procedures. To this end, appropriate and regular consultation mechanisms shall be established by each Party;  (c) that there shall be a reasonable time period between the publication of new or amended legislation, procedures and fees or charges and their entry into force6;  (d) to foster cooperation with the business community via the use of non-arbitrary and publicly accessible procedures, such as Memoranda of Understanding, based on those promulgated by the WCO; and  (e) to ensure that their respective customs and related requirements and procedures continue to meet the needs of the trading community, follow best practices, and remain as little trade-restrictive as possible.  Article 339. Publication  Each Party shall endeavour to provide opportunities for interested persons of the other Party to comment on any proposed law, regulation, procedure or administrative ruling of general application and to take into account relevant comments received. |

In compliance with international agreements that require it, regulations in some countries provide for consultation prior to issuing any general resolutions or laws. Similarly, some countries provide non-binding technical consultations in their domestic legislation.

## International Best Practices

The Revised Kyoto Convention requires that customs allow third parties to participate in their formal consultations with the private sector:

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| Revised Kyoto Convention—General Annex  Chapter 8. Relationship Between the Customs and Third Parties  4. Trade Consultation  Standard 8.5 The Customs shall provide for third parties to participate in their formal consultations with the trade.  This Standard supplements Standard 1.3 of the General Annex that calls for Customs to establish and maintain consultative relationships with the trade, by requiring Customs to include third parties in their formal consultations. The inclusion of third parties with other traders in carefully managed consultative processes is a feature of modern, effective Customs administration. All parties, including Customs themselves, will benefit from timely, friendly and regular consultation on any matters affecting the movement of goods in international trade. This includes, as an example, proposed legal or procedural changes, especially when these may require substantial changes to the computer and information technology systems of traders. Likewise commercial plans to relocate major operational centres which could entail corresponding redeployment of Customs human and technical resources, as well as those of traders, should be the subject of prior trade consultation.  Co-operation and consultation may be managed through formal Joint Customs/Trade Committees at all national, regional and local levels. At the national level this co-operation is often supplemented by concluding Memoranda of Understanding (MOU’s) between Customs and trade representative bodies or between Customs and individual companies. MOU’s have been found particularly useful in some countries for assisting Customs to combat fraud and drug smuggling, and they have brought advantages to the trade in the form of reduced Customs interventions at the frontier. These Memoranda often include joint training and awareness programmes. Such exchanges provide real practical benefits to both sides in terms of better compliance, improved facilitation and more effective resource management.  The consultative process should particularly be encouraged at regional and local levels. By communicating directly at the time and place of trading operations, many problems can be avoided or solved for all parties concerned. Some countries have established regional and local Customs Liaison Committees which deal with day-to-day issues successfully and timely. (See the Guidelines to Chapters 1 and 3 of the General Annex for other examples of the benefits of consultation and communication with the trade).  Note: Emphasis added. |

The EFTA-CA establishes these obligations for countries:

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| EFTA-CA  Annex VII: Trade Facilitation  Article 2: Transparency  Paragraph 4  Each Party will publish in advance and in conformity with its domestic legislation, any generally applicable bill of law and regulations relevant to international trade, to offer interested parties the opportunity to comment on them. |

## Identified Gaps

Regarding clause 2.1, while the TFA regulation is a best practice rule, international best practices establish the need for these mandates to be fulfilled. The RKC and the SAFE Framework clearly establish that Customs should provide for prior consultation with all stakeholders and respond to specific consultations, indicating how they were addressed or taken into account. The absence of a provision in regional legislation makes it difficult to enforce the TFA in this regard. The only legal bases for achieving the TFA objective is by mandating these recommendations in international agreements or countries individually including them in their internal regulations.

Regarding subsection 2.2, CAUCA and RECAUCA do not provide mechanisms for regular or periodic consultations about their own regulations or other regulations related to customs activity. Some countries in the region have national regulations that establish mechanisms for consultations about legislation in general, and not on a regular basis, as sought by the TFA.

## Recommendations

Regarding paragraph 2.1, CAUCA should establish a general mandate that obliges customs to consult with stakeholders any reform or change in customs regulations before it is approved. At a regulatory level, RECAUCA or regional resolution, a consultation mechanism should be established that creates uniformity in terms of:

* The anticipation with which it should be published and the time that must be allowed so the interested parties can formulate their observations and questions;
* Feedback mechanisms that allow stakeholders to verify that their questions and observations have been taken into account or answered.

Article 2.2 of the TFA provides that each member shall establish periodic consultations between border agencies and traders, or other interest groups in its territory. The RKC is more specific and rules that customs “will institute and maintain formal relations of consultation with companies ...” (Standard 1.3 of the General Annex).

According to Article 2.2 of the Implementation Guide of the WCO, one key element in trade facilitation is the possibility for interested persons to obtain specific information about a particular trade operation. The decision to carry out this operation may depend on the information provided by the customs office. When this kind of information is requested from customs, it has an obligation to provide complete, accurate and rapid information (Chapter 9 to the General Annex of the RKC).

The guideline of the RKC (General Annex to RKC, Chapter 7) recommends creating a consultation mechanism allowing users to obtain simple and concrete information in response to their questions. However, it also recommends that a link be established between the most complex questions, which require specific answers regarding the unique situation of the interested parties, and the option of requesting advance resolutions. In fact, when the consultations require a certain amount of time for customs officials to understand and answer specific questions from the interested parties, it is suggested that a novel mechanism be created to direct the interested party to request an advance ruling.

It is also recommended that technologically based media be used to receive, process, and respond to inquiries, and to create a database open to the public after the removal of confidential information.

## Gaps and Technological Recommendations

It is necessary to establish interoperability between each member so sharing information and consultation is feasible. Likewise, confidentiality needs to be maintained for information exchange. Therefore, technology-based collaboration systems need to be established.

Publications, consultations, and observations must be handled at different levels using different tools:

* Public and reserved or confidential information (only for authorized foreign trade members) should be handled using virtual networks and a group collaboration system;
* General public information should be handled through portals or even the most modern means of social communication;
* Anything private or reserved should be handled using virtual networks and group collaboration systems.

# Article 3 - Advance Rulings

This article obligates countries to issue advance rulings. For these purposes, it defines the advance rulings and the matters that can be resolved through the Advanced Resolutions. Likewise, it establishes the characteristics advance rulings must have in terms of:

* Reasons a country may have to refuse to issue them (a limited list that summarizes whether a petition is pending, or a review or appeal decision has been reached);
* Requirements to apply and who can apply;
* Temporal validity and reasons for revoking, modifying, or invalidating advance rulings;
* Binding nature for the applicant;
* Notification of interested parties if changes occur (due to changes in the facts, standards, or other circumstances that lead to modification, revocation, or invalidation);
* The possibility of requesting a review of the Advance Ruling or of the decision to revoke, modify, or invalidate it; and
* Publication of decisions after removal of confidential information.

## Analyzed Standards

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| CAUCA: Article 72  RECAUCA: 291-309  Central American Strategy  CAFTA-DR: 5.10 and 5.11  EU-CAAA: 54 and 118  EFTA-CA: Art.6  RKC |

## Analysis of Central American Regulations and Goals

In general terms, both CAUCA and RECAUCA fulfill all the requirements specified in the TFA and the CAFTA-DR and EU-CAAA. The Central American Strategy does not expressly include this tool.

## International Agreements

Articles 54 and 118 of the EU-CAAA establish advance rulings as general mechanisms that should be deployed when the agreement is applied. In relation to CAFTA-DR, CAUCA and RECAUCA were drafted to comply with the obligations in CAFTA-DR Article 5.10 and, in addition, generally comply with international best practices. CAFTA-DR Article 5.10 states:

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| CAFTA-DR  Article 5.10: Advance Rulings  1. Each Party, through its customs authority or other competent authority shall issue, before a good is imported into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer in the territory of another Party with regard to:  (a) tariff classification;  (b) the application of customs valuation criteria for a particular case, in accordance with the application of the provisions set out in the Customs Valuation Agreement;  (c) the application of duty drawback, deferral, or other relief from customs duties;  (d) whether a good is originating in accordance with Chapter Four (Rules of Origin and Origin Procedures);  (e) whether a good re-entered into the territory of a Party after being exported to the territory of another Party for repair or alteration is eligible for duty free treatment in accordance with Article 3.6 (Goods Re-entered after Repair or Alteration);  (f) country of origin marking;  (g) the application of quotas; and  (h) such other matters as the Parties may agree.  2. Each Party shall provide that its customs authority or other competent authority shall issue an advance ruling within 150 days after a request, provided that the requester has submitted all information that the Party requires, including, if the authority requests, a sample of the good for which the requester is seeking an advance ruling. In issuing an advance ruling, the authority shall take into account facts and circumstances the requester has provided.  3. Each Party shall provide that advance rulings shall be in force from their date of issuance, or another date specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged.  4. The issuing Party may modify or revoke an advance ruling after the Party notifies the requester. The issuing Party may modify or revoke a ruling retroactively only if the ruling was based on inaccurate or false information.  5. Subject to any confidentiality requirements in its law, each Party shall make its advance rulings publicly available.  6. If a requester provides false information or omits relevant facts or circumstances relating to the advance ruling, or does not act in accordance with the ruling’s terms and conditions, the importing Party may apply appropriate measures, including civil, criminal, and administrative actions, monetary penalties, or other sanctions. |

## International Best Practices

The WTO Agreement on Rules of Origin (Article 2 (h)) states that rulings must be issued as quickly as possible and, in no case, later than 150 days. International best practices, however, suggest that a reasonable time period is between 30 and 60 days, to be of use to the applicant.

The Agreement between Chile and Central America indicates that rulings should be issued “expeditiously,” but does not establish a specific term. The EFTA-CA may be used as a guide:

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| EFTA-CA  Annex VII: Trade Facilitation  Article 3: Advance Rulings  Paragraph 6  Each Party will issue an advance ruling **within 90 days** after the application is submitted, provided that the requesting importer, producer or exporter has submitted all the information required by the Party, including, if requested, a sample of the good for which the ruling is being requested. If the applicant importer, producer or exporter is unable to provide all the required information, the Party may refuse to issue the advance ruling and shall notify in writing. |

Panama has the best practice, not only because it has issued a significant number of advance rulings on all the matters established in CAUCA and RECAUCA but because it emits them in 30 days or less. Although this 30-day limit is imposed by its internal regulations, it is a good practice.

## Identified Gaps

Article 3 of the TFA obligates the countries to comply. Compliance is mandatory for all countries.

Although CAUCA and RECAUCA comply with all TFA provisions, the TFA does not set a specific term, but uses the term “reasonable.” Because of the abstract nature of the word, we carried out an analysis of international best practices, specifically what WCO and WTO suggest and as established by RKC.

## Recommendations

Issuing advance rulings is an express mandate of the TFA regulated by CAUCA and RECAUCA but not effectively applied in the countries for a variety of reasons. The following changes are suggested:

1. Reduce the 150-day time period to obtain an answer, which is so long that it is no longer useful for the applicant. We propose between 30 and 60 days with the understanding that Customs may extend this period when needed because of complexity or the need for laboratory tests or specific additional studies.
2. Simplify and systematize the application, processing and response procedure for advance rulings by using technological tools. We recommend that requests be made electronically, using forms that can come with the required attachments. The internal processing and issuance of the advance ruling must be done through the computer, without requiring physical documentation.
3. Include mutual recognition of advance rulings at a regional level.
4. Include the possibility for customs to charge fees to cover the costs of service.[[2]](#footnote-3)
5. Create regional databases that the general public can consult, after deletion of the applicants’ information and any confidential matters.

# Article 4 – Procedures for Appeal or Review

This article refers to the obligation of countries to guarantee the existence and applicability of an administrative or judicial authority to appeal any administrative decisions issued by customs. It also requires the countries to make their best endeavor to ensure one of these two authorities is available for decisions issued by any other entity operating at the border.

In effect, countries must guarantee the right of individuals to:

* file a judicial review or an administrative appeal to a higher authority or official, independent of the authority issuing the administrative decision, or an appeal for review by the same authority issuing the ruling (review);
* receive duly reasoned administrative decisions to allow for proper appeal; and
* count on non-discriminatory procedures for appeal.

Likewise, countries must guarantee the right of an individual to file, without undue delay, a later administrative or judicial appeal if the country has not notified the individual about its decision on a previously submitted recourse within the legal deadlines.

Each country is allowed to:

* place as a condition of the judicial remedy that the administrative route has been exhausted, and
* use positive administrative silence as regulated by its internal law.

## Analyzed Regulations

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| CAUCA: 127  RECAUCA: 623-629  RKC: Chapter 10  CAFTA-DR: Art, 5.8  EU-CAAA: Art. 342 |

## Analysis of Central American Regulations and Goals

CAUCA and RECAUCA are inconsistent in defining the review levels and the causes of revision at each level. These legal bodies only contemplate the following assumptions:

1. **Motion for Review**: this document is included in RECAUCA Article 623, which states that a petition for review is only possible if the action being challenged determines taxes or sanctions. It may not, therefore, be filed in any other situation where the interested party disagrees with an administrative decision that does not cause sanctions or taxes.

RECAUCA indicates that this document will be determined by the “higher authority of the customs service,” without clarifying whether it refers to the immediately superior authority or the maximum authority for the customs service, i.e., the Customs Director.

1. Challenging Actions by the higher authority of the customs service: RECAUCA literally states:

**Article 624:** **“Challenging Actions by the higher authority of the customs service:** Appeals may be brought against rulings or final actions issued by the superior authority of the customs service determining taxes or sanctions or causing grievance to the recipient of the ruling or action, in relation to regimens, processes, operations, and procedures regulated by this Code and these Regulations, or that wholly or partially deny the motion for review; the appeal may be filed within ten days after notice of the ruling or final action has been served.”

When this article is read in conjunction with Article 623, there are several shortcomings in terms of clarity:

First, the article does not specify the competent authority designated to receive and rule on a challenge. The lack of clarity with regard to the authority designated to receive and rule on a challenge lends itself to having all appeal decisions fall on the highest customs authority (i.e., the Customs Director), which could lead to bottlenecks and unnecessary setbacks.

Second, the article is not clear as to whether the motion for review should be submitted first, followed by the challenge. The lack of clarity on this point seems to allow the interested party to choose between first filing the review or directly challenging the administrative action without the review process having first run its course.

Third, challenges are allowed for situations slightly different from a recourse for review because the article indicates they may be filed not only against actions leading to sanctions or taxes but also against any action that may “cause a grievance” in relation to the “processes, operations and procedures regulated by this Code and these Regulations or that wholly or partially deny the motion for review.”

There is also a question about what happens if the grievance refers to a process or procedure not directly provided for in CAUCA or RECAUCA, such as an action on phytosanitary matters.

1. **Motion for Appeal:** This recourse is directed only at the Customs Court referenced in CAUCA Article 128. In effect, according to RECAUCA Article 625, this motion is filed with the “highest authority” of the customs service, without specifying whether it is immediately superior to the authority handing down the ruling or to the maximum customs authority. Nevertheless, the article states that this recourse exhausts the administrative channel.

## International Agreements

CAFTA-DR Article 5.8 requires access to two appeal authorities for any decisions on customs-related matters:

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| CAFTA-DR  Chapter 5: Customs Administration and Trade Facilitation  Article 5.8: Review and appeal  Each Party shall ensure that, with respect to its determinations on customs matters, importers in its territory have access to:  (a) a level of administrative review, independent of the employee or office that issued the determination; and  (b) judicial review of the determination.  NOTE: The text is verbatim from the CAFTA-DR. |

EU-CAAA Article 342 does not require two appeals authorities but does require the existence of judicial, quasi-judicial or administrative courts or procedures independent from the entity that issued the action being challenged. It also states that, in either of these courts or proceedings, the parties have the right to:

* a reasonable opportunity to support or defend their respective stances; and
* a properly grounded and reasoned ruling.

## International Best Practices

The RKC, General Annex, Chapter 10:

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| Revised Kyoto Convention—General Annex  Chapter 10. Appeals in Customs Matters  A. Right of appeal  Standard 10.1  National legislation shall provide for a right of appeal in Customs matters.  Standard 10.5  Where an appeal to the Customs is dismissed, the appellant shall have the right of a further appeal to an authority independent of the Customs administration.  Standard 10.6  In the final instance, the appellant shall have the right of appeal to a judicial authority.  C. Consideration of appeal  Standard 10.10  The Customs shall give its ruling upon an appeal and written notice thereof to the appellant as soon as possible.  Standard 10.11  Where an appeal to the Customs is dismissed, the Customs shall set out the reasons therefore in writing and shall advise the appellant of his right to lodge any further appeal with an administrative or independent authority and of any time limit for the lodgment of such appeal.  Source: Verbatim from WCO (World Customs Organization). 2006. RKC (Revised Kyoto Convention). http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/conventions/kyoto-convention/revised-kyoto-convention/body\_gen-annex-and-specific-annexes.pdf?la=en (emphasis added). |

Article 3 of the Revised Arusha Declaration states:

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| Revised Arusha Declaration  Article 3. Transparency  Appeal and administrative review mechanisms should be established to provide a mechanism for clients to challenge or seek review of Customs decisions.  NOTE: The authors have merely highlighted key phrases; the text is verbatim from the Revised Arusha Declaration. |

## Identified Gaps

In relation to the TFA guidelines:

* **Nature of the Actions that can be challenged through Appeals:** The main gap identified between CAUCA and RECAUCA and the TFA refers to the nature of the actions being challenged. Indeed, the TFA obliges countries to offer the option to appeal any decision having legal effects on a party’s rights and obligations, while CAUCA and RECAUCA require that “taxes or sanctions be imposed” for the motion for review, or that “taxes or sanctions be imposed or that cause injury.” This means that, according to CAUCA and RECAUCA, the applicable venue for motions is more limited than as established by the TFA.
* **Further Appeals:** Neither CAUCA nor RECAUCA establishes the possibility of further administrative or judicial appeal after a decision is issued, when it is not issued within legal periods, or when there have been undue delays.
* RECAUCA does not provide for sufficient reasoning of decisions.

Regarding international best practices and the CAFTA-DR:

* CAUCA and RECAUCA do not provide for any recourse when dealing with trade-related decisions that are issued by entities other than customs but directly or indirectly affect border processes, customs activity or the rights and duties of parties engaged in foreign trade activities.
* The CAFTA-DR requires the existence of two authorities, one administrative and the other judicial. This is not provided for in CAUCA and RECAUCA since the Customs Court is an administrative entity that does not replace the judicial venue.
* International best practices recommend that the administrative proceedings run their course first by means of a motion for review, and then an appeal to a higher or independent administrative authority, after which the process may be sent for judicial review. This is not clearly established in CAUCA and RECAUCA.
* There are inconsistencies both between CAUCA and RECAUCA and within RECAUCA itself:

There is a lack of clarity regarding the sequence of the recourses provided in RECAUCA and which customs authority should rule on a motion for review and/or appeal of administrative actions. It is impossible to pinpoint whether a sequence should exist between the motion for review and the appeal, or whether they are alternative actions.

CAUCA limits recourses to customs authority rulings or final actions deemed to cause a grievance to a party. RECAUCA, however, reduces the scope of recourses to those challenging actions that determine taxes or sanctions (eliminating the “grievance”) in the case of reviews but allows them for appeals.

## Recommendations

Actions Issued by Entities Other than Customs: In relation to the possibility of appealing decisions issued by governmental entities that have a presence at the borders, regulation of the matter falls outside CAUCA and RECAUCA’s scope of application. Consequently, this type of recourse is subject to each country’s rules of administrative law. Therefore, there can be no uniformity on the matter, which may cause problems and hinder trade. Achieving uniformity and integration in the region requires creating new legal administrative instruments to cover appeal procedures common to international trade-related administrative actions, issued by entities with a presence at the borders, and not just by Customs.

To the extent that administrative actions issued by border entries will have a direct effect on how customs actions evolve and facilitate trade, there is a need to have common appeal programs for ruling on all recourses quickly and expeditiously, for both customs actions and those of other entities operating at the borders.

Recourses: In compliance with international best practices and the CAFTA-DR, CAUCA and RECAUCA should provide the following possibilities:

1. An appeal for review to the superior authority to the one that dictated the administrative ruling, not necessarily the maximum customs authority. This first level should allow submission of evidence;
2. A motion for appeal to the Customs Court that exhausts the administrative course of action;
3. A motion for appeal or recourse for nullity in the judicial venue; and
4. Administrative silence: In any case, CAUCA or RECAUCA should provide a mechanism for negative administrative silence to provide appellants a tacit decision in time for them to appeal to the next authority, or in the next venue. However, the ideal would be to establish the mechanism of positive administrative silence, so that when there is no decision within a reasonable time, it is considered that the appeal has been decided in favor of the appellant.[[3]](#footnote-4)
5. Contemplate that the object of the administrative appeal is not limited only to the tax elements, but also extends to cover other formal aspects or procedures that do not affect the tax (denial of release, retention of goods, etc.).

# Article 5 – Other Measures for Increasing Impartiality, Non-Discrimination, and Transparency

Section 5.1 regulates the conditions to be established for issuing notices and guidelines to reinforce controls and inspections of food products, beverages and compound feed for customs and all entities with a presence at the border. This is not a best endeavor rule; it is a mandate.

It is important to note that these notices are those that a country may issue to “its competent authorities” to “raise the level of border controls or inspections.” This part of the article does not refer to adopting measures or notices related to other member states.

For the purposes of these notifications or guidance, the following disciplines shall apply with respect to the manner of issuing, ending and suspending such notifications and guidelines:

a. Countries may issue risk-based notifications and guidance;

b. Countries may issue notifications and guidelines so that they are applied uniformly only at entry points under which the SPS conditions on which notifications and guidance is based;

c. Countries may end the notifications or guidance, or suspend them without delay, when the circumstances that gave rise to them no longer exist, or if the changed circumstances may be handled in a less trade-restrictive manner; and

d. When countries decide to put an end to the notifications or guidance or suspend them, they must:

publish promptly, as appropriate, the announcement of termination or suspension of the notification or guidance in a non-discriminatory and easily accessible manner, or

inform the exporting or importing country.

Section 5.2 imposes an obligation on customs and other entities intervening at the border, to promptly inform the carrier, importer or its agent of holdups caused by inspections.

Section 5.3 covers the issue of the possibility of traders requesting a second test when the results of the tests of a sample taken on arrival of goods declared for import are unfavorable to them. In this sense, Section 5.3 establishes:

The possibility for countries to allow this second approval;

If allowed, the obligation to publish the information needed to contact accredited laboratories in which confirmatory tests may be carried out or to provide such information to the importer;

The possibility of using regional or international laboratories if there are no accredited national laboratories; and

The obligation for the countries to consider the results of the second test.

## Analyzed Regulations

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| COMIECO Resolution 271 of 2011 used to approve the Central American Regulations on SPS Measures and Procedures: Articles 1-6, and 12.  Resolution 338 / 14 Central American SPS Directive to Facilitate Trade in Shipments and Goods: Article 8  WTO Agreement on the Application of SPS Measures  SPS Agreement (complementary standards applicable to the areas regulated in Resolution 271 of 2011): Articles 2-5  CAUCA  RECAUCA  Central American Strategy  CAFTA-DR  EU-CAAA: Articles 144, 145, 146, 147, 150, 151, 152 and 153.  RKC: Rule 3.36 and 3.37, Rule 13 of the Specific Annex H Infringements |

## Analysis of Central American Regulations and Goals

The wording of Section 5.1 implies that it refers to the application, through controls or inspections, of measures already adopted in the country. The goal of the TFA in this area is to prevent, through notifications and internal guidelines, the application of SPS measures, creating hidden restrictions. This objective coincides with the provisions in Resolution 271, the EU-CAAA and the SPS Agreement.

CAUCA and RECAUCA do not provide for the existence of notification systems or internal guidance to the competent authorities of the same country for the reinforcing of their own border controls. Nor do they provide for any notice of holdups for inspections or establish the possibility of running a second test.

Although the Central American Strategy does not establish anything specific with regard to this TFA article, it does indirectly identify various obstacles related to the problem of information (and therefore notification) mechanisms among national border organizations. Likewise, it deals with the subject of developing risk management mechanisms that would also be applicable to Section 5.1.

The constraints referenced in Section 5.2 are not expressly regulated in Central American regional laws or in the agreements signed with other countries. Nor are they provided for in the Central American Strategy.

The second test procedure, referenced in Section 5.3, is not provided for in Central America legislation or in international agreements, either. As in the previous case, it is a good practice that contributes to transparency.

### Comparison between the TFA and Regulations Applicable to the Region

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| TFA | RESOLUTION 271 of 2011 | RESOLUTION 338 of-2014 |
| Issuance of risk-based notifications or guidelines. | Article 4.  The sanitary and phytosanitary measures that a Member State prepares, adopts, applies or maintains shall…  b. be based on risk analysis;  c. not restrict trade any more than required to achieve a proper protection level for human and animal life, or preserve the health of plants, and not create any hidden restrictions on trade between the member states. |  |
| Issuance of notifications or guidelines to be uniformly applied at points of entry, where the conditions upon which the notices are based occur. | Article 12. Import Requirements  …3. The importing Member State must ensure that its import conditions **are applied in a proportional, non-discriminatory manner**. |  |
| End or suspend the notification without delay, when the originating circumstances no longer exist or can be handled less restrictively, if they have changed. |  | Article 4. Whether or not emergency measures are continued should be evaluated when the affected Member State is able to scientifically demonstrate that the original conditions causing the application of emergency measures have disappeared, or otherwise the emergency measure should be suspended so it does not restrict trade more than necessary. |
| When a decision is made to end the notification or guidelines, publish, without delay and in an easily accessible and non-discriminatory manner, an announcement of the termination or suspension or inform the exporter or importer. | Article 12. Import Requirements:  1. The Member States must ensure that all adopted sanitary and phytosanitary regulations, including import requirements, are published and available. | 8.3. Once the emergency situation has ended, the Member State that brought about the change in risk category **must reestablish the original category** and notify the other member states, SECAC, and SIECA. |

## International Agreements

The CAFTA-DR does not cover this subject. The EU-CAAA establishes the following:

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| EU-CAAA  Part IV. Trade  ARTICLE 144 Competent Authorities  The Competent Authorities of the Parties are the authorities competent for the implementation of this Chapter, as provided for in Annex VI (Competent Authorities). The Parties shall, in accordance with Article 151 of this Chapter, inform each other of any change concerning such Competent Authorities.  ARTICLE 145 General Principles  1. The sanitary and phytosanitary measures applied by the Parties shall follow the principles established in Article 3 of the SPS Agreement.  2. The sanitary and phytosanitary measures cannot be used so as to create unjustified barriers to trade.  ARTICLE 146 Import Requirements  1. The exporting Party shall ensure that products exported to the importing Party comply with the sanitary and phytosanitary requirements of the importing Party.  2. The importing Party shall ensure that its import conditions are applied in a proportional and non discriminatory manner.  Note: Emphasis added |

## International Best Practices

In relation to the notification of the withholding of a good provided for in Article 5.2 of the TFA, the RKC should be consulted:

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| Revised Kyoto Convention  Chapter 3. Clearance and Other Customs Formalities  Examination of the goods   1. Time required for examination of goods   Standard 3.36  The Customs shall consider requests by the declarant to be present or to be represented at the examination of the goods. Such requests shall be granted unless exceptional circumstances exist.  Standard 3.37  If the Customs deem it useful, they shall require the declarant to be present or to be represented at the examination of the goods to give them any assistance necessary to facilitate the examination.  Specific Annex H. Offenses  Chapter 1. Customs offences  Seizure or detention of the goods or means of transport  Standard 13  When the Customs seize or detain goods and/or means of transport, they shall furnish the person concerned with a document showing:   * the description and quantity of the goods and means of transport seized or detained; * the reason for the seizure or detention; and * the nature of the offence.   Note: Emphasis added. |

## Identified Gaps

**Section 5.1.** The issue is covered by Articles 4 and 12 of Resolution 271, and Article 8 of Resolution 338, as indicated in the preceding table. They also coincide with the EU-CAAA, Article 146, and Articles 2 and 5 of the WTO SPS Agreement. Although the subject is covered by these resolutions, there are no general regulations in CAUCA and RECAUCA establishing parameters that may be later developed in greater detail by the different resolutions. This is not a gap, but it is not a good practice.

**Section 5.2:** The only approach to the matter is found in the RKC on the presence of a declarant in the goods examination process, which assumes knowledge on its part. Nevertheless, Article 5.2 is a practice that contributes to transparency in the customs process and its express regulation, and its existence in the standards is very important. Consequently, the absence of regulation in both CAUCA and RECAUCA constitutes a gap in the obligation imposed by the TFA on Customs.

**Section 5.3.** This is a best endeavor rule and is not covered by regional Central American laws. Its absence constitutes a gap for international best practice and the goals of effective TFA compliance.

## Recommendations

Section 5.1 Provide for the issuance, termination or suspension of notifications or guidelines issued by countries to their competent authorities on increased border controls or inspections of SPS measures, subject to the following disciplines:

1. Issued on the basis of risk;
2. Applied uniformly to the points where the SPS conditions on which the notification or guidance is based;
3. Terminate or suspend the measures when the underlying circumstances no longer exist or may be handled in a less restrictive manner;
4. Publish the termination or suspension of the notification or guideline without delay, in an easily accessible and non-discriminatory manner, or it should be informed to the exporter or importer.

Section 5.2. Expressly indicate that Customs and the entities involved in border control processes must immediately report any vehicle, goods or cargo that is detained for inspection purposes to the carrier, the importer or the importer’s agent. This obligation may be included in CAUCA and RECAUCA in relation to Customs and in Resolution 271.

Section 5.3, If the first test carried out on a sample of a good has resulted in unfavorable results for the importer, Customs should authorize a second test if the importer requests it. In such a case, Customs should provide information about accredited laboratories that can run the test.

If there are no accredited laboratories in the country for the required analysis, customs may authorize regional or international laboratories to run the second test, after an agreement is reached on the matter. The applicant shall bear the costs of running the second test. A good practice to follow in this matter exists in Europe:

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| Customs Laboratories European Network (CLEN)  The Customs Laboratories European Network (CLEN) provides the structure to coordinate the Customs laboratories in the member states. Eighty-nine European Customs laboratories participate in diverse activities organized by CLEN in its efforts to achieve its ambitious objective of an integrated European Customs laboratory network well-prepared to face the challenges of tomorrow.  CLEN organizes diverse activities under six subjects as it advances toward achieving its ambitious objective of an integrated European Customs laboratory network. The activities are carried out ad hoc and voluntarily by their own Customs laboratories. Third-party country Customs laboratories may participate provided they meet specific criteria.  Meanwhile, greater coordination between European Customs Laboratories has received the backing of European elected representatives. In its Resolution dated June 19, 2008, on the fortieth anniversary of the Customs Union, the deputies in the European Parliament accepted with satisfaction the initiative to create a European Customs laboratory network so that EU technical standards can be uniformly interpreted as the CLEN advances in its work. |

# Article 6 – Disciplines on Fees and Charges Established for or Related to Imports and Exports

This article establishes precise obligations for countries. The content should be analyzed separately in accordance with each section:

**Section 6.1** refers to fees and charges for or related to imports and exports, other than import or export duties or fees, that countries can charge for providing custom services, and other border entities can charge for import and export and related operations (such as internal transit and transshipment). It specifically establishes that these fees or charges (i) should be published to inform as to how, when, and to whom they should be paid, and (ii) should allow sufficient time between publication and the date they take effect unless an emergency is involved. It also requires that the fees or charges be reviewed periodically to reduce their number and diversity as much as possible.

**Section 6.2** states that these customs processing fees and charges must be proportional to the cost of the services provided, rather than to the value of the goods to be imported or exported, because they are for the service provided, rather than a specific import or export.

**Section 6.3** refers to the sanctions imposed by the countries’ customs administrations for violating their regulations, including customs formalities and procedures for international transit operations. In that regard, sanctions must be levied solely on the parties responsible and must be proportionate to the degree and seriousness of the offense, plus attenuating circumstances must be allowed for voluntary offense disclosure. Likewise, offenses must be reported by means of an administrative document that complies with the duty to report the reasons, causes, and explanations for the offense and the levied sanction.

This rule originates in Article VIII of the 1994 GATT:

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| GATT 1994  Article VIII: Fees and Formalities Connected with Importation and Exportation  1. (a) All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connexion with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.  (b) The contracting parties recognize the need for reducing the number and diversity of fees and charges referred to in sub-paragraph (a).  (c) The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.\*  2. A contracting party shall, upon request by another contracting party or by the CONTRACTING PARTIES, review the operation of its laws and regulations in the light of the provisions of this Article.  3. No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.  4. The provisions of this Article shall extend to fees, charges, formalities and requirements imposed by governmental authorities in connexion with importation and exportation, including those relating to:  (a) consular transactions, such as consular invoices and certificates;  (b) quantitative restrictions;  (c) licensing;  (d) exchange control;  (e) statistical services;  (f) documents, documentation and certification;  (g) analysis and inspection; and  (h) quarantine, sanitation and fumigation. |

## Analyzed Standards

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| CAUCA: 122-126 (offenses)  RECAUCA  COMIECO Agreement 01 of 2011  CAFTA-DR: Art. 3.10 and 5.9  EU-CAAA: 87 and 118  RKC |

## Analysis of Sections 6.1 and 6.2

### Analysis of Central American Regulations and Goals

CAUCA and RECAUCA do not mention fees and charges for services related to customs procedures. Nor does the Central American Strategy. Agreement 01 2011 establishes the procedure for reviewing non-tariff barriers which may be used to file a claim when a country levies fees or charges for customs services that hide a tariff barrier. However, there is no regional standard that establishes and details the guidelines in Article 6 of the TFA.

### International Agreements

Articles 87 and 118 of the EU-CAAA clearly establish that fees or charges (i) should be limited to the approximate costs of the services provided and not represent any indirect protection of national goods or a tax on imports or exports for tax purposes, and (ii) should not be calculated based on ad valorem but rather solely on the cost of providing the service.

CAFTA-DR establishes the same as Article 3.10 of the EU-CAAA but adds that each country shall keep available on the Internet an updated list of the fees or charges levied in relation to imports or exports.

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| The Panama Case  Panama has recently established an internal standard based on its constitution (Decree 12 dated March 29, 2016). This standard provides details on the types of fees, fee calculation, and charges for transshipment, storage, and import-related services, among others. However, for a variety of reasons, it should not be considered best practice. |

### Identified Gaps

#### Sections 6.1 and 6.2

The lack of a standard in CAUCA and RECAUCA concerning fees and charges for services related to customs procedures is a clear gap with the mandates set forth in sections 6.1 and 6.2 of the TFA.

The fact that the scope of application for CAUCA and RECAUCA does not include other agencies that operate at the border does not constitute a gap with the TFA. However, the lack of regulation on this matter is not in line with international best practices.

#### Section 6.3

This matter is not regulated by CAUCA and RECAUCA and is subject to international agreements, such as the EU-CAAA and the EFTA-CA, and the countries’ internal laws for more detailed regulation.

The lack of regulation in this matter constitutes in itself a major gap that may give rise to a series of disparities and a lack of clarity and synchronicity in the region.

## Analysis of Section 6.3 on International Transit Matters

### Analyzed Standards

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| CAUCA  RECAUCA: 103, 104, 406, 410, 415, 419, and 421.  COMRIEDRE Resolution 65: 32 and 33.  RKC: Rule 3.2, Chap. 3, General Annex |

TFA subsection 6.3.3.7 states that the provisions of this article will apply to sanctions levied on in transit traffic as referenced in Section 3.1.

### Identified Gaps

In relation to ground transit, COMRIEDRE Resolution 65-2001 includes a list of administrative types or faults in the International Ground Cargo Transit Customs Program (Article 32) but delegates the power to member states to specify applicable sanctions in their national laws for offenses provided in Resolution 65.

CAUCA does not contain specific provisions for transit-related sanctions, and RECAUCA indicates the parties responsible for transit-derived obligations without listing the offenses. In effect, RECAUCA generally states who should be considered directly responsible for air and maritime transport.

With regard to sanctions, RECAUCA Article 421 only indicates that air transit offenses should be handled according to each Member State’s laws but does not contain a similar standard for maritime transit.

The principle of supplementary applicability included in RECAUCA Article 401 for internal customs transit, according to which, in what is not foreseen in the RECAUCA for this regime, it applies the provisions of the Regulation on the International Customs Transit Regime, declaration form and instructions, does not specify whether that principle also applies to the system of penalties.

Based on all of this, the conclusion may be drawn that the lack of accuracy and clarity regarding offenses and sanctions for the transit program in regional legislation constitutes a gap with the TFA.

### International Best Practices

Chapter 3 of the General Annex to the RKC (Standard 3.2), and the Guidelines on the RKC General Annex - Chapter 9 (Standard 19) state that any charge applied by customs for customs services must be limited to the approximate cost of the services provided.

## General Analysis of Section 6.3

### Analysis of Central American Regulations and Goals

CAUCA defines customs, administrative, tax, and criminal violations and refers determination of sanctions to RECAUCA and the countries’ internal legislation. RECAUCA, however, does not establish what the violations or sanctions are. Nor does it establish anything regarding attenuating circumstances or any of the matters provided in the TFA.

The CAFTA-DR states that each party must adopt or maintain measures to be able to levy civil or administrative sanctions and, when appropriate, criminal sanctions, due to violations of its laws and customs regulations, including measures governing tariff classification, customs valuation, country of origin, and application for preferential treatment under this Agreement.

### International Agreements

The EU-CAAA clearly establishes the principle of sanction proportionality in Article 118 (g) when it determines that countries shall ensure proportionate, non-discriminatory levying of sanctions for minor violations of customs standards or procedural requirements and that any such application will not give rise to unjustified delays.

## Recommendations

Recommendations applicable to the disciplines of duties and charges established for importation, exportation or in relation to them:

1. include in CAUCA the provisions of the International Agreements signed by the countries of the Central American Economic Integration System and for this same
2. consolidate a regulation that defines infractions in accordance with the principles of international best practices (legality, typicity, anti-juridical)
3. in relation to the sanctioners that the legal provisions contemplate the deterrent nature of sanctions and the principles of proportionality and effectiveness
4. clearly distinguish administrative offenses with respect to the offense or crime of contraband, given the difference of the legal right protected from said provisions.
5. as far as possible, promote the definition of a sanctioning framework with the previous principles for border control agencies, through a parallel provision of COMIECO.

### Sections 6.1 and 6.2

Fees and Charges: A basic principle of administrative law is that the fees and charges charged by the Public Administration must be clearly regulated by law (the Principle of Legality), plus any fees and charges must comply with proportionality, covering the costs of the services and not resulting in profit. The TFA adds that fees and charges should not only have clarity (through publication) and proportionality at the cost of fees and charges, but they should also be examined periodically to guarantee their simplicity, need, and cost. International best practices and the TFA add the suitability of coordination between the Customs and the border entities to avoid paying more than once for overlapping services.

As a consequence, CAUCA should establish general parameters on the principles that should govern the fees and charges to be charged by customs. If CAUCA’s scope is expanded, or a new set of standards is created, these general standards must also cover the fees charged by other border entities to achieve true uniformity in the matter. These basic principles should be regulated in greater detail through a lower-ranking set of standards to allow periodic reviews and clearly establish, in detail, the what, how, why, and when of these fees and charges to achieve regional uniformity.

### Section 6.3

Sanctions: In addition, to follow up on the Principles of Administrative Law, there must be clarity and definition for anything related to the violation and sanction program. A lack of clarity in the types of sanctions creates legal gaps and opportunities for corruption and lack of transparency.

To move toward regional integration—and abide by the principles governing the matter in Article 6 of the TFA—authorities should create harmonized sanctions in CAUCA and RECAUCA that also include standards on sanction proportionality and causes for attenuation in the event the responsible party voluntarily contacts the authority about committing a violation.

In relation to sanction procedures, general legal bases could be created in CAUCA for a single sanction procedure that is regulated, but that it be advanced by the national authorities of the State Parties in which the act or omission that constitutes the respective infraction has taken place or occurred.

# Article 7 - Release and Clearance of Goods

## Section 7.1 - Pre-Arrival Processing

With regard to pre-approval processing, the TFA establishes a mandate and a best endeavor rule for which the countries are responsible:

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| WTO TFA  Article 7: Release and Clearance of Goods  1. Pre-arrival Processing  1.1 Each Member shall adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.  1.2 Each Member shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents. |

### Analyzed Standards

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| CAUCA Article 80  RECAUCA articles 103, 147, 152, 245, 246, 319, 325, 330, from 392 to 402, and 568  CAFTA-DR: Chap. 5  EU-CAAA: Art. 118  Central American Strategy for Trade Facilitation and Competitiveness  SAFE Framework  RKC, Rule 3.25  Annex to COMRIEDRE Resolution 65-2001, Article 5 |

## Analysis of Section 7.1.1 in General

The Central American Strategy contains a Coordinated Border Management (CBM) model built on eight fundamental pillars. To achieve these fundamental pillars, the strategy proposes short-, medium-, and long-term measures. Among the short-term measures, the Central American Strategy proposes early submission of goods declarations. The following was taken into consideration to determine short-term measures: i) the existence of a regional legal base; ii) relatively simple implementation executable within an approximate timeframe of one year at a low cost; and iii) significant positive impact on the cost, timeframe, and predictability of movement through border crossings in the short-term. It expressly indicated that in FAUCA the export transmission creates an import file.

CAUCA Article 80 provides importers with the option to submit an import declaration prior to the arrival of their goods.

RECAUCA Article 330, for its part, establishes the possibility of submitting an early declaration by electronic transmission or using forms authorized by customs. It recognizes the full validity of using information technology and electronic media to exchange information for transmitting, registering, and filing the declaration and related information. However, Article 330 itself later on:

* limits the scope of pre-declaration to five programs that it expressly identifies and to “others as established by the customs service”; and
* prohibits pre-declaration of goods entering the country under the auspices of consolidated transport documents.

In relation to documents subject to pre-arrival processing, RECAUCA establishes the following:

* **Carrier manifest:** RECAUCA requires the carrier to supply the pertinent information by electronic transmission **before the carrier arrives**. The transmission period may be determined by customs or be subject to the deadlines established in the regulations, depending on the mode of transport:

for maritime transport, a minimum of 24 hours;

for air transport, at least two hours in advance;

for de-consolidation companies with rapid delivery, prior to the arrival of the aircraft;

for ground transport, electronic pre-transmission or **submission upon arrival.**

* **Transport documents:** RECAUCA requires carriers to provide the information contained therein to customs via electronic transmission, or via other authorized media, without indicating the deadline for doing so.
* **Manifests or consolidation documents**: the documents must be delivered prior to the arrival of the aircraft.

### International Agreements

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| CAFTA-DR  Chapter 5 Customs Administration and Trade Facilitation  Article 5.3: Automation  Each Party’s customs authority shall endeavor to use information technology that expedites procedures for the release of goods. When deciding on the information technology to be used for this purpose, each Party shall…(c) provide for electronic submission and processing of information and data before arrival of the shipment to allow for the release of goods on arrival. |

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| EU CAAA  Part IV. Trade  Chapter 3. Customs and Trade Facilitation  Article 118. Customs and Trade-Related Procedures  The Parties agree that their respective customs legislation, provisions and procedures shall be based upon…  (d) the application of modern customs techniques, including risk management, simplified procedures for entry and release of goods, post release controls, and company audit methods; |

### General Identified Gaps

In principle, according to the literal mandate of the TFA, both CAUCA and RECAUCA provide procedures for pre-transmission of import declarations, the carrier manifest and cargo consolidation documents, **but not for all customs procedures.** In effect, the customs service of each country may decide whether to include more regimes.

CAUCA and RECAUCA also provide for pre-submission of documents in electronic format.

However, with regard to international best practices and the region’s goals for effective compliance with the TFA, RECAUCA strays from the objective provided in Section 7.1 by establishing exceptions to pre-processing for ground transport and some import regimes.

In particular, various contradictions exist in the regulations for each of the documents for effective compliance with the TFA and regional goals.

* Cargo manifest: RECAUCA provides for pre-transmission of the cargo manifest, indicating different terms, depending upon whether it involves maritime, air, or ground transport. This matches the mandate in Article 7.1. However, further on, it indicates that customs may “establish different deadlines than those indicated therein.” This gives rise to dissimilar interpretations in customs services, user insecurity, and even potential elimination of the obligation to transmit the manifest information prior to the arrival of the goods.

RECAUCA makes it possible, with ground transport, for manifests to be delivered upon arrival of the means of transport, which generates greater congestion at the borders, deprives customs of important control information, and thereby strays from regional goals.

* Consolidated manifest or guide**.** RECAUCA establishes that de-consolidation and fast delivery companies must transmit their manifests prior to the arrival of the aircraft but does not establish any similar regulations for de-consolidation companies in maritime or ground transport.
* Transport documents: No pre-transmission is provided for transport documents. This strays from international best practices and the region’s goals for effective compliance with the TFA.
* Location in a single warehouse. In relation to import declarations, RECAUCA Article 319 establishes the conditions for submitting a customs declaration. One of those conditions is that “goods must be stored in a single warehouse or in a single location” (Section c). This is a limiting factor for early submission of the declaration given that it assumes that the goods are physically located in a warehouse or location site.

## Analysis of Section 7.1.1 on Transit Matters

Section 7.1 should be analyzed in conjunction with Section 11.9 of the TFA, which obligates countries to allow early submission of transit-related documents and data prior to arrival of the goods.

RECAUCA Article 330 states that incoming goods, under the auspices of consolidated transport documents, may not be eligible for submission of a pre-declaration. Resolution 65 does provide for pre-transmission of international transit declarations.

### Identified Gaps in Transit Matters

Although Resolution 65 of 2001 expressly allows this possibility for international transit, RECAUCA in regulating the advance regulation in its Article 330, does not expressly include the transit regime among the regimes eligible for this possibility. This is a contradiction between RECAUCA and Resolution 65 2001 that makes it difficult for the TFA to be effectively implemented.

### International Best Practices

The SAFE Framework is best practice:

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| SAFE Framework  Pillar 1 – Customs-to-Customs  2. Standards and Technical Specifications for Implementation  2.1 Standard 1 – Integrated Supply Chain Management  2.1.2. General control measures  i. Customs control  For the purpose of Standard 1, the integrity of the consignment has to be ensured from the time the goods are loaded into the container, or if not containerized, onto the means of transport until they have been released from Customs control at destination.  v. Unique Consignment Reference (UCR)  Customs administrations should apply the WCO Recommendation on the UCR and its accompanying Guidelines.  2.1.3. Submission of data  i. Export Goods declaration  The exporter or his/her agent should submit an advance electronic export Goods declaration to the Customs at export prior to the goods being loaded onto the means of transport or into the container being used for their exportation. For security purposes, the Customs should not require the advance export Goods declaration to contain more than the details listed in the Annex II.  The exporters have to confirm to the carrier in writing, preferably electronically, that they have submitted an advance export Goods declaration to Customs. Where the export Goods declaration was an incomplete or simplified declaration, it may have to be followed up by a supplementary declaration for other purposes such as the collection of trade statistics at a later stage as stipulated by national law.  ii. Import Goods declaration  The importer or his/her agent should submit an advance electronic import Goods declaration to the Customs at import prior to arrival of the means of transport at the first Customs office or, for maritime container shipments, prior to loading. For security purposes, Customs should not require more than the details listed in the Annex II. Where the import Goods declaration was an incomplete or simplified declaration, it may have to be followed up by a supplementary declaration for other purposes such as duty calculation or the collection of trade statistics at a later stage as stipulated by national law. The Authorized Supply Chain (see 2.1.6) provides the possibility to integrate the export and import information flows into one single declaration for export and import purposes, which is being shared between the Customs administrations concerned.  iii. Cargo declaration  The carrier or his/her agent should submit an advance electronic cargo declaration to the Customs at export and/or at import. For maritime containerized shipments, the advance electronic cargo declaration should be lodged prior to the goods/container being loaded onto the vessel. For all other modes and shipments, it should be lodged prior to the arrival of the means of transport at the Customs office at export and/or import. For security purposes, Customs should not require more than the details listed in the Annex II.  The advance cargo declaration may have to be followed by a supplementary cargo declaration as stipulated by national law. |

## Analysis of Section 7.1.2

According to CAUCA and RECAUCA, the cargo manifest, transport documents and consolidated cargo documents **may be transmitted electronically or “other authorized media.”** Import declarations may be transmitted electronically or submitted in a “format determined by Customs.”

In relation to the region’s goals, the Central American Strategy includes a Goods Pre-Declaration as a short-term priority measure.

### International Agreements

The analysis of subsection 7.1.2 is fully applicable to Article 5.3 of the CAFTA-DR, Article 118 of the EU-CAAA and the SAFE Framework, Pillar 1. Customs-Customs Association. Standards and technical specifications for their application, transcribed in the analysis carried out in subsection 7.1.1.

### Identified Gaps

The use of physical documents significantly reduces customs control and seriously affects timely information exchange, so this option established in Central American laws does not contribute to effective compliance with the TFA.

From a literal point of view, this may not be considered to be a gap in relation to the TFA, where the mandate to use electronic transmission is preceded by the conditioning expression “as pertinent.” This translates into the obligation being conditioned to availability of the parties participating in the process.

In summary, the use of physical documents in customs processes notably strays from international best practices, regional goals, and effective compliance with the TFA.

## General Recommendations

1. Cargo Manifest: There must be a mandatory general provision that the cargo manifest, consolidation documents, and transport documents issued by the carrier or by the cargo agent must be sent electronically to Customs prior to arrival of the means of transportation. The lead time for transmitting documents must be uniformly determined in the regional regulations, according to the modes of transportation (by air, by sea, and by land) and always considering that it must always be transmitted prior to arrival of the means of transportation.

Only in exceptions situations (as classified by customs) should the electronic transmission of these documents be allowed at the time of the arrival of air, land, and sea transport.

1. Import Declaration. The importing country’s Customs should be encouraged to use a mandatory import declaration that can be transmitted electronically prior to arrival of the means of transportation at the first customs office in that country, along with any supporting documents.[[4]](#footnote-5)

This is without prejudice to the fact that, in exceptional situations rated as such beforehand by customs, the information may be sent by electronic transmission upon arrival of the means of transportation.

## Gaps and Technological Recommendations

The use of technology for all regimes, but especially in transit, is urgent and necessary. The use of technology will reduce the complexity of the formalities and simplify documentation requirements. It also enables follow-up on cargo movement.

The CADTP relates these subjects in the following strategic concepts:

* Integral information interoperability must exist between border control institutions, both nationally and regionally;
* Exchange must take place in real time;
* There is greater potential for use of the International Transit of Merchandise (TIM) platform at major border crossings. In the case of Central America, all the countries use the TIM platform as an automated procedure for customs processes. The use of TIM is limited to a few borders and could be expanded. Not all borders that implement it use the quarantine module, and the immigration module is still not integrated. The TIM should be expanded to multimodal transit, integrating multimodal operations that include air and maritime transport as well;
* The post-audit should emphasize cargo clearance at the border crossing using the information obtained through interoperability.

## Section 7.2 - Electronic Payment

This section refers to the convenience of adopting procedures to allow for the option of electronic payment of fees, taxes, duties, and charges collected by customs (not the other governmental entities) on exports and imports.

### Analyzed Regulations

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| CAUCA: 37, 38 and 39  RECAUCA: 169, 173 and 318  RKC: Chapters 3 and 4 |

### Analysis of Central American Regulations and Goals

#### CAUCA

Chapter II on the Use of Information Technology Media, Article 37, states that payment for the pertinent fees and taxes should be made using electronic media and that RECAUCA is responsible for regulating it. Article 38 also establishes that international standards also apply for ensuring transaction security and integrity, the successful completion of transactions (otherwise identifying any failures and correcting them), and their compatibility, regardless of the technological platform used.

Article 39 requires state and private customs-related entities to transmit a receipt of payment for customs tax obligations, according to procedures agreed upon by these offices or entities and customs.

#### RECAUCA

Article 173 establishes payment of customs tax obligations by means of electronic funds transfer at financial system banks authorized by the customs service or other competent authority. In such cases, the bank receiving the payment must immediately transmit it to the customs service.

Article 169 delegates to the customs of each country the minimum technical specifications that software programs and communications links must have, including those used to pay taxes by electronic means.

### International Best Practices

In its recommendations to Zambia in 2012, OECD included the use of electronic payment of customs duties and internal taxes to simplify and add transparency to all these transactions.

The World Bank Doing Business project establishes the following with regard to good practices in border trade:

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| Doing Business  Trading Across Borders  Good Practices  Allowing Electronic Submission and Processing of Information Required by Customs  Electronic systems for filing, transferring, processing and exchanging customs information have become an important tool for managing flows of information, now widely used in complex trading systems. The most advanced web-based systems allow traders to submit relevant documents and to pay duties online from anywhere in the world. The key to success is the ability of an economy to adapt its regulatory framework to the new information technologies.  If implemented effectively, such a system saves precious time and money. It can also limit direct interactions with officials, which reduces opportunities for corruption. However, introducing an electronic system often requires governments to enact legislations on electronic signatures and transactions; without appropriate legislations in place, the implementation of a new system can lead to redundancy and delays, requiring paper submission of signed documents after they have already been filed electronically. Furthermore, for small and low-income economies, the infrastructure and training costs of implementing such systems can be onerous, and meaningful effects for local traders may take time to materialize.  Exchange of customs data and harmonization of customs procedures are important pillars of many regional communities, and electronic data interchange systems can help facilitate the materialization of regional integration initiatives. In Central America, the International Goods in Transit (TIM) system harmonizes previously cumbersome procedures in a single document to manage the movement of goods across 9 economies. At some border locations, this system has reduced clearance times for goods in transit by up to 90% (1). However, linking 2 or more information technology systems through a common interface is not always a simple process. Integrating Kenya’s Simba system with Uganda’s ASYCUDA++ through the development of the Revenue Authorities Digital Data Exchange (RADDEx) system has taken several years and expanding this system to the rest of the East African Community also remains an ongoing challenge.  The full potential of digitalization and electronic data interchange systems is not realized immediately. Implementing the systems takes time and involves change in operational practices, in training and in some cases, in the work habits of staff. Zambia reduced the time to complete documentary and border compliance by about 30%, underscoring the impact of its rolling out of the ASYCUDA World system, an automated customs data management system, to multiple customs offices nationwide. Despite initial setbacks, in 2017 Zambia increased the functionality of the platform, enabling electronic submission of declarations, supporting documents and the online payment of customs fees.  Across economies, regardless of income level, allowing electronic submission and processing of customs-related documents has been one of the most common and effective ways to reduce delays in the trading process. Today, traders can submit all trade documents electronically in more than half of OECD high-income economies with no need to provide hard copies. In Sub-Saharan Africa and Eastern Europe and Central Asia, by contrast, most economies that have electronic systems still require traders to submit hard copies of documents.  Source: http://www.doingbusiness.org/data/exploretopics/trading-across-borders/good-practices |

### Identified Gaps

From the literal point of view, both CAUCA and RECAUCA comply with the TFA. The TFA is more flexible than CAUCA and RECAUCA because it requires only that members adopt, “to the extent feasible, procedures to permit the electronic payment option.”

Gaps exist in relation to the region’s compliance goals and effective implementation of the TFA because electronic payment is an indispensable tool. Although it is understandable that, at some border points, cash payment is the only option because there is no electronic payment infrastructure, this situation must be treated as an exception to the general rule that payments must always be made electronically.

As for the payment of fees for services provided by customs, there are no standards that provide procedures for payment other than by physical payments; this is also a gap in relation to regional and TFA compliance goals. An example of this is Decree 12 of March 29, 2016, in Panama, which directly stipulates the obligation to make payments in cash for certain customs service fees (articles 27, 36, 41, 90, and 91).

### Recommendations

General Rule with Exceptions: We recommend that CAUCA establish a general rule that all payments to be collected by Customs must be made electronically. Electronic payment must apply not only to taxes, but also to fees and tariffs. As an exception to this general rule, non-electronic payment may be allowed in circumstances where it is not possible.

Likewise, RECAUCA, or specific resolutions, should regulate exceptions to the general electronic payment rule to promote uniformity in the region.

Payment to Other Border Entities: The recommendation to create a regional standard establishing these rules is repeated for other border entities.

### Gaps and Technological Recommendations

Part of the improvement needed in this process is to achieve full interoperability between the customs systems, other entities operating at the border, and banking systems. It is also possible and necessary to integrate electronic payment of taxes, customs duties, and other payments needed in the foreign trade process, such as import and export licenses.

## Section 7.3 - Separation of Clearance and Final Determination of Customs Duties, Taxes, Fees, and Charges

Section 7.3 sets out an obligation for countries to adopt or maintain procedures for release goods prior to final determination of customs duties, taxes, fees, and charges, if the determination is not made “prior to arrival of the goods” or “at arrival of the goods” or “as quickly as possible after arrival of the goods”, provided that all legal requirements have been fulfilled. To ensure that duties, taxes, fees, and charges are collected, the TFA foresees the requirement of a guarantee.

### Analyzed Rules

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| CAUCA: ARTICLES 51, 52, 53, 54, 55, and 56  RECAUCA: ARTICLES 202, 203, 231, 232, 332, 349, 350, 351, 352, and 318 |

### Analysis of Central American Regulations and Goals

CAUCA establishes the provision of a guarantee for the tax obligation, including interest earned and any other applicable charge; the form of guarantee is freely determined (check, bank guarantee, trade securities) provided that the immediate payment to its presentation is secured; must be released immediately upon cancellation of the guaranteed obligation. The execution of the guarantee, the form and terms are determined in the RECAUCA.

RECAUCA establishes the possibility of providing security: i) assessed on the sum in discussion relative to the customs value; and ii) when dealing with adjustments or differences found during clearance related to “classification, value, quantity, origin of goods or any other information provided by the declarant.” In other words, a guarantee may only be provided when a dispute has arisen during clearance due to any of the reasons indicated in RECAUCA.

### Identified Gaps

Requirement for Guarantee to be Warranted: The only assumption required by the TFA for warranting the use of a security is “**the lack of a final determination of customs duties, taxes, fees, or charges**” on any of the three opportunities provided for in the regulation. It does not require discussion of the declared amount or disagreement over detected differences. Nor does it waive the security from being warranted when disputes have arisen or differences have been found. The security simply comes into play, **with or without disputes**. Therefore, the RECAUCA requirement for disputes constitutes a gap.

What the Guarantee Covers: Central American laws are not clear when indicating the security as a release condition “to ensure partial payment of fees and obtain a release of the goods when the remaining part has been paid,” i.e., some of the fees (those that have been definitively determined) are paid and the rest (those that have not been definitively determined) is secured. This constitutes another breach.

The laws in CAUCA provide for security to cover interest, a concept that is excluded from TFA Article 7.3. Therefore, the concept of a quarterly update to the security amount may possibly be included in RECAUCA Article 231. This matter is also left out of TFA Article 7.3.

Guarantee coverage is confusing in RECAUCA. Articles 202 and 203 claims that the security covers “taxes” to which the goods may be definitively subject. Article 349 refers to “fees, taxes, fines, and surcharges,” and Article 350 refers to “adjustment or fines,” while Article 351 refers to a “tax obligation.”

Advanced Electronic Payment and Use of Guarantee. There are inconsistencies between several RECAUCA articles. On one hand, a possibility is established to secure payments arising from imports, while Article 318 requires prepayment for submitting the import declaration. Actually, since this article requires “prior compliance with customs formalities and electronic prepayment of the fees or taxes...,” it does not give the option of providing security. This constitutes a gap.

In regulating the Provisional Declaration, Article 332 indicates that “taxes must be properly paid or **guaranteed**...,” which is in clear alignment with TFA Article 7.3.

Absence of a clear and complete regulation of the issue of securities. There is a clear void related to guarantees in regional laws. In addition, in some cases, the matter is referred to Customs in each country, which lends itself to discretionary application, contradictory decisions, and legal instability for individuals. Examples:

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| Article 203. Form of Guarantee  The security referenced in the preceding article may be provided as a deposit, **bond or any other form established by the customs service** that covers the import tax amount.  Article 350. Authorization for Release  The customs service will authorize release of goods in the following cases… (c) When the immediate verification and differences are determined with the declaration of merchandise, these are corrected, the adjustments and fines are paid or, **when required by the customs authority**, the pertinent guarantee is rendered.  Article 351. Authorization for Release with Guarantee  The declarant or its representative will submit an application to customs for authorization for a release with a guarantee as indicated in Section c) of Article 350 of these Regulations....Customs services will have other ways to authorize a release with accountability or security.  NOTE: Text is translated from RECAUCA. The authors have emphasized important phrases. |

### Recommendations

1. Expressly empower customs in each country to permit the provision of guarantee in the form of a bond or deposit, so importers can get their goods released without definitive determination of customs fees and taxes, duties, or charges: i) prior to arrival of the goods, or ii) when the goods arrive, or iii) as soon as possible after the goods have arrived. In any case, the importer must submit an import declaration and comply with all other regulations.
2. The constitution of the guarantee does not require prior discussion between the importer and customs on the amount declared, nor do they disagree on the differences selected. Warranties should be provided regardless of whether or not there is any disagreement. If there are any disagreements or disputed differences, the security can ensure the payment of all customs fees, taxes, duties, or charges, or part of them, when the rest has already been paid.
3. Clarify the coverage of the guarantee in the law and use the same scope for all regulations: The concepts indicated in the TFA should be included: Customs fees, duties, taxes, and charges that may ultimately be subject to the merchandise.
4. To achieve uniform Central American legislation and eliminate unwise use of discretion, the gaps in the security program in the current legislation, where Customs or customs authorities have the discretion to decide on certain matters, should be eliminated.[[5]](#footnote-6)

At the request of El Salvador, the following security-related practices are being included:

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| European Union: Consolidated Text of Community Customs Code Council Regulation (EEC) No. 2913/92 and Commission Regulation (EEC) No. 2454/93  Where acceptance of a customs declaration gives rise to a customs debt, the goods covered by the declaration shall not be released unless the customs debt has been paid or secured. Warranty may be provided in the form of a cash deposit or a check in the currency of the Member State in which the security is required, or in the form of a bond where payment is ensured, in any manner acceptable to the customs authority, by the concerned party to which the goods have been released or by the surrender of any other security with the power to release them. The customs authorities shall allow comprehensive security to cover various operations that have given rise to, or that may give rise to a customs debt. (Articles 74 and 189 to 200).  In the preceding legal framework, an endorsement is available as security for payment of the Customs fees on imports as provided in Spanish law. An endorsement is a contract subscribed to by the Customs Agent and the banking entity to facilitate the release of goods without prepayment of the pertinent fees. An endorsement secures obligations caused by imports made by all operators represented by a specific Customs Agent when the agent acts on behalf and on account of said operators. In each import declaration in which the Customs Agent is involved, the Complete Reference Number (CRN) issued by the endorsing banking entity will be used, and that entity must pay the amount owed to Customs. |

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| The General Customs Law of Peru  This law indicates that importers must submit, prior to numbering the goods declaration, comprehensive or specific security that ensures payment of the Customs tax debt, among other obligations. Security is comprehensive when it ensures compliance with obligations binding on more than one Customs declarations or application and specific when it ensures compliance with obligations deriving from one Customs declaration or application. The terms for this security may not exceed one (1) year or three (3) months, respectively, and may be renewed according to the Regulations. (Article 160)  According to the Regulations, security may be in the form of a surety bond or policy issued by guarantor entities supervised by the Superintendence of Banking, Insurance and Private Pension Fund Managers, or in the form of a nominal guarantee. Warranties are only accepted from companies classified as frequent importers, or certified as authorized economic operators, provided they do not back goods susceptible to fraud.  Guarantees submitted prior to numbering of the Customs merchandise declaration cover Customs taxes and/or surcharges that have been determined up to three (3) months after the release is granted.  The amount of comprehensive security equals a percentage, defined by Customs, of the amount of the Customs tax debt and/or surcharges recorded during the 12 months prior to initial submission of the security, plus a user risk percentage set by Customs. The specific security amount is equal to a percentage of the value of the goods set by Customs as a function of user risk, plus the Customs tax debt amount.  When security is accepted, Customs opens a current account for the security amount, which will be increased or decreased as established in the approval procedures. Increases in the current account are actions whereby Customs deposits the declared or determined amounts in the current account for the security. The security current account is increased by Customs tax debts and/or surcharges on the declarations or applications intended for securing, in addition to any applicable determinations or fines. The security current account is decreased with payment or other forms of extinguishing the Customs tax debts and/or surcharges, or through the provision of another guarantee securing payment.  The security current account consists of an operating amount and a security amount. The operating amount of a specific guarantee is used by the importer, exporter, or beneficiary to cover Customs tax obligations and surcharges for a single declaration or application. The operating amount for comprehensive security may be re-used.  The importer, exporter or beneficiary will add to the operating amount with Customs tax debts and/or surcharges when they are generated, and will bring it down with payment or other forms of extinguishing the debts or by submitting another guarantee to secure the claimed or appealed amount. The security amount is for exclusive use by Customs and will be calculated as a function of the importer, exporter or beneficiary’s default risk. Customs will set the security amount when the Customs tax debts and/or surcharges are reported during Customs clearance or post-clearance audit. If the security amount is insufficient, Customs will increase the operating amount.  Source: ??? |

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| U.S. Legislation, Title 19, the United States Code, Section 1623, provides for a CBP bond, or “Customs Bond”  The purpose is to ensure compliance with a legal obligation, in this case payment of Customs fees caused by an import. The bond makes it possible to release the goods without payment of fees by the importer and ensures CBP of collection in the event of future noncompliance.  There are three parties to a CBP bond: the principal, which is the importer who gives the bond to Customs to ensure satisfactory performance of his obligations; the surety, which is usually an insurance company authorized by the Treasury Department to write CBP bonds and which agrees to pay any liability that may arise from the principal’s failure to perform its obligations. The principal and surety are also known as the bond obligors; and the beneficiary, which is CBP on all the bonds it authorizes.  CBP bonds must be in writing and be signed by the bond obligors. There are two types of bonds:   * Continuous transaction bonds. These are normally obtained by importers who have a large number of imports through several ports of entry during a given year. They have a term of one year and are automatically renewed. A continuous bond is valid until it is terminated by the surety or the principal. The minimum amount for continuous bonds is generally $50,000 or 10% of the total taxes and fees paid by the principal in the previous 12-month period, whichever is greater. * Single entry bonds. These bonds are obtained for a single import. The amounts are set by the party accepting the bond. Generally, it is not less than the total entered value plus all fees, taxes, and duties. If merchandise is subject to other federal agency requirements or is restricted merchandise, the amount is not less than three times the total entered value of the merchandise.   The conditions for a CBP bond appear in the CBP Regulations at Title 19, Code of Federal Regulations (CFR), Sub-part G of Part 113. The bond conditions vary depending on the applicant’s activity and legal obligations. For importers, the obligations are to pay the fees, submit import documentation by the legal deadlines, and surrender the merchandise to the CBP when legally petitioned. These obligations are different from the obligations applicable to exporters or carriers.  If the principal does not perform the obligations insured by the bond, CBP may initiate a claim against the principal or the surety. The responsibility is joint and several. This means that CBP will accept payment from either of the parties. If the surety pays CBP, a claim may be filed against the principal but CBP is not party to the claim. |

## Section 7.4 - Risk Management

Section 7.4 requires members to adopt or maintain a risk management system for customs control and apply it in a manner that prevents arbitrary or unjustifiable discrimination or hidden trade restrictions.

In addition, it requires countries to concentrate customs control and, as far as possible, non-border controls at high risk, and speed up the sending of low-risk shipments. It also requires countries to use appropriate selectivity criteria when applying risk management.

### Analyzed Regulations

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| CAUCA: Articles 9, 11, 16, 84  RECAUCA: Articles 9,16, 17, 18, 19 ,27, 335, 336, 238, and 577  Central American Strategy  International Agreements: CAFTA-DR Article 5.4  EU-CAAA: Art. 118 and 122  EFTA-CA: Art. 6 Annex VII  SAFE Framework: Rules 1-7  RKC: Chap. 6, General Annex |

### Analysis of Central American Regulations and Goals

CAUCA defines the concept of risk management, its effect on customs control, its use for verification purposes and, in general, control procedures. RECAUCA, for its part, defines the concepts of risk, risk management, databases, methodology, criteria for determining risks (associated with people, goods, and operations), and establishment of customs control priorities, based on determining risk management criteria by checking the proportionality, urgency, potential impact on trade flow, and collections.

The Central American Strategy identifies **the nonexistence of a system of risk identification, analysis, and integral risk management** that includes all control entities as one of the key challenges to the region’s competitiveness. Its goal is to reduce fiscal intervention in general, improving border control efficacy through integral risk management that involves the participation and cooperation of all border control institutions and the private sector.

It also states that, to achieve this goal, risk management should be established as a regular work tool at each border control institution to minimize physical inspections of goods and/or transport units by coordinating interventions while at the same time increasing effectiveness using improved targeting systems. Necessary strategic actions include strengthening risk management in each country through coordinated treatment by national border control institutions and establishing a Regional Cooperation Commission dedicated to identifying regional risks and proposing measures for mitigating them adequately.

It states that, in order to move forward on this component, each country’s control institutions need to be provided with the necessary tools and training for establishing and strengthening their national risk management systems, and progress needs to be made on developing a regional system.

Finally, it proposes two main projects:

* **Customs, sanitary, immigration, and security risk management**: by incorporating different targeting criteria and combinations thereof, using non-intrusive inspection equipment.
* **Joint notification of previous risk management results**: through a “single action” whereby goods and transport units are stopped only once, in a non-repeatable manner, and ensuring that technical control officials from each of the institutions expressing an interest in oversight, are involved during the stop.

### International Agreements

**CAFTA-DR Article 5.4: Risk Management** requires that each party endeavor to adopt or maintain risk management systems that enable its customs authority to focus its inspection activities on high-risk goods, and that simplify the clearance and movement of low-risk merchandise, while respecting the confidential nature of the information it obtains through such activities.

**EU-CAAA Articles 118 and 122** establish that the parties apply modern customs techniques that include, among others, risk management (Article 118 1.d). In terms of risk management, the EU-CAAA indicates that each party will use risk management systems that allow its customs authorities to focus on the inspection of high-risk goods and facilitate the clearance and circulation of low-risk goods (Article 122).

### International Best Practices

#### RKC, General Annex, Chapter 6: Customs Control

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| Revised Kyoto Convention  General Annex  Chapter 6. Customs Control  6.1. Standard  All goods, including means of transport, which enter or leave the Customs territory, regardless of whether they are liable to duties and taxes, shall be subject to Customs control.  6.2. Standard  Customs control shall be limited to that necessary to ensure compliance with the Customs law.  6.3. Standard  In the application of Customs control, the Customs shall use risk management.  6.4. Standard  The Customs shall use risk analysis to determine which persons and which goods, including means of transport, should be examined and the extent of the examination.  6.5. Standard  The Customs shall adopt a compliance measurement strategy to support risk management.  6.6. Standard  Customs control systems shall include audit-based controls  6.7. Standard  The Customs shall seek to co-operate with other Customs administrations and seek to conclude mutual administrative assistance agreements to enhance Customs control.  6.8. Standard  The Customs shall seek to co-operate with the trade and seek to conclude Memoranda of Understanding to enhance Customs control.  6.9. Transitional Standard  The Customs shall use information technology and electronic commerce to the greatest possible extent to enhance Customs control. |

#### SAFE Framework

The member countries of the WCO adopted the SAFE Framework in 2005 with the aim of ensuring and facilitating world trade.

One of the main elements of the SAFE Framework is that countries commit to employing a consistent approach to risk management to address security risks. It provides that the country receiving the cargo may request within “reasonable” parameters to the Customs that sends to carry out inspections of cargo and outbound transport, when these are considered high-risk, using a comparable risk management methodology. It encourages Customs to use non-intrusive equipment, such as X-ray scanners and radioactive detectors. Likewise, the SAFE Framework suggests benefits that Customs can provide to companies that comply with minimum standards of the logistics chain and good practices.

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| SAFE Framework  Pillar 1 – Customs-to-Customs  2. Standards and Technical Specifications for Implementation  2.1 Standard 1 – Integrated Supply Chain Management  The Customs administration should follow integrated Customs control procedures as outlined in the World Customs Organization’s (WCO) Customs Guidelines on Integrated Supply Chain Management (ISCM Guidelines).  2.1.1. Scope  The implementation of the integrated Customs control procedures requires appropriate legal authority that will allow Customs administrations to request the advance electronic submission to Customs of data from the exporter and by the carrier…for security risk-assessment purposes. In addition, the integrated Customs control procedures involve cross-border cooperation between Customs administrations on risk assessment and Customs controls, to enhance the overall security and the release process, that require a legal basis.  Both of these requirements are supported by WCO-developed instruments: Guidelines for the Development of National Laws for the Collection and Transmission of Customs Information; the Model Bilateral Agreement; and the International Convention on Mutual Administrative Assistance in Customs Matters (Johannesburg Convention)….  As part of this co-operation, Customs administrations should agree on mutual recognition of control/inspection results and AEO programmes.  2.1.2. General control measures  ii. Risk assessment  In the integrated Customs control chain, Customs control and risk assessment for security purposes is an ongoing and shared process commencing at the time when goods are being prepared for export by the exporter and, through ongoing verification of consignment integrity, avoiding unnecessary duplication of controls. To enable such mutual recognition of controls, Customs should agree on consistent control and risk management standards, the sharing of intelligence and risk profiles as well as the exchange of Customs data.  2.2 Standard 2 – Cargo Inspection Authority  The Customs administration should have the authority to inspect cargo originating, exiting, transiting (including remaining on board), or being transhipped through a country.  2.3 Standard 3 – Modern Technology in Inspection Equipment  Non-intrusive inspection equipment and radiation detection equipment should be available and used for conducting inspections, where available and in accordance with risk assessment. This equipment is necessary to inspect high-risk cargo and/or transport conveyances quickly, without disrupting the flow of legitimate trade.  2.4 Standard 4 – Risk-Management Systems  The Customs administration should establish a risk-management system to identify potentially high-risk cargo and/or transport conveyances and automate that system. **This management system should include a mechanism for validating threat assessments and targeting decisions and implementing best practices**.  2.4.1. Automated selectivity systems  Customs administrations should develop automated systems based on international best practice that use risk management to identify cargo and/or transport conveyances that pose a potential risk to security and safety based on advance information and strategic intelligence. For containerized maritime cargo shipments, that ability should be applied uniformly before vessel loading. Usage of automated selectivity systems in relation to cargo shipments by all types of transport which is necessary due to geographic location of the trading country should be applied during the whole route of cargo from the point of departure to the point of destination.  2.5 Standard 5 - Selectivity, profiling and targeting  Customs should use sophisticated methods to identify and target potentially high-risk cargo, including - but not limited to - advance electronic information about cargo shipments to and from a country before they depart or arrive; strategic intelligence; automated trade data; anomaly analysis; and the relative security of a trader’s supply chain. For example, the Customs-Business Pillar certification and validation of point-of origin security reduces the risk, and, therefore, the targeting score.  2.6 Standard 6 – Advance Electronic Information  The Customs administration should require advance electronic information in time for adequate risk assessment to take place.  2.7 Standard 7 – Targeting and Communication  Customs administrations should provide for joint targeting and screening, the use of standardized sets of targeting criteria, and compatible communication and/or information exchange mechanisms; these elements will assist in the future development of a system of mutual recognition of controls. |

### Identified Gaps

CAUCA and RECAUCA regulate customs-related risk management in a very broad and general way, through the formulation of basic standards on issues such as: definition, analysis and risk management; regional risk criteria; creation of a regional database; methodology, techniques and tools used to identify and evaluate risks.

From an entirely literal standpoint, the regional legislation may be said to match the provisions in TFA Article 7.4. However, for the purposes of the region’s goals and for effective implementation of the TFA, the following gaps exist:

1. The rules are too general and broad. The following are consequences of this:

It impedes efficient risk management;

It introduces discretion, arbitrary / unjustifiable discrimination, and hidden trade restrictions; and,

It leads to the creation of dissimilar types of national treatment to the detriment of the customs union it seeks to create. This situation has been detected and analyzed in the Central American Strategy.

1. Impossibility of regulating an integral risk system. an integral system must include not only customs but also border control entities and the private sector. For this purpose, different selectivity criteria must be incorporated for each of these entities: customs, sanitary, immigration and security criteria. This could be complemented by a parallel instrument.
2. Impossibility of exercising control over non-customs actions and lack of control mechanisms for purely customs actions. The standards are not adequate for fostering the exercise of control by different entities as a single, simultaneous action.
3. Cooperation and Mutual Assistance: It cannot achieve cooperation and mutual assistance with Customs and control entities of other countries.
4. Validation processes are missing for the actions performed and the criteria used.
5. Mechanisms are missing to obtain complete, timely information. This hinders identification of high-risk cargo and operations and leads to random targeting to the detriment of trade facilitation and efficient use of customs resources.

### Recommendations

1. Transmission of information prior to the arrival of merchandise: This is essential for implementing an efficient risk system. It can be achieved at the customs of the importing country by requiring the carrier to electronically transmit the cargo manifest or the Advanced Electronic Declaration. This should occur as far in advance as the legislation requires to carry out the corresponding risk analysis;
2. Customs could use sophisticated methods to identify and select high-risk cargo, including: i) advance electronic information for cargo shipments to and from a country before departure or arrival; ii) strategic intelligence; iii) automated trade data; and iv) evaluation of anomalies;
3. Security of the logistics chain of a commercial agent: For example, certification and validation of origin reduce risk and, therefore, the scope of target selection;
4. Cross-border collaboration between customs authorities in terms of risk analysis and customs control to improve security and expedite the release of merchandise;
5. Selectivity and joint assessment of customs using standardized targeting criteria and compatible communications and/or information-sharing mechanisms;
6. Use of NII equipment and radiation detectors; and
7. Inclusion of validation processes of the selected risks and the and the results of the advanced actions.

In addition, in accordance with the goals in the Central American Strategy for Trade Facilitation and Competitiveness, it is recommended that regulations be drafted to regulate other border entities in relation to:

1. Coordinating risk management for customs control with health, phytosanitary, immigration, and security risk management by incorporating selectivity criteria and combinations between them.
2. Performing simultaneous inspection with technical health control, immigration, and security officials who would have expressed interest in auditing the goods or transport unit. The process should be performed as a “single act” so that the merchandise and transport units are stopped only once, not repeatedly; and
3. Creating a Regional Cooperation Commission dedicated to identifying regional risks and proposing appropriate mitigation measures.

### Gaps and Technological Recommendations

Using technology will reduce physical interventions in general, improving the effectiveness of border controls based on comprehensive risk management that involves the participation and cooperation of all border control institutions and the private sector. To do this, risk management should be established with technological tools that allow each of the border control institutions to minimize physical inspections of goods and exchange information. The actions of the other border entities other than customs can be regulated in a parallel instrument.

Common Technology established by the CADTP:

* Creation of electronic risk profiles to identify security items and improve targeting;
* Electronic database by operator group, with dynamic identification of the risk level (high, medium, or low); and
* Computerized risk system at customs and common IT systems at border control entities.

## Section 7.5 - Post- Clearance Audit

This section refers to the use of post-clearance audits as a trade control and facilitation tool. For it to be effectively applied, risk-based targeting criteria need to be used transparently so that auditees learn the results in a timely, well-grounded fashion and are able to understand their rights and obligations.

In addition, the TFA states that the results of these audits may be used:

* for further administrative or judicial procedures; and
* to feed into risk management system databases.

### Analyzed Regulations

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| CAUCA: 86 and 87  RECAUCA: Articles 5, 8 Section 4, 23, 28, and 48  Central American Strategy for Trade Facilitation and Competitiveness with emphasis on borders  EU-CAAA: Article 118  RKC: Rule 9.8 ; Chap. 6, General Annex |

### Analysis of Central American Regulations and Goals

In general, CAUCA and RECAUCA do not regulate post-audits as a mandatory tool for combining control with rapid release of goods.

In general, CAUCA and RECAUCA merely indicate the term within the post-audit without determining operation selection criteria or the target party or establishing that the results of the risk analysis should be a determining factor in the selection.

### International Agreements

#### EU-CAAA

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| EU-CAAA  Part IV. Trade  Chapter 3. Customs and Trade Facilitation  Article 118. Customs and Trade-Related Procedures  1. The Parties agree that their respective customs legislation, provisions and procedures shall be based upon….  (d) the application of modern customs techniques, including risk management, simplified procedures for entry and release of goods, post release controls, and company audit methods.  Source: Verbatim from European Commission. 2012. EU-CAAA (European Union Central American Association Agreement). Part IV: Trade. http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc\_147664.pdf |

### International Best Practices

#### RKC General Annex Chapter 9

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| Revised Kyoto Convention—General Annex  Chapter 9. Information, Decisions and Rulings Supplied by the Customs  C. Decisions and Rulings  9.8. Standard  At the written request of the person concerned, the Customs shall notify their decision in writing within a period specified in national legislation. Where the decision is adverse to the person concerned, the reasons shall be given and the right of appeal advised.  Source: Verbatim from WCO (World Customs Organization). 2006. RKC (Revised Kyoto Convention). http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/conventions/kyoto-convention/revised-kyoto-convention/body\_gen-annex-and-specific-annexes.pdf?la=en |

#### RKC Guidelines for the General Annex, Chapter 6: Customs Control

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| Revised Kyoto Convention—General Annex Guidelines  Chapter 6. Customs Control  7. Control methods  7.2. Audit-based controls  7.2.1. Post clearance audit  7.2.1.1. Introduction  Post-clearance audit focuses on persons involved in the international movement of goods. It is an effective tool for Customs control because it provides a clear and comprehensive picture of the transactions relevant to Customs as reflected in the books and records of international traders. At the same time it enables Customs administrations to offer the trader facilitation measures in the form of simplified procedures (e.g. periodic entry system).  7.2.1.2. Development of audit programmes  Customs administrations should identify post-clearance audit categories, e.g. importer/exporter, value, foreign trade zone, broker, and carrier manifest, and produce manuals to provide step-by-step guidance for carrying out audits.  7.2.1.3. Selection of persons/companies for audit  The selection of persons/companies for audit should be based on risk profiles (see Section 6.2.2). Audits should generally be conducted for compliance verification purposes in the areas of valuation 2, origin, tariff classification, duty relief/drawback/remission programmes, etc., but other areas should be targeted as necessary. Depending on the profile of the auditee and its business (e.g. type of business, goods, revenue involved, etc.) the audit may be conducted on a continuous, cyclical or occasional basis.  7.2.1.4. Annual audit planning  Audit planning should take place every year, taking into account the availability of the auditor or audit team, in relation to work in progress and the start of new audits. Each audit area could be assigned standard hours of completion and each available auditor or audit team hour could be calculated in order to determine how many audits can be performed by each auditor or audit team in a given year. Alternatively, each stage of the audit activity could be broken down into time blocks in order to measure productivity against time spent. Both methods allow Customs to allocate resources effectively.  7.2.1.5. Audit process  Post-clearance audit places great emphasis on professionalism in the conduct of a review and the examination of the auditees’ books and records. From pre-audit planning to completion, it is essential to maintain communication and co-ordination with the auditee and with other interested parties in Customs. A report should be produced to ensure that all findings and other relevant issues are fully shared and discussed. Follow-up visits may be needed.  7.2.2. Traders’ systems audit  7.2.2.7. Report  The outcome of the audit will usually be a report to senior management which will make recommendations as to how identified weaknesses can be eliminated or controls tailored to be more effective. Controls can even be discarded if they are seen to be irrelevant in a particular situation.  Note: Emphasis added. |

### Identified Gaps

CAUCA and RECAUCA do not provide for mandatory post- clearance audits in the terms established by the TFA. This is a gap in relation to the TFA.

CAUCA and RECAUCA also do not provide for “immediate” notification of the auditee of the audit results, grounds for the opinion, and the auditee’s rights and obligations. Interested parties should therefore follow the general standards for this matter.

On the other hand, it is not expected that the information obtained in the audit may be used in administrative or judicial proceedings or that serve to feed risk profiles, useful in the elaboration of databases. Although this does not constitute a gap, this breach does not contribute to achieving regional goals and effective compliance with the TFA.

### Recommendations

1. Complement the post-control mechanism that appears briefly regulated in CAUCA and RECAUCA, incorporating in the Central America legislation some RKC Guidelines that satisfy the requirements of the TFA:’

Identify post-clearance audit categories associated with parties, goods, or operations (for example, importer/exporter, value, foreign trade zone, customs assistance, cargo manifest, economic sectors, and customs regimens).

Preparation of manuals: Customs should first prepare manuals to provide auditors with audit guidance.

1. Risk Profiles: selection of people, companies, sectors or regimens for audit control should be based on risk profiles. The audit should verify compliance with the law in areas of valuation, origin, tariff classification, duty relief/drawback/remission programs, etc. and other areas deemed to be necessary.
2. Coordination and communication during the audit. In the post-clearance audit, review and verification of documents, books, records, and accounting entries belonging to the auditees is extremely important. From pre-audit planning to completion, it is essential to maintain communication and coordination with the auditee and with other interested parties in customs.
3. Report Preparation. When the audit is finished, a report should be produced to ensure that all findings and other relevant issues are fully shared and discussed by all the participants. The information in the audit may be used in later administrative or judicial proceedings.
4. Next steps: If the result of the audit shows noncompliance by the audited company, a well-grounded resolution should be issued. Notice of the resolution should be served and if the auditee is sanctioned, he should be advised of the appeals provided by customs legislation.

### Gaps and Technological Recommendations

According to the CADTP, a regional database should be established with interconnectivity and interoperability allowing for exchange of information and findings among all control institutions in the region.

This regional database should allow interpretive access to the statistical flow with criteria established for later control.

## Section 7.6 - Establishing and Publishing Release Time Periods

This best endeavor regulation encourages customs and the border entities to periodically and systematically calculate and publish average time periods for release of goods. It also encourages countries to share their experiences in the WTO Trade Facilitation Committee, with the task of making such measurements.

### Analyzed Regulations

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| CAUCA articles 17 and 28  RECAUCA  Central American Strategy  SAFE Framework  CAFTA-DR: Article 5.2. |

### Analysis of Central American Regulations and Goals

Neither CAUCA nor RECAUCA contain legal provisions obliging the countries to publish average time periods for release of goods, nor do they urge them to use tools such as, for example, the WCO study on the time needed for release. Nor does it include provisions requiring countries to periodically and uniformly review these deadlines.

The Central American Strategy contains a CBM model that will undoubtedly have an effect on decreasing release times for goods. However, it does not suggest the ideal average time for release.

The short-, medium- and long-term measures for the implementation of the CBM model propose establishing measurement and evaluation indicators. The indicators will take into account, among things, elements such as the differentiation between the main flows of trade of export, import and transit and its application to each border point of the countries (ports, airports and land border crossings). Consequently, it is considered that through these indicators, the average delivery times of the merchandise could be quantified.

### International Agreements

CAFTA-DR Article 5.2 establishes a 48-hour period for release:

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| Article 5.2: Release of Goods  1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties.  2. Pursuant to paragraph 1, each Party shall ensure that its customs authority or other competent authority shall adopt or maintain procedures that:  (a) provide for the release of goods within a period no greater than that required to ensure compliance with its customs laws and, to the extent possible, **within 48 hours of arrival**;  (b) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities; and  (c) allow importers to withdraw goods from customs before and without prejudice to the final determination by its customs authority of the applicable customs duties, taxes, and fees.  Note: Emphasis added |

### Identified Gaps

Although the TFA does not literally require it, to the extent that CAUCA and RECAUCA lack provisions obliging countries to publish the average deadline for the release of goods, the region strays from effective compliance with the TFA. Nor do they include provisions that force countries to periodically and uniformly review these time periods.

### Recommendations

Provisions should be created that includes the obligation of the countries to calculate and publish the corresponding average terms of release in order to inform interested parties about the average duration of this procedure and to provide indicators that allow to know the possible advances or future setbacks in terms of lifting times.

Likewise, the obligation should be included for member countries to share their experiences, through their Trade Facilitation Committees, in average release time calculation, methods used, and problems and effects must be included. These experiences should also be channeled into the Trade Facilitation Group created by COMIECO.

## Section 7.7 - Authorized Economic Operators (AEOs)

TFA Article 7.7 regulates AEOs through a series of provisions. The first provision defines them as operators who meet pre-established criteria and qualify for preferential trade facilitation measures. The second provision sets out the criteria to be met in order to qualify as an AEO. The third establishes the benefits deriving from this classification. Complementarily, subsequent provisions point out the importance of implementing international guidelines and negotiating mutual recognition agreements with WTO members, and the advisability of exchanging information about the aforementioned systems.

Indeed, Article 7.7 provides that at least three of the following measures should apply to AEOs:

i) reduced documentation and data requirements;

ii) low inspection index;

iii) quick release;

iv) use of comprehensive or reduced security;

v) a single customs declaration for all imports or exports within a given period;

vi) deferred fee and tax payment; and

vii) release of goods at all authorized operator locations or at a site authorized by customs.

This section includes six subsections that are analyzed jointly:

* **7.7.1.** Additional trade facilitation measures for authorized operators;
* **7.7.2**. Specified criteria for qualifying as an authorized operator;
* **7.7.3.** Minimum measures for AEOs;
* **7.7.4**. Creation of systems based on international standards;
* **7.7.5**. Ability to negotiate mutual recognition agreements; and
* **7.7.6**. Information exchange.

### Analyzed Regulations

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| CAUCA 17, 28  RECAUCA 54, 55, 159 to 166 BIS and Resolution 368/15  Central American Strategy for the Facilitation of Trade and Competitiveness with an Emphasis on Borders  RKC and SAFE Framework  CAFTA-DR |

### Analysis of Central American Regulations and Goals

Central American laws regulate the subject in CAUCA (RECAUCA, modified by Resolution 368/15). CAUCA, on the one hand, introduces the concept of AEOs in Central America and, on the other hand, generally establishes the ability of the different countries’ customs services to develop mutual recognition systems for controls and procedures to facilitate import, export, and transit of goods. After reiterating AEO compliance and reliability, RECAUCA regulates the matter by establishing operator requirements and obligations, covering all the criteria established by Article 7.2 of the TFA for qualifying as an operator, as shown in the table below.

Likewise, when it indicates the regulation that the customs service must establish in the matter of security of the logistics chain management, it includes the same criteria indicated in the SAFE Framework: Partnership, Security, Authorization, Technology, Communications, and Facilitation.

In these aspects, Central American laws comply with the best practices recently recommended by the WCO.

#### AEO Requirements and Obligations

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| TFA Article 7.2 | Article 163 RECAUCA Requirements | Article 165 RECAUCA Obligations |
| Appropriate history of compliance with the laws | Have demonstrated conformity to the legal, tax, and customs framework for three consecutive years, using the record provided by the competent authorities as a reference. | - |
| Record tracking system that allows internal controls | Have an adequate administrative management system in place for tracking trade operation records, making customs controls possible. | Periodically review security measures and procedures according to defined risks…  Adopt appropriate security measures for information technology to ... ensure security and proper preservation of records and documents concerning customs operations subject to control. |
| Financial Solvency | Have sufficient financial availability. | - |
| Supply chain security | Have appropriate security and protection measures with regard to cargo, staff, business partners, information technology, transportation, and facilities, as well as staff training and awareness raising. | Implement international logistics chain security measures. |

The Central American Strategy establishes the concept of reliable operators as one of the fundamental pillars of the CBM model:

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| Coordinated Border Management Model  The purpose of reliable operators is to reduce fiscal risk and increase logistics chain security. Proposed strategic actions include providing an incentive for implementing and strengthening AEO programs, integrating border control institutions and aligning them according to the minimum standards of the Standard Framework of the World Customs Organization (WCO). Two main projects are identified in this component:   * Installation of the adjusted version of the WCO Authorized Economic Operator (AEO) program to increase the number of certified companies. * Capacity building for auditing compliance with the conditions needed to obtain AEO certification, with the goal of moving forward on installing groups of specialized technical officials suitable for training in processing auditing techniques, so they not only take action while inspecting for certification but also assist, support, and steer companies in their attempts at inward processing. |

### International Agreements

CAFTA-DR: The AEO concept is not included.

EU-CAAA: In Chapter 3 of the EU-CAAA, the parties agree that their laws, procedures and administrative dispositions regarding customs, are based as far as possible on the standards of the WCO, the SAFE Framework and the RKC. These instruments contain provisions related to the AEO.

### International Best Practices

#### RKC special programs for authorized parties:

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| General Annex, Chapter 3  3.32. Transitional Standard  For authorized persons who meet criteria specified by the Customs, including having an appropriate record of compliance with Customs requirements and a satisfactory system for managing their commercial records, the Customs shall provide for:   * release of the goods on the provision of the minimum information necessary to identify the goods and permit the subsequent completion of the final Goods declaration; * clearance of the goods at the declarant's premises or another place authorized by the Customs; * and, in addition, to the extent possible, other special procedures such as:   allowing a single Goods declaration for all imports or exports in a given period where goods are imported or exported frequently by the same person;  use of the authorized persons’ commercial records to self-assess their duty and tax liability and, where appropriate, to ensure compliance with other Customs requirements;  allowing the lodgement of the Goods declaration by means of an entry in the records of the authorized person to be supported subsequently by a supplementary Goods declaration. |

#### SAFE Framework

The SAFE Framework indicates that the AEO is an integral part of the international merchandise movement recognized for being in compliance with WCO standards or equivalent standards concerning logistics chain security. AEOs may be manufacturers, importers, exporters, Customs Brokers, carriers, grouping operators, intermediaries, port operators, airport or terminal operators, integrated transport operators, warehouse operators, distributors, and transport operators.

The related criteria, prerogatives, obligations, standards, and technical specifications are developed in Pillar 2 of the Framework called Customs-Enterprise in Annex IV. The purpose is to create an international system to identify private companies that provide supply chain security guarantees. Therefore, it establishes criteria so companies in the supply chain may strive to be authorized companies that are recognized as “trustworthy partners.” These criteria have to do with threat assessment, a security plan adapted to the assessed threats, a communications plan, measures to avoid irregular or undocumented goods from joining the international supply chain, the physical security of the facilities used as loading sites or warehouses, container and cargo security, transportation media security, and information system protection, etc.

The benefits accruing to operators include fast low-risk cargo movement through customs, greater security levels, improved logistics chain costs through security efficiency, an enhanced organizational reputation, greater business opportunities, a better understanding of customs requirements, and improved communication between AEOs and the customs administrations.

For joint preparation of programs by customs and companies, the SAFE Framework proposes the following technical standards and specifications:

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| Section IV. Pillar 2 – Customs-to-Business  2. Standards and Technical Specifications for Implementation  2.1 Standard 1 – Partnership  Authorized Economic Operators involved in the international trade supply chain will engage in a self-assessment process measured against pre-determined security standards and best practices to ensure that their internal policies and procedures provide adequate safeguards against compromise of their supply chains until cargo is released from Customs control at destination.  2.2 Standard 2 – Security  Authorized Economic Operators will incorporate pre-determined security best practices into their existing business practices.  2.3 Standard 3 – Authorization  The Customs administration, together with representatives from the trade community, will design validation processes or quality accreditation procedures that offer incentives to businesses through their status as Authorized Economic Operators….  2.4 Standard 4 – Technology  All parties will maintain cargo and container integrity by facilitating the use of modern technology.  2.5 Standard 5 – Communication  The Customs administration will regularly update Customs-Business partnership programmes to promote minimum security standards and supply chain security best practices.  2.6 Standard 6 – Facilitation  The Customs administration will work co-operatively with AEOs to maximize security and facilitation of the international trade supply chain originating in or moving through its Customs territory. |

The systems that are part of the Customs Pillar-Enterprise of the SAFE Framework have accreditation based on customs routines that use information technology to facilitate procedures associated with trans-border trade and that offer special benefits to importers, exporters, brokers, carriers, messengers, and other qualifying services. The AEO security requirements are based on Standard 2 of the Customs Pillar - Private Sector (Security) and Annex III (AEO conditions, requirements and benefits) of the SAFE Framework.

**Private sector trade facilitation and benefits methods are based on Standard 6 of the Customs Pillar - Private Sector (Facilitation).**

1. **Mutual recognition:** According to the SAFE Framework, mutual recognition is a concept by means of which a measure or decision taken, or an authorization granted by the customs of a country is recognized and accepted by the customs service of another country. The authorization of the AEO facilitates the creation of international systems of mutual recognition at the bilateral, sub-regional, and, in the future global levels.

It also indicates that, for a mutual recognition system to work, the following are essential:

AEO programs must be compatible and follow the standards and principles established in the SAFE Framework;

A set of standards including solid provisions for both customs and AEOs must be accepted;

The standards must be applied uniformly so that one Customs administration can confide in the authorization granted by another Customs administration;

If the certification process is delegated to an authority designated by a Customs administration, a mechanism and standards must exist for that authority; and

There must be laws allowing for implementation of a mutual recognition system.

### Identified Gaps

1. Incentives: The incentives for AEOs provided in RECAUCA are inferior to the incentives included in TFA Article 7.3 and in the RKC. This has the effect of reducing program usage:

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| TFA Article 7.3 | RECAUCA, Article 166 | RKC Transitional Standard 3.32 |
| Reduced documentation and data requirements. | Fast, simplified procedures to release cargo with a minimum of information. | Release of the goods on the provision of the minimum information necessary to identify the goods and subsequent final goods declaration. |
| Low index of physical inspections and examinations. | Reduction in the percentage control of their declarations and cargo. | - |
| Quick release | Possibility of being considered as the first choice in testing new projects for Customs Service facilitation.  Priority in customs controls to which their declarations or cargo are subject.  Personalized assistance by the Customs Service. | - |
| Deferred payment of fees, taxes, duties, and charges. | Not included. | Payment of fees and taxes using their own trade records. |
| Use of comprehensive security or reduced security | Not included. | - |
| A single customs declaration for all imports or exports within a given period | Not included. | A single goods declaration for all exports and imports within a given period. |
| Merchandise release at the authorized operator’s premises or another place authorized by the Customs. | Merchandise release at the authorized economic operator’s premises or another place authorized by the Customs. | Clearance at the declarant’s premises or another place authorized by the Customs. |

Annex IV of the SAFE Framework establishes additional benefits. They are not mandatory, and they are included in the framework to illustrate to countries the additional incentives that may be granted to AEOs.

1. Mutual recognition: RECAUCA allows the application of mutual recognition among the Party States through special agreements. However, it is not mandatory and uniformly applied standards are needed in all the countries for it to be implemented:

The standards must be applied uniformly so that one customs administration can trust an authorization granted by another customs administration; and

If the certification process is delegated to an authority designated by a customs administration, a mechanism and standards must exist for that authority.

1. The current standard does not include the possibility of mutual recognition among border control entities: In addition to the fact that it would exceed the scope of application of CAUCA, there is no special agreement that provides for mutual recognition by these entities. One of the reasons may be that national laws are not fully in line with the minimum standards of the WCO Standards Framework.

This is a significant gap with respect to the regional goals and effective implementation of the TFA. Mutual recognition in health matters, based on a harmonized control system with coordinated certification and inspection standards among countries is a key facilitation and safety measure of great importance for the international logistics chain. This should be regulated in parallel agreements.

### Recommendations

1. Clearly define, increase and harmonize at a regional level the customs benefits that can be granted to AEOs, such as companies that comply with the safety standards of the international logistics chain and with best practices. The TFA provides for minimum benefits in addition to those established in Central American legislation that could be considered, among others, by the countries for purposes of harmonization: i) deferred payment of duties, taxes, fees and charges; ii) the use of global guarantees or the reduction of guarantees established in general; iii) presentation of a single customs declaration covering all imports or exports made during a given period.
2. Standardize AEO licensing conditions. As a prior step for mutual regional recognition of AEOs, countries should agree to standardized conditions, guarantees, and other licensing requirements.
3. Create a regional mutual recognition system for AEOs, to allow, through bi-national or regional agreements, for measures or decision taken or authorizations granted by the Customs in one country to be accepted and acknowledged by the customs authorities in another country, provided that agreements are reached for meeting the following assumptions:

AEO programs must be compatible and follow the standards and principles established in the SAFE Framework;

A set of standards is accepted that includes solid provisions for both customs and the AEO;

The standards are applied uniformly so that one customs administration can trust an authorization granted by another customs administration; and

If the certification process is delegated to another authority designated by a customs administration, a mechanism and standards exist for that authority.

1. The recommendation is reiterated in the sense that special laws should be enacted at the Central American level for all border control entities, other than customs, providing for qualification and mutual recognition of AEOs by these entities prior to signing of relevant inter-institutional agreements and compliance with the generally required assumptions.

## Section 7.8. Express Shipments

The TFA contains provisions for the importation of documents and goods by operators of express delivery services by air and other express consignors. The obligations extend to customs and also to operators and owners of airports. The main TFA provisions for urgent shipments include:

1. Adopt or maintain quick release procedures, at least, for any goods entering through air cargo facilities and for any party requesting such treatment, maintaining customs control.

If the members use criteria that limit the parties allowed to submit applications, the member is authorized, based on published criteria, to require: adequate infrastructure; submission of the necessary information prior to arrival of the express shipment; payment of fees the amount of which is limited to the approximate amount of the services provided; provision of services and exercise of a high degree of control on express shipments from pickup to delivery; assumption of responsibility for paying taxes and fees to the customs authority; a good history of compliance with customs and other standards; and compliance with other conditions directly related to compliance with standards;

1. Reduce to a minimum the documentation required for release and, if possible, allow release based on a one time submission of information: this will allow release as quickly as possible after arrival provided that the required information is submitted; efforts will be made to apply this treatment to shipments of any weight or value, recognizing that a member may demand additional procedures for entry, including submitting declarations and justification documentation and payment of fees and taxes, and to limit this type of treatment based on the type of goods (provided that the treatment is not applied solely to low value goods); and,
2. Provide, to the degree possible, a shipment value and a minimum taxable quantity that is exempt from the collection of customs duties and taxes, except for determined goods (this provision excludes internal taxes applicable to the members in a fashion compatible with the 1994 GATT).

The above does not affect the members’ right to examine, retain, confiscate, seize, refuse entry, or perform audits after the goods are released.

### Analyzed Regulations

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| CAUCA: Articles 108, 110, and 116  RECAUCA: Articles 87, 120, 147, 148, 212, 258, 282, 356, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 571, 572, 573, 574, 575, 576, and 577.  RKC: Specific Annex J / Chapters 2 and 5  CAFTA-DR: Articles 5.7 and 11.13 |

### Analysis of Central American Regulations and Goals

CAUCA contains a legal provision establishing what is understood by express shipments, including goods that, due to their nature or because of a justified need, must be released quickly or preferentially, as well as goods entering under the express delivery or courier system. RECAUCA classifies express shipments into aid shipments, shipments requiring quick release due to their nature, and goods entering under the express delivery or courier system.

For aid shipments, RECAUCA contains a release procedure that allows for accelerated release with authorization by a Customs official and gives 20 days for later submission of the information and documentation to prepare the official declaration.

Shipments requiring express release due to their nature include, but are not limited to, goods such as vaccinations, medicine, perishable material for immediate use or material indispensable for a person or hospital, etc.; the customs service will submit the goods declaration to minimum mandatory processing for ensuring tax interests.

Likewise, RECAUCA authorizes customs to process, as a matter of course:

* express shipments because of their nature;
* express shipments due to a properly justified need;
* definitive imports of goods based on a verbal request by the consignee who must provide customs with the information in the necessary documents.

For the type of express shipments based on the nature of the goods, the possibility is provided of transmitting a pre-declaration and of requesting express release, provided that a medical statement or a statement from a competent authority is provided as to the need for the goods to be used immediately. Otherwise, submission of a pre-declaration is not expressly provided for any express shipments based on a duly justified need.

For express delivery or delivery by courier, RECAUCA contains a special section for companies registered as express delivery companies, indicating the type of goods that may be included in this mode:

* correspondence or documents;
* taxable shipments: Shipments subject to tax payment must have a customs **value lower than or equal to 1,000 Central American pesos** or they must be samples with no commercial value. The express delivery or courier company has a six-hour period to submit the simplified goods declaration; and
* shipments not eligible for simplified processing.

After the joint analysis of articles 559 to 566, the conclusion may be drawn that shipments by courier are not linked to the standards provided for express shipments, which creates confusion because there may be emergency courier shipments which, not being documents, may also receive the benefits of express shipments.

### International Best Practices

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| Main Provisions that Should be Included in the Laws or Regulations on Express Shipments  The fundamental provisions are found in two sections of the U.S. regulations, the one on administrative matters and the one on procedures.  The section on administrative matters establishes the standards that must be met by companies to act as express shipment operators in the United States. It includes provisions to promote equity and coherence such as those on definitions and the conditions for qualifying as an express shipment operator. The administrative provisions also include itemized information about the requirements to participate as an express shipment expediter, the procedure to file an application, the procedure to file a motion for appeal against a decision concerning the status of express shipment expediter, the circumstances that give rise to a loss of that classification, and the payment of fees for maintaining the status of express shipment expediter.  The section on procedures includes the standards applicable to shipments using express delivery programs. It includes the restrictions on manifests and goods entry. (The United States does not place restrictions on the types of goods that may enter as express shipments, or provide weight or value limitations.) The section on procedures also provides details about de minimis goods reporting and goods meeting the conditions for informal handling and formal entry requirements….  Two other fundamentally important factors are required to make an express shipment system functional and practical: 1) a de minimis value; and 2) unrestricted transit of the different types of goods through this channel, without establishing any arbitrary weight or value limitations. To solve practical problems that affect this transport and distribution system, a mechanism needs to be established that allows entry as part of a franchise regime with formalities for all goods with a value lower than or equal to a *de minimis* value. The cost, which is a small percentage of the implied and uncollected revenue, is offset by savings in human resources and information technology. Processing thousands of air bills of lading with a *de minimis* value in the technological systems and the pertinent examination by employees is ineffective and a waste of resources, and reduces the success of the results. In addition, shipments subject to complete customs declarations have the same procedural rights as shipments with a greater volume that are more valuable. Exercising procedural rights requires time and resources – in other words, money – which, once again, is neither efficient nor effective cost-wise. In addition, express release of these kinds of goods is hugely beneficial for all traders; it signifies time and resources for express shipment operators and in particular for importers on the receiving end.  Limitations on types of goods based on determined weight or value limits are not an effective way to address safety concerns or to comply with customs regulations. When there are concerns about shipping goods that exceed a determined weight, the regulations issued by the air transport sector may apply. They indicate the weight limitations for goods transported by air. These concerns do not have to be addressed by the customs administrations. In relation to a value limit, some valuable items may be the most difficult to transport and deliver quickly. If a high-cost item for an unused or damaged machine is denied urgent delivery, the loss in terms of production and manufacturing may be exponential.  All customs services must perform their functions quickly to reduce release times while at the same time protecting revenue collection and ensuring the safety of people and goods. These two objectives may only be reached by an effective risk management program with resources allocated to the goods and parties running the most risk. Establishing a *de minimis* margin and risk management methods to address concrete concerns related to weight or value are more effective means for customs administration than making worldwide goods movement and movement growth more difficult. Establishing *de minimis* margins allows members to know the number of shipments that meet the requirements, obtain necessary information, and implement any type of justified customs control at any time without imposing an onerous burden on human and information technology resources with goods having a relatively low effect on revenue collection.  Source: INT/SUB/2673: Optimal practices for facilitating trade in using Express Shipments. United States of America. Emphasis added. |

### International Agreements

CAFTA-DR Article 5.7 establishes a regulation that could be used as best practice:

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| Article 5.7: Express Shipments  Each Party shall adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall:  (a) provide a separate, expedited customs procedure for express shipments;  (b) provide for the submission and processing of information necessary for the release of an express shipment before the express shipment arrives;  (c) allow submission of a single manifest covering all goods contained in a shipment transported by an express shipment service, through, if possible, electronic means;  (d) to the extent possible, provide for clearance of certain goods with a minimum of documentation; and  (e) under normal circumstances, provide for clearance of express shipments within six hours after submission of the necessary customs documents, provided the shipment has arrived. |

### Identified Gaps

Additional requirements: In principle, RECAUCA Article 560 expressly provides simplified procedures and the minimum documentation and processing for shipments that by nature require express release. However, when articles 561 and 562 are interpreted jointly, they show that, unless customs declares ex- officio that a shipment should be express, the interested party is responsible for requesting and proving such a declaration using the necessary documents, which contradicts the facilitation mandate provided in the previous article and in the TFA. Specifically, Article 562 allows for a pre-declaration “provided a statement by a physician or the competent authority demonstrating that the goods are essential and must be used immediately is submitted with the pre-request.”

Pre-declaration: The provisions of Article 562 represent a clear gap for the region’s general goals and effective application of the TFA, firstly because a pre-declaration should be a tool used in special cases requiring urgent processing, not just to allow fast, simple processing but also to enable proper use of risk management systems. Secondly, a request for additional requirements to justify the urgency is contrary to mandate for simplification and speed referred to in the TFA.

Inappropriate Use of the *De Minimis*: Article 566 c) excludes from simplified, express release any shipments not included in the document categories or those that do not fall below the *de minimis*. Using the *de minimis* as a limitation for processing goods constitutes a gap in relation to international best practices and effective application of the TFA because *de minimis* should not be used to restrict procedural simplicity and speed, but rather to collect fees and taxes. Limitations should be based on the type of goods and the use of risk management systems.

In essence, the TFA’s express mandate is the following:

“... they will strive to apply the treatment provided in sections a) **minimum documentation** and b) **quick release** **to shipments of any weight or value** recognizing that a Member is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to **limit such treatment based on the type of good, provided the treatment is not limited to low value goods** such as documents;”

Courier Services:

1. Regular, non-simplified processing: Article 566 c) states that shipments that cannot be classified as correspondence or documents, samples or shipments with a customs value lower than or equal to one thousand Central American pesos (*de minimis*) will not be subject to simplified processing. This exclusion from simplified processing based on value rather than risk constitutes a gap in the general TFA mandate.
2. Article 565 provides customs officials (based on the definition of “Customs Authority” in Article 4 of CAUCA) with the discretionary power to:

authorize express delivery companies to perform separation and release operations for shipments in areas located in a customs control area, requiring them to keep for this purpose computer equipment with the necessary connections to the customs service information technology system; and,

assign customs officials permanently or when needed, based on risk criteria, to such places.

This is poor practice because it leads to discretion and a consequent lack of transparency and predictability in the operation of these services.

### Recommendations

1. Process simplification and expedited release should be the general norm governing express consignments whether or not they are sent through a courier. We recommend that simplification and quick processing should not be differentiated on the basis of the person delivering the goods or the value of the goods, but rather according to the nature or request for express treatment.
2. Couriers:
3. Updated and easily updatable standards: CAUCA and RECAUCA should only contain general standards for maintaining regional uniformity in the basic matters of licensing, operations, and security, and a mandate to use risk management systems. A standard should be drafted that makes it possible to quickly and efficiently adopt the growing and changing technological tools that may be used by courier companies to expedite release of their goods and to exercise more efficient controls.

Replacement of the Customs officials’ discretionary powers with efficient use of risk management and NII systems: the standard should be clear and should leave no room for Customs officials to exercise discretion. Risk management systems used in conjunction with pre-declarations, electronic documentation and NII methods is essential for this.

A pre-declaration accompanied by documents in an electronic version should be the general rule in all cases, regardless of the value or nature of the goods.

Authorized Economic Operator: Couriers should be able to qualify as AEOs with reciprocal recognition throughout the region.

## Section 7.9 - Perishable Merchandise

This article establishes particular obligations for the countries, which may be summarized as follows:

1. To prevent losses or inevitable deterioration of this type of goods, provided that the regulations have been followed, each country will provide:

for perishable goods to be released as quickly as possible under normal circumstances; and

for goods to be released outside the regular work hours of customs and the competent authorities under exceptional circumstances where “it must be done this way.”

1. Each country will prioritize perishable goods when scheduling any necessary inspections.
2. Each country should adopt provisions for proper storage of these types of goods while waiting for release or should allow the importer to adopt them, in which case the facilities may have to be approved or designated by the competent authority.

Moving these goods to storage facilities may be subject to approval by the competent authorities. When it is feasible and compatible with national laws, the member will provide procedures for the release to take place at these facilities.

1. The importing country will facilitate communication about the reasons for delay, upon request, in the event of a major delay in releasing perishable goods.

### Analyzed Regulations

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| CAUCA:  RECAUCA: Articles 103, 233, 235, 258, 289, 353, 497, and 559  Central American Strategy for Trade Facilitation and Competitiveness: 3.1. Priority short-term measures.  RKC: General Annex / Chapter 3: Standard 3.34; Specific Annex A / Chapter 1: Recommended Practice 14, Recommended Practice 18, and Standard 19: Specific Appendix D / Chapter 1: Standard 11  CAFTA-DR: 5.2  EFTA-CA: Articles 12.3, 12.4 Annex VII: Article 5 |

### Analysis of Central American Regulations and Goals

CAUCA does not expressly refer to special, quick handling of the release of perishable goods.

In relation to the release and clearance of goods, RECAUCA prioritizes release of hazardous, perishable, or easily decomposable goods. Likewise, RECAUCA includes several legal provisions for handling perishable goods, such as allowing perishable goods to be loaded or unloaded in unauthorized places at the request of the legal representative, consignee, or carrier. It also limits storage for this type of goods in cases where there is a risk of deterioration that may cause damage to other goods.

### International Agreements

Neither the CAFTA-DR nor the EU-CAAA contain provisions in line with the TFA. Nor do they contain provisions that may constitute best practice.

### International Best Practices

The RKC General Annex, Chapter 3, establishes a priority for processing perishable goods:

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| 3.34. Standard  When scheduling examinations, priority shall be given to the examination of live animals and perishable goods and to other goods which the Customs accept are urgently required. |

### Identified Gaps

In relation to operating hours, RECAUCA does not establish special schedules for handling perishable goods. There is only one standard that leaves open the possibility of providing special services to any type of goods when necessary, though it leaves this decision up to customs.

Expedited release: RECAUCA does not contain any regulation that expressly and directly regulates quick release of perishable goods. Nor does it expressly establish the priority for inspecting this type of goods. It is left to Customs to decide.

Special schedules: There is no express regulation for Customs to establish extended hours for releasing perishable goods.

Explanation of delays: Neither CAUCA nor RECAUCA contain any provision concerning delays.

The lack of provisions expressly regulating the contents of the TFA represents a definite gap for effective application of the TFA.

### Recommendations

1. Expedited release: We recommend that pre- arrival declarations be used to the degree possible and that advance transmission of the manifest in electronic format be mandatory. This allows not only for quick release of the goods but also for use of a risk management system.
2. Special hours: Extended hours should be established for the release of perishable goods for all authorities involved in the release.
3. Infrastructure: Perishable goods importers should be authorized to use their own storage facilities after the facilities have been approved by the competent authorities. Likewise, countries should create separate infrastructures at the border posts, ports and airports for preferential release of perishable products.
4. CBM: A specific obligation should be included for customs and the other border entities to coordinate with each other to expedite the release of perishable goods.
5. Explanation of delays: We recommend that a provision be included requiring Customs to justify delays to the importer, upon request, giving an explanation whenever there is a major delay in releasing goods.

# Article 8 - Cooperation Among Agencies Involved in Border Controls

This article refers to the cooperation that should exist between the different entities of a country that exercise border controls, as well as cooperation between countries that share borders. In this regard, the cooperation and coordination referred to in the TFA should include compatibility of hours and procedures, the use of joint services and controls and the establishment of a single customs control per border crossing.

## Analyzed Regulations

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| CAUCA: Art. 10  RECAUCA: Art. 235  Central American Strategy (as a whole)  CAFTA-DR  EU-CAAA: Art. 53 and 119  SAFE Framework  COMRIEDRE 65 |

## Analysis of Overall Regional Regulations and Goals

CAUCA and RECAUCA do not sufficiently develop these matters. The lack of proper regulation in this matter, coupled with the imperative need to achieve effective coordination at borders, led the region to work hard on a solution and targets for achieving it. These targets are outlined in the Central American Strategy.

Although the Central American Strategy is not a binding legal document, it is an agreement among countries to work together and achieve a series of specific objectives necessary for the region:

**Central American Strategy - Coordinated Border Management - (GCF)**

The Central American Strategy has identified factors that directly affect the region’s performance and prevent cooperation and coordination of control tasks by national and border authorities. The following obstacles were identified:

* lack of a mechanism for comprehensive information exchange between border control institutions at national and regional levels;
* lack of a regulatory framework for cooperation and coordination among border control institutions at national and bi-national levels;
* lack of an integrated system to identify, analyze and manage risks involving all national and regional control entities; and
* poor or no coordination in carrying out control and inspection activities between countries.

The model suggested by the Central American Strategy is based on eight pillars. Its objective is to promote coordination of public and private sector agencies and improve collections, control, security and facilitation of transit. These eight pillars should be adopted jointly and in coordination between border peers and country peers:

1. Adoption of international standards to guide conceptual work (TFA10.3);
2. Promotion of interoperability of information (TFA 7.1 and 10.4);
3. Exercising of controls based on comprehensive risk management (TFA 7.4);
4. Reliable economic operators (TFA 7.7);
5. Quarantine control (TFA 5);
6. Reforming of border infrastructure and equipment;
7. Coordination and integration of control procedures (TFA 8); and
8. Attention to the impact of reforms on border communities.

In turn, these eight pillars are broken down into plans covering three cross-cutting areas:

1. **CADTP**

The CADTP is an ongoing initiative to achieve interoperability of national and regional systems for the integration of customs, migratory, and one-stop information processes. The idea of this mechanism is to achieve the following objectives:

Trade record management (exchange of data on trade operators);

Risk management (harmonization of criteria, profiles and risk detection processes);

Declaration management;

Information exchange between national authorities;

Regional one-stop platform;

Migration platform;

Business intelligence services;

Optimization of interoperability for all countries in the region.

1. **Classification of border posts** according to their functional characteristics, geographical service demands, etc. Once border posts have been classified, reform proposals will be developed and implemented at a bi-national level at each border crossing, according to their classification (single office, double office, integrated, shared use, etc.)
2. **Strengthening of National Committees and the Trade Facilitation Group**

### International Agreements

CAFTA-DR does not have any relevant standards.

Article 119 of EU-CAAA requires countries to ensure cooperation and coordination in their territory of all authorities and agencies concerned, in order to facilitate transit traffic and promote cross-border cooperation.

Article 53 of EU-CAAA establishes a clear mandate for the parties to facilitate coordination between the parties’ customs authorities to ensure simplification of customs procedures and facilitation of legitimate trade without undermining their control capabilities. Specifically, it obligates the parties to promote coordination among all relevant border agencies both internally and across borders. It also requires the exchange of information in the following areas:

* Simplification and modernization of customs procedures;
* Facilitation of movements in transit;
* Enforcement of intellectual property rights by customs;
* Relationships with the business community; and
* Free movement of goods and regional integration.

### International Best Practices

The SAFE Framework includes a new pillar to foster cooperation between customs and other government bodies to ensure an efficient response to facilitation and control of the international logistics chain. In effect, this framework sets forth the following objectives, which complement the Central American Strategy:

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| Section V. Pillar 3 - Customs to Other Government and Inter-Government Agencies  2. Standards and Technical Specifications for Implementation  Cooperation within Government  2.1 Standard 1 - Mutual Cooperation  Governments should foster mutual cooperation between their Customs administration and other competent government agencies.  2.1.2. Cooperation between Customs and Aviation Authorities  ….Customs should encourage aviation security authorities to recognise the role consignment level Customs risk analysis may play in air cargo security….  2.1.3. Cooperation between Customs and Maritime and Port Security Authorities  Customs should establish mutual cooperation with the maritime (including inland water ways) and port security authorities….with regards to areas such as the initial security assessment procedure, exchange of available and appropriate information and where possible alignment of compliance controls and follow-up activities.  2.1.4. Cooperation between Customs and Land Transportation Authorities  Customs should establish mutual cooperation with land transportation authorities in relation to transportation by land (including rail). Cooperation may include areas such as the initial security assessment procedure, the exchange of available and appropriate information and where possible alignment of compliance controls and follow-up activities.  2.1.5. Cooperation between Customs and Postal Operators  Customs should establish mutual cooperation with postal operators responsible for security in relation to postal traffic. Cooperation may include areas such as the initial security assessment procedure, the exchange of available and appropriate information and where possible alignment of compliance control and follow-up activities. Cooperation may include areas such as the initial security assessment procedure, the exchange of available and appropriate information and where possible alignment of compliance control and follow-up activities.  2.2 Standard 2 - Cooperative Arrangements/Procedures  Governments should develop and maintain cooperative arrangements or procedures among their agencies that are involved in international trade and security.  2.2.1. Mechanisms should be established for ensuring inter-agency coordination to improve the efficiency and effectiveness of the supply chain security measures and operation.  2.3 Standard 3 - Alignment of security programmes  Governments should where appropriate align the requirements of the various security programmes/regimes that are implemented to enhance security of the international supply chain.  2.3.1. Customs should establish mutual cooperation with other government agencies in relation to their respective security programmes….  2.3.2. In the area of air cargo security…. [c]ooperation may include areas such as the application and initial assessment procedure, exchange of available and appropriate information on the applicant, [and] alignment of compliance and follow-up activities….  2.4 Standard 4 - Harmonization of national control measures  Governments should harmonize the supply chain security national control measures of government agencies, including risk management and risk mitigation, in order to limit any negative impact of those measures on legitimate trade and international movement.  2.5 Standard 5 - Development of continuity and resumptions measures  Customs should work with other government agencies as well as the private sector to identify their respective roles and responsibilities in relation to trade continuity and resumption measures in order to continue trade in the event of a disruptive incident.  2.6 Standard 6 - Mutual Cooperation  Governments should foster mutual cooperation between Customs administrations and other competent government agencies involved with supply chain security across borders or within a Customs Union.  2.6.1. This mutual cooperation may include exchange of information, training, technical assistance, capacity building, alignment of business hours where appropriate and the sharing of equipment.  2.7 Standard 7 - Development of Cooperative Arrangements or Protocols  Governments should develop cooperative arrangements or protocols among their agencies that are working side by side on a shared border or within a Customs Union.  2.8 Standard 8 - Harmonization of security programmes  Governments should, where appropriate, harmonize the requirements of the various security programmes that are implemented to enhance security of the international supply chain.  2.8.1. Agencies involved in the supply chain security should collaborate to enhance security programmes where appropriate. This collaboration may be achieved by aligning requirements, enhancing member benefits and minimise unnecessary duplication.  2.9 Standard 9 - Harmonization of cross-border control measures  Governments should work to harmonize cross-border control measures.  2.9.1. Cooperation may include mutual recognition of control measures and compliance programmes, sharing of resources and techniques, and accepting clearance of goods by the other party.  Multinational Cooperation  2.10 Standard 10 - Establishment of Mutual Cooperation  Together, governments should foster cooperation between and among international bodies that are involved with supply chain security.  2.11 Standard 11 - Development of cooperative arrangements or protocols  The WCO on behalf of its Members should develop and maintain cooperative arrangements with those international governmental bodies (e.g. ICAO, IMO and UPU) that are involved with supply chain security. |

### Identified Gaps

#### Section 8.1

The objective of the cooperation and coordination provided for under Article 8 of the TFA is to ensure effective actions by customs and all border control entities in the face of current challenges to security and facilitation of international logistics chains.

In terms of coordination and cooperation, CAUCA and RECAUCA include general mandates, basic principles that do not constitute a specific regulatory framework applicable to the routine work of customs services. Such a framework is not within the regular scope of application of other involved governmental organizations. The absence of regional and national procedures or arrangements which regulate the cooperation and coordination provided for by the standards in CAUCA and RECAUCA, has led to their unenforceability and lack of knowledge thereof.

This lack of regulations in the region is a gap, with regard to regional goals and effective implementation of the TFA.

#### Section 8.2

Regional regulatory developments related to the mandate for cooperation between countries sharing common borders to facilitate cross-border trade is limited to the mandate under RECAUCA article 235. This article does not efficiently regulate the matter; it only establishes general mandates that fail to meet the following goals:

* Compatibility of business days and work hours and of procedures and formalities;
* Establishment and shared use of common services, joint controls and controls at one-stop border posts.

## Transit Analysis

### Analysis of Central American Regulations and Goals

The Central American Strategy includes a diagnosis of the current state of interoperability of information on the international transit of goods (TIM) in all Central American countries:

* Physical and technological infrastructure for the TIM is underutilized; neither the quarantine nor the migratory TIM is used;
* It is necessary to develop standards that regulate TIM recording at the window;
* Currently, all countries use the TIM platform as a window for customs procedures in transit operations, but the other modules (quarantine and migration) are not yet used.

In terms of international land transit,Resolution 65 COMRIEDRE of 2001 establishes in Article 41 that the customs administrations of the signatory countries shall designate central control offices and customs offices authorized to perform functions related to international land transit, for which business hours shall be determined. These hours must be communicated to the authorities of the remaining signatory countries within 30 days of their approval.

Likewise, it establishes a mandate to minimize the time needed to comply with customs formalities at border crossings. To achieve this, a simplified and expedited customs procedure should be established for TIM.

Additionally, it also provides for facilitation of the passage of unloaded transport units through authorized border crossing customs offices by presenting the cargo manifest.

### Identified Gaps

Resolution 65 of COMRIEDRE delegates to the national customs services of the countries the adoption of mutual cooperation measures for documentary control and seal authenticity. This is a good practice to promote integration, uniformity and cooperation referred to in Article 8 of the TFA, so it does not constitute a gap.

## General Recommendations and Transit Recommendations

### Section 8.1

Mutual cooperation between customs and other competent government agencies should be effectively regulated. Such cooperation must include the following activities:

* between customs and aviation authorities;
* between customs, land transport organizations and postal operators; and
* between customs and maritime and port security agencies, for the initial assessment of safety, exchange of relevant information, adaptation of monitoring activities and control of regulatory compliance.

To achieve effective cooperation regarding, among other things, information exchange, training, technical assistance, capacity building, alignment of service hours and equipment, it is necessary to:

* Develop cooperative procedures or arrangements between the agencies involved in order to strengthen the effectiveness of logistics chain security measures and their operation;
* Harmonize the logistics chain security control measures applied by government agencies, in particular any measures to control and mitigate risks to prevent impairment of legitimate trade;
* Align the various security programs implemented by the institutions to enhance security of the logistics chain;
* Harmonize cross-border control measures;
* Develop mutual cooperation arrangements between agencies working together on a shared border.

Cooperation may be achieved through mutual recognition of control measures and compliance programs, sharing of resources and techniques, and accepting clearance of goods by the other party.

### Section 8.2

Customs: The coordination and cooperation that should exist between customs administrations must be subject to detailed legal regulations and expressly incorporated into customs functions and competences. In effect, it should expressly provide for the possibility of exchanging information on:

* Entry, exit or transit of goods;
* Particularities according to the type of economic activity;
* Simultaneous inspections; and
* Inspections carried out to ensure cargo control, determination, settlement and collection of taxes, fraud prevention and anti-fraud efforts, and tax and customs evasion and avoidance.

In any case, the issue of information confidentiality should be analyzed in accordance with national standards and international best practices.

Other government agencies at borders: Coordination and cooperation among border control institutions should be incorporated into Central American regulations and each institution’s rules.

Coordination between border control authorities should be developed under the legal framework indicated in the previous point, adjusting it to the functional, geographic and service-demand characteristics typical of border crossings. It may be appropriate for the rules to provide for the possibility of entering into bi-national agreements.

# Article 9 - Transfer of Goods Destined for Import Under Customs Control

This article refers to the so-called internal customs transit, which is the transfer of goods within the same country, from one customs office to another customs office. Unlike transshipment, goods must leave one customs area and go to another customs area for the release or clearance to take place.

The TFA states as an obligation for members to allow, to the extent feasible and upon compliance with regulatory requirements, that goods intended for imports to be moved within the territory under their customs control from the customs office of entry to another customs office within their territory where clearance or release of the goods will take place.

The objective is to allow the goods to be moved to the internal customs office in accordance with a simplified procedure, and for the importer to clear them at the destination site, rather than the port of arrival.

It is suggested to analyze this article in conjunction with Article 11.

## Analyzed Regulations

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| CAUCA: 94  RECAUCA: Arts. 320; 321; 392-401  CAFTA-DR  EU-CAAA: 119  RKC: Annex E |

## Analysis of Central American Regulations and Goals

Article 94 of CAUCA defines the types of internal transit and establishes carrier responsibilities during this process. Section II of RECAUCA (articles 392 to 401) regulates in detail everything related to internal transit.

RECAUCA establishes the following requirements:

1. A goods declaration for internal transit, which complies with the provisions of Article 320 and contains, additionally, the following:
   1. Identification of security devices;

Identification of the customs office and destination site;

Name of consignee;

Number and date of the transport document, such as: bill of lading, air waybill or consignment note, itemized;

Number and date of the commercial invoice(s) associated with the goods in the case of international sales, or equivalent document in all other cases;

Value of the goods as per the commercial invoice, in the case of international sales, or equivalent document in all other cases;

Date and signature of declarant; and

Others as determined by the customs service.

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| Article 320. Content of the goods declaration  The goods declaration shall include, in accordance with the customs procedure in question, the following information:  a) Tax identification and registration of the declarant;  b) Identification of the customs agent or the special proxy customs agent, when applicable;  c) Identification code of the carrier and means of transport;  d) Customs procedure requested;  e) Country of origin and source country; and, where appropriate, the country of destination of the goods;  f) Cargo manifest number, as applicable;  g) Characteristics of packages, such as quantity and type;  h) Gross weight of goods in kilograms;  i) Tariff code and commercial description of the goods;  j) Customs value of the goods; and  k) Amount of customs tax obligation, when applicable.  In the case of goods that can be identified individually, the serial numbers, make and model or, failing this, technical or commercial specifications shall be declared. |

* 1. Additional Documents: In addition to the documents referred to in subsections (a), (b), (e) and, according to the case, also those referred to in subsection (f) under Article 321. The first two may be in the form of copies.

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| Article 321. Documents supporting the declaration of goods  The declaration of goods shall be based, *inter alia*, on the following customs documents, depending on the customs regime:  a) Commercial invoice, in the case of international purchases or sales, or equivalent document in all other cases; (**in copy form)**  b) Transport documents, such as: bill of lading, consignment note, air waybill or other equivalent document; (**in copy form)….**  e) Licenses, permits, certificates or other documents related to compliance with the non-tariff restrictions and regulations to which the goods are subject, and other authorizations; **(in original form)**  f) Guarantees required due to the nature of the goods and the customs regime to which they are destined; and **(in original form)**. |

* 1. Control Measures: Although the type of security devices is not specified, Article 394 states that Customs shall monitor the status of security devices and any other security measures at initiation of transit, as well as everything concerning safety, health and other issues.
  2. Time Limit for Transit: Article 394 states that each Customs administration shall determine time periods for internal transit. The time limit set by Customs shall be counted from the moment the dispatch authorization is recorded in the computer system of the departure customs office. The carrier is required to immediately remove the means of transport.
  3. Routes: Article 396 expressly orders customs to set time limits and internal transit routes.
  4. Arrival of the means of transport to the destination customs office: The destination customs office is required to check the security devices and verify that the transit was carried out within the established period. If all is well, the means of transport is received. If there are any irregularities, the means of transport should be inspected immediately.

Pursuant to Article 399, the destination office shall inform the departure office, electronically or otherwise, of the time the means of transport has arrived and if there have been any irregularities, and it may request additional information in the event of irregularities.

The means of transport cannot be used to carry out another internal transit operation until regular arrival is complete or any delay has been justified.

* 1. Default rules: Those relating to international land transit (Resolution 65 COMRIEDRE).

## International Best Practices

Annex E under Chapter 1 of the RKC establishes standards and best practices in this area:

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| Field of application  2. Standard  The Customs shall allow goods to be transported under Customs transit in their territory:  (a) from an office of entry to an office of exit;  (b) from an office of entry to an inland Customs office;  (c) from an inland Customs office to an office of exit; and  (d) from one inland Customs office to another inland Customs office.  Formalities at the office of departure  (a) Goods declaration for Customs transit  6. Standard  Any commercial or transport document setting out clearly the necessary particulars shall be accepted as the descriptive part of the Goods declaration for Customs transit and this acceptance shall be noted on the document.  7. Recommended Practice  The Customs should accept as the Goods declaration for Customs transit any commercial or transport document for the consignment concerned which meets all the Customs requirements. This acceptance should be noted on the document.  (b) Sealing and identification of consignments  8. Standard  The Customs at the office of departure shall take all necessary action to enable the office of destination to identify the consignment and to detect any unauthorized interference.  9. Recommended Practice  Subject to the provisions of other international conventions, the Customs should not generally require that transport-units be approved in advance for the transport of goods under Customs seal.  10. Standard  When a consignment is conveyed in a transport-unit and Customs sealing is required, the Customs seals shall be affixed to the transport-unit itself provided that the transport-unit is so constructed and equipped that :  (a) Customs seals can be simply and effectively affixed to it;  (b) no goods can be removed from or introduced into the sealed part of the transport-unit without leaving visible traces of tampering or without breaking the Customs seal;  (c) it contains no concealed spaces where goods may be hidden; and  (d) all spaces capable of holding goods are readily accessible for Customs inspection.  The Customs shall decide whether transport-units are secure for the purposes of Customs transit.  11. Recommended Practice  Where the accompanying documents make it possible unequivocally to identify the goods, the latter should generally be transported without a Customs seal or fastening. However, a Customs seal or fastening may be required:   * where the Customs office of departure considers it necessary in the light of risk management; * where the Customs transit operation will be facilitated as a whole; or * where an international agreement so provides.   12. Standard  If a consignment is, in principle, to be conveyed under Customs seal and the transport-unit cannot be effectively sealed, identification shall be assured and unauthorized interference rendered readily detectable by :   * full examination of the goods and recording the results thereof on the transit document; * affixing Customs seals or fastenings to individual packages; * a precise description of the goods by reference to samples, plans, sketches, photographs, or similar means, to be attached to the transit document; * stipulation of a strict routing and strict time limits; or * Customs escort.   The decision to waive sealing of the transport-unit shall, however, be the prerogative of the Customs alone.  13. Standard  When the Customs fix a time limit for Customs transit, it shall be sufficient for the purposes of the transit operation.  14. Recommended Practice  At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend any period initially fixed.  15. Standard  Only when they consider such a measure to be indispensable shall the Customs:  (a) require goods to follow a prescribed itinerary; or  (b) require goods to be transported under Customs escort.  Customs seals  16. Standard  Customs seals and fastenings used in the application of Customs transit shall fulfil the minimum requirements laid down in the Appendix to this Chapter.  17. Recommended Practice  Customs seals and identification marks affixed by foreign Customs should be accepted for the purposes of the Customs transit operation unless:   * they are considered not to be sufficient; * they are not secure; or * the Customs proceed to an examination of the goods.   When foreign Customs seals and fastenings have been accepted in a Customs territory, they should be afforded the same legal protection in that territory as national seals and fastenings.  Formalities en route  19. Standard  A change in the office of destination shall be accepted without prior notification except where the Customs have specified that prior approval is necessary.  20. Standard  Transfer of the goods from one means of transport to another shall be allowed without Customs authorization, provided that any Customs seals or fastenings are not broken or interfered with.  21. Recommended Practice  The Customs should allow goods to be transported under Customs transit in a transport-unit carrying other goods at the same time, provided that they are satisfied that the goods under Customs transit can be identified and the other Customs requirements will be met.  22. Recommended Practice  The Customs should require the person concerned to report accidents or other unforeseen events directly affecting the Customs transit operation promptly to the nearest Customs office or other competent authorities.  Termination of Customs transit  23. Standard  National legislation shall not, in respect of the termination of a Customs transit operation, require more than that the goods and the relevant Goods declaration be presented at the office of destination within any time limit fixed, without the goods having undergone any change and without having been used, and with Customs seals, fastenings or identification marks intact.  24. Standard  As soon as the goods are under its control, the office of destination shall arrange without delay for the termination of the Customs transit operation after having satisfied itself that all conditions have been met.  25. Recommended Practice  Failure to follow a prescribed itinerary or to comply with a prescribed time limit should not entail the collection of any duties and taxes potentially chargeable, provided the Customs are satisfied that all other requirements have been met. |

## Identified Gaps

Based on the objective of this TFA article, which is to simplify the internal transit process, the following gaps have been found in this objective:

In general terms: The TFA compels customs to simplify internal customs transit requirements and procedures, unless this is not possible. The internal transit procedure included in RECAUCA is complex, and definitely no simpler than the recommendations and standards in Annex E of RKC Chapter 1.

Declarations: Instead of taking RKC’s recommendation to replace the declaration with any document containing all relevant information, RECAUCA imposes a more complex declaration than that provided under Article 320. The last requirement of Article 392 is open and allows customs to establish any other requirements it deems relevant.

Annexed Documents: In addition to an already complex declaration, RECAUCA requires additional documents, some in copy and others in original form. There is no mention of their transmission in electronic copy.

Seals: RECAUCA does not establish mechanisms for mutual recognition of seals when the transported goods are sealed by the customs administration of another country.

Deadlines and Routes: RKC recommends being flexible in terms of pre-defined time limits and routes, unless circumstances require otherwise. RECAUCA does not allow flexibility, as it requires Customs to determine time limits and routes.

## Recommendations

Declarations: we suggest that a simple and clear internal transit declaration be created for uniform use throughout the region. This simplified declaration should require the minimum information necessary for identification of the goods, the carrier and the parties.

Annexed Documents: These should be simplified, since what is presently stipulated is duplicating what is going to be requested for the definitive process that will take place at the customs office of arrival. It is not necessary to request them again. No documents should be required in original form or hard copy.

Seals: The Central American Strategy contains novel ideas and plans for international transportation that could be readily transferred to internal transit.

Time Limits and Routes: RECAUCA should not impose the use of itineraries and time limits. Plans should be established that include options allowing for greater flexibility without sacrificing control.

# Article 10 - Formalities in Relation to Importation, Exportation and Transit

This article covers several issues, which will also be discussed separately in dealing with articles 7.4, 8 and 10.2.

## Section 10.1 - Formalities and Documentation Requirements

This section is aimed at all entities operating at the border, in addition to customs. It refers to the need to reduce and simplify documentation requirements for importation, exportation and transit processes by applying technological tools, international best practices and member contributions. In this regard, countries are encouraged to take the following steps regarding documentation formalities and requirements, in order to achieve:

* Rapid release and clearance of goods, in particular of perishable goods;
* Reduced time and cost of compliance for traders and operators;
* Application of the least trade-restrictive option where two or more alternative measures are reasonably available to meet the goal; and
* Elimination of any measure or requirement that is no longer necessary.

NOTE: In analyzing this article, special procedures for couriers, postal consignments, samples or perishable goods will not be discussed. These items will be analyzed separately under the articles referring to them.

### Analyzed Regulations

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| CAUCA: 16, 17, 29, 31, 33, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85 y 131.  RECAUCA: 9, 22, 54, 55, 172, 202, 208, 210, 211, 212, 233, 236, 237, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 349, 350, 351, 352, 361, 362, 363, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 382 y 462.  Central American Strategy (as a whole)  CAFTA-DR: Art. 5.2 – 5.4  EU-CAAA: Art. 10.1  SAFE Framework |

### Analysis of Central American Regulations and Goals

CAUCA contains a series of measures that facilitate compliance with customs formalities, such as mutual recognition, the use of information and communication technologies, means equivalent to the autograph signature, the evidentiary value of electronic or digitally transmitted documents and data, the possibility to submit provisional declarations, and verification targeting and randomness.

Article 131 of CAUCA, on the other hand, establishes the principle of legality of the actions of customs officials. In fact, this article sets forth that no official may demand requirements, formalities or procedures not provided for in national or international regulations for the application or authorization of any act, procedure, regime or operation.

In regulating all the measures in CAUCA, RECAUCA also seeks to facilitate import, export and transit declaration procedures. Given its regulatory nature, its wording is more restrictive than that of CAUCA.

However, although both aforementioned regulations seek to facilitate procedures, explicit legal provisions compelling signatory countries to periodically review and examine the formalities and documentation required for transit, import and export cannot be found. Indeed, as the TFA states, countries should regularly review the required documentation and formalities in an effort to reduce and simplify them, as circumstances vary and new technological tools are being added to expedite information analysis, enhance user knowledge and speed up release procedures.

On the contrary, the Central American Strategy proposes and provides a current examination of the regional border management model through short, medium, and long-term measures. Further, it calls for facilitating import, export and transit procedures. For this reason, the strategy, measures, and cross-cutting areas, including the Central American digital trade platform, are in line with the TFA.

However, beyond the Central American Strategy there are no regulations that involve monitoring compliance with the objectives outlined therein. The strategy itself should also be examined at specific intervals in order to dynamically review the existing situation in the countries in an effort to further advance trade facilitation.

It should be noted that the wording of the aforementioned CAUCA Article 131 expressly refers to “customs or foreign trade regulations” as the source of legitimacy for the actions of customs officials. This is particularly important for effective implementation of the TFA, CAUCA and RECAUCA, and all Central American regulations and international agreements.

This principle of legality is particularly relevant for effective enforcement of Article 10.1 of the TFA, and failure to comply with it should give rise to all actions set forth in the general principles and in the rules of administrative law at the violating country level and internationally in the committees created by the TFA.

RECAUCA establishes several relevant standards to comply with the provisions of Article 10.1. In fact, the articles listed in the following table establish the relevant standards:

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| Article | Summary |
| 172 | This establishes electronic transmission of data to streamline declaration, application of risk criteria, release authorization and other clearance-related aspects. |
| 202 | This establishes the possibility of performing the release with guarantee when there may be delays in determining the value of the goods. |
| 208 | Following the principle of post-control, this article envisions the possibility of verification or validation of the value of goods after their release. |
| 335 | Pursuant to this article, risk analysis must occur at the time the import declaration is accepted, and this analysis shall depend on whether or not the declaration has been immediately verified. |
| 336 | This article defines immediate verification as documentary or documentary and physical verification. For documentary verification, it does not establish a maximum time limit, but for documentary and physical verification, it establishes a maximum time limit of 24 hours, regardless of whether it is done for part or all of the goods. |
| 349 | This establishes the appropriateness of release upon conclusion of the immediate verification, except in cases with inconsistencies. |
| 350 | This article is extremely important, although in practice its enforcement is very limited or non-existent. In effect, this rule establishes the appropriateness of release as a right (not at the discretion of Customs) in the following cases:   * When it is clear from the declaration that immediate verification is not appropriate. This assumes that the risk management system has given the goods a green light; * When the immediate verification (it does not specify whether documentary alone or documentary and physical) did not detect any differences with what was declared and there was no breach of formality;   When the immediate verification has been carried out and differences have been determined with the declaration, but these have been corrected, the adjustments and fines have been paid or, where appropriate, the corresponding security has been provided. |
| 351 | This establishes the possibility of release with security. |
| 374 | For exports, this establishes that the risk system shall determine whether immediate verification or release of the goods is appropriate. |
| 375 and 462 | Equivalent to Article 350, this article establishes the appropriateness of the release as a right when the risk system has indicated release without verification, or if the immediate verification has taken place, and no differences between the declared goods and verified information have been found. |
| 377 | In cases where physical examination of the goods is to be carried out, customs shall immediately inform the declarant of this and designate the official responsible for performing the inspection. It does not set a maximum time limit for this step, but it does state that once the official has been designated, said official shall arrive at the appropriate premises and carry out the physical examination within a maximum of six hours after the goods have been made available. If everything is in accordance with the declaration, the official must immediately authorize release. |

The Central American Strategy encompasses several relevant measures for the purposes of Article 10.1. The GCF is one of the main tools, in addition to the following mechanisms that are in alignment with those envisaged in the TFA:

* Interoperability of systems involving customs processes;
* Implementation of Single Windows;
* Unique documents for the different customs processes;
* Electronic certifications by all involved government agencies;
* Development of effective risk management systems;
* Integration of procedures and controls;
* Establishment of common regional parameters.

### International Agreements

#### CAFTA-DR

Articles 5.2, 5.3 and 5.4 are in line with TFA guidelines:

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| Article 5.2: Release of Goods  1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties.  2. Pursuant to paragraph 1, each Party shall ensure that its customs authority or other competent authority shall adopt or maintain procedures that:  (a) provide for the release of goods within a period no greater than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of arrival;  (b) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities; and  (c) allow importers to withdraw goods from customs before and without prejudice to the final determination by its customs authority of the applicable customs duties, taxes, and fees.  Article 5.3: Automation  Each Party’s customs authority shall endeavor to use information technology that expedites procedures for the release of goods. When deciding on the information technology to be used for this purpose, each Party shall:  (a) use, to the extent possible, international standards;  (b) make electronic systems accessible to the trading community;  (c) provide for electronic submission and processing of information and data before arrival of the shipment to allow for the release of goods on arrival;  (d) employ electronic or automated systems for risk analysis and targeting;  (e) work towards developing compatible electronic systems among the Parties’ customs authorities, to facilitate government to government exchange of international trade data; and  (f) work towards developing a set of common data elements and processes in accordance with World Customs Organization (WCO) Customs Data Model and related WCO recommendations and guidelines.  Article 5.4: Risk Management  Each Party shall endeavor to adopt or maintain risk management systems that enable its customs authority to focus its inspection activities on high-risk goods and that simplify the clearance and movement of low-risk goods, while respecting the confidential nature of the information it obtains through such activities.  Note: Emphasis added |

The EU-CAAA[[6]](#footnote-7) is also consistent with Article 10.1 of the TFA. Although less detailed than CAFTA-DR, it also states that simplified and modern procedures should be established, making use of technological tools and international best practices.

### International Best Practices

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| EFTA-CA  Article 4: Simplification of International Trade Procedures  1. The Parties shall apply customs, trade and border procedures that are **simple, reasonable and impartial**.  2. The Parties shall limit **controls, formalities and the number of documents required** in the context of trade in goods between the Parties to those **necessary and appropriate** to ensure compliance with legal requirements and **thereby simplify** to the greatest extent possible the respective procedures.  3. The importing Party shall not require an original or a copy of the export declaration from the importer.  4. The Parties shall use efficient trade procedures, with a view to reducing costs and unnecessary delays in the trade between them, based, as far as possible, on international standards, in particular the standards and recommended practices of the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), the International Organization for Standardization (ISO) and the World Customs Organization (WCO).  5. Each Party shall adopt or maintain procedures that: (a) provide for advance electronic submission and processing of information before the physical arrival of goods in order to expedite their clearance; and (b) allow importers to obtain the release of goods prior to the payment of import duties and taxes in that Party if the importer provides sufficient guarantees, in accordance with its domestic legislation.  Note: Emphasis added. |

### Identified Gaps

The analysis of this article should be combined with the analysis of articles 7.1, 7.3, 7.4, 7.5, 7.6 and 10.2. Indeed, Article 10.1 states, in general terms, that effective implementation of the TFA requires:

* Periodically reviewing formalities and documentation requirements with a view to simplifying or reducing them;
* Reforming documentation formalities and requirements to make them as quick and efficient as possible;
* Applying the least trade-restrictive solution, eliminating or modifying any formalities and requirements that are no longer necessary.

1. In general terms, both CAUCA and RECAUCA establish the necessary foundations for compliance with Article 10.1. However, the real gap lies in the failure to effectively implement its rules, which can be a consequence of the following:

The drafting of CAUCA and RECAUCA rules does not actually establish an imperative mandate but rather one of best endeavor: “shall strive to...” “shall... to the extent possible...;”

Neither CAUCA nor RECAUCA establish a fast and effective mechanism that allows users to efficiently, quickly and effectively report failure to enforce standards set forth in CAUCA and RECAUCA or when the principle of legality established in CAUCA is being infringed.

1. CAUCA and RECAUCA are only binding on customs administrations, not on the other agencies at the border. This means they are not the appropriate legal instruments for effective enforcement of the TFA.
2. The obligation imposed by the TFA on the countries to carry out an analysis of all the formalities and documentation required in the respective legislation, both at the time of entry into force of the TFA and on a regular and periodic basis, is not reflected in CAUCA or RECAUCA. In that order of ideas, we consider that since there is no express provision to examine the formalities periodically and to include the changes and / or adjustments that, as a result of the examinations, can be made, in order to facilitate the procedures; there is currently a gap between CAUCA and RECAUCA and the TFA.

The Central American Strategy is creating mechanisms to implement Article 10.1, thereby promoting compliance with CAUCA and RECAUCA standards. This, in itself, constitutes a review and examination of the current regional model of border management. Both the measures and the cross-cutting areas, including the Central American digital trade platform, are in line with the obligation imposed by the TFA. However, not being regulations as such, they cannot replace CAUCA and RECAUCA.

1. The complex nature of CAUCA and RECAUCA does not allow for periodic reform of requirements and procedure. For multiple reasons, regular and ongoing reform of formalities and requirements is not possible in instruments such as CAUCA and RECAUCA.

### Recommendations

1. Include periodic review and reform mechanisms within CAUCA and RECAUCA. The objective is to include a mandate for regular and systematic review of CAUCA, RECAUCA and any relevant regional regulations.
2. In implementing Article 2 of the TFA and this subsection, create mechanisms for participation of all stakeholder sectors for discussing and proposing reform and modernization of procedures and formalities.
3. Mechanisms that reinforce the enforceability of CAUCA and RECAUCA:

Although the region has COMIECO Agreement 01-2011 establishing the “Procedure for the Review, Analysis and Resolution of Non-Tariff Barriers in Central American Intra-Regional Trade,” we suggestincorporatinginternal mechanisms that facilitate/reinforce effective compliance of CAUCA and RECAUCA as applicable regulations before escalating to complaints by one country against another country. These mechanisms should facilitate prevention of any violation of customs legislation even if there is no administrative act to invoke but rather a violation in the enforcement of the regulations, as represented, for example, by situations such as:

Creation of requirements or formalities that are not provided for in the regulations;

Changes in procedures, formalities or requirements that are not based on any regulations; or,

Changes in the interpretation of standards not supported by valid administrative acts.

This should be based on:

The right to consultation laid down in Article 2.2 of the TFA;

The desirability of maintaining ongoing review mechanisms with a view to reducing formalities and clarifying and facilitating procedures; and

The need to create mechanisms that guarantee both compliance and the uniform interpretation and application of CAUCA standards.

We recommend including a standard that establishes a procedure for consultation on interpretation of CAUCA and RECAUCA by requesting that the following conditions be reviewed:

The scope and interpretation of the CAUCA or RECAUCA norms; and

the conduct or practices carried out by the customs service or customs authority of a country.

This mechanism should operate internally in the country in which the alleged infringing conduct or practice is occurring. Thus, at an internal level in each country, this mechanism should:

Authorize any individual (regardless of nationality or domicile) to consider that their rights have been violated as a result of:

* A conduct or practice (without requiring the existence of an administrative act) by the customs service or customs authority of a country;
* Considering that such conduct or practice is in violation of a rule or procedure established in the regulations of that country and/or in CAUCA or RECAUCA;

To request that same customs authority to review the scope and correct interpretation of the rule apparently infringed by the conduct or practice that the person alleges has violated their rights. This request would be made through a formal petition to customs, requesting customs to review whether a conduct or practice of a particular customs authority or customs office is in accordance with the interpretation of the standard or procedure that is considered infringed.

After the deadline for administrative silence, and with no reply from the customs administration, the petitioner may go to the Customs Court and request before said Court, in its capacity as an advisory body, to reach a decision on the interpretation and scope of the rule or procedure whose alleged infringement has caused a violation of the individual’s rights. This interpretation by the Customs Court should serve as a tool for the individual to:

* Submit the decision of the Customs Court as a mandatory interpretation of the rule or procedure to customs and, in particular, to the customs office whose conduct or practice has violated the rights of the individual, so that customs voluntarily complies with the mandatory interpretation of the Customs Court; or
* Initiate the procedure envisaged in AGREEMENT No. 012011 (COMIECO LX) if the individual considers that there are grounds and evidence for it, as established in said Agreement.

If customs makes a decision, either recognizing or rejecting the individual’s petition, it must issue a clarification that clearly states how to construe the rule or procedure whose interpretation the individual requested. This clarification on the interpretation of the rule or procedure must be published so that all customs users of that country may know the scope and interpretation of that rule or procedure.

The individual who has initiated the procedure may then use that clarification issued by customs to avoid any future violations or misinterpretations.

Clarifications issued by customs or by the Customs Court may serve to achieve uniform enforcement of internal regulations or CAUCA and RECAUCA.

1. In order to ensure uniform enforcement of regional regulations, this interpretation of CAUCA/RECAUCA regulations, whether by customs or the Customs Court, could be elevated to COMIECO.

## Section 10. 2 – Acceptance of Copies

This subsection refers to the submission of documents as part of the import, export or transit formalities, related both to customs and to all other entities at the border. Specifically, it states that:

* The agencies involved in border controls should strive to accept copies of supporting documents required for import, export or transit formalities;
* When the original document has been provided to a governmental authority, other governmental authorities should accept a copy authenticated by the agency holding the original document;
* The original or a copy of the export declarations issued by authorities of the exporting country should not be required for the import of goods.

### Analyzed Regulations

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| CAUCA: 33, 36  RECAUCA: 318, 321, 322, 393. Resolution 306/13  Resolution 65 COMRIEDRE: Art. 8  Central American Strategy (as a whole)  CAFTA-DR  EU-CAAA  SAFE Framework  RKC: Standard 3.18 |

### General Analysis of Central American Regulations and Goals

Article 36 of CAUCA establishes the validity, unless proof exists to the contrary, of electronic or paper copies issued by customs, customs office assistants, the declarant and any person authorized by customs, either by electronic or computerized means, or copies of originals stored electronically, as well as electronic images of documents, originals or copies thereof.

However, Article 33 of CAUCA establishes the validity of documents transmitted electronically as equal to the original when they have the digital signature, within the context of what CAUCA regulates regarding the digital signature.

With regard to RECAUCA**,** the interpretation of articles 318 and 321 (modified by Resolution 306/13) leads to the conclusion that RECAUCA establishes that documents transmitted electronically have the same validity as if they were sent in original form, insofar as they accompany a declaration. In effect, the final paragraph of Article 318 states, verbatim:

“The use of electronic means and electronic exchange of information shall have full validity for the formulation, transmission, registration and filing of the goods declaration and its related information and of the documents that must be attached to it.”

Article 321 sets forth which documents support the goods declaration, depending on the regime in question. The reform introduced by Resolution 306 amends the penultimate paragraph of Article 321 regarding the use of copies or originals:

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| The documents listed above must be attached in original form to the Goods Declaration. In the case of definitive exports, temporary exports or re-exports, a copy may be attached; ‘copy’ shall be construed in accordance with each State Party’s national legislation.  The documents supporting the Goods Declaration may be transmitted electronically to the computer system of the Customs Service and, in such case, shall produce the same legal effects as those written on paper.” |

Resolution 306 of 2013 did not alter the last paragraph of Article 321, which requires the declaration of export, re-export or equivalent document of the country of export.

### General Identified Gaps

1. CAUCA and RECAUCA cannot regulate anything in relation to other border control agencies. Therefore, their enforcement applies only to customs.
2. CAUCA establishes an *iuris tantum* or rebuttal presumption of the validity of the physical or electronic copies of documents accompanying customs declarations in general. RECAUCA, however, does not refer to physical copies, but only to the validity of the electronic versions of documents that accompany the declarations.
3. Not only is there a contradiction between the provisions of CAUCA and RECAUCA, but the wording of RECAUCA is unclear when it establishes the evidentiary value of documents “written on paper.” It is not clear whether it refers exclusively to the originals or also to paper copies.
4. Neither CAUCA nor RECAUCA cover the issues provided for in subsections 10.2.2 and 10.2.3, except as provided in the last paragraph under Article 321 of RECAUCA. Indeed, this last paragraph is in clear violation of the provisions of Article 10.2.3, which states that no country may require the presentation of the declaration of export, re-export or equivalent document of the country of export, either in original or in copy form.
5. In any case, the possibility of using copies, utilizing electronic means and eliminating paper in customs formalities should be in line with the requirements of post-control agencies, in the administrative and fiscal areas.

### Analysis of Regional Regulations and Goals in Matters of Transit

Article 393 of RECAUCA refers to the use of copies in internal transit, and expressly provides for submission of copies of the documents referred to in subparagraphs (a) and (b) of Article 321,[[7]](#footnote-8) consisting of the commercial invoice or equivalent document and the transport document. However, it leaves out the other documents, i.e. licenses, authorizations, permits or other documents related to compliance with non-tariff restrictions. With regard to the provision of guarantees, customs is given the authority to demand such documents, if it so deems.

COMRIEDRE Resolution 65:Article 8 sets forth the documents that should be annexed to the declaration.

### International Best Practices

Although it should be taken into account that the requirement of copies is a cross-cutting issue, the rules for which should apply to all customs regimes, of note is the implementation and gradual strengthening planned by Japan of its Nippon Automated Cargo and Port Consolidated System (NACCS) regarding the requirement of supporting documents for customs procedures.

In the beginning, the NACCS covered about 98% of all import and export declarations. However, importers and exporters had to fill out some supporting documents in writing. Recently, in order to address this, the requirement for supporting documents was dropped for low-risk shipments, in principle; for high-risk shipments, NACCS accepts electronic filing of these supporting documents.

In future, there are plans to strengthen the existing tool, computerizing the procedures handled by other ministries, promoting computerization in the private sector, expanding the transactions and procedures that may be carried out through the NACCS, and achieving computerization of all customs procedures.

### Identified Gaps in Transit Matters

Although Article 6 of the International Ground Customs Transit Regulations allows the transit declaration to be transmitted electronically, Article 8 requires the submission of original supporting or justifying documents for the authorization of said declaration, which may slow down the procedure, thus creating a gap between COMRIEDRE 65 and the TFA.

Regarding internal transit, Article 393 of RECAUCA regulates the documents that support the transit declaration and refers to Article 321, sections (a) and (b). It only allows the use of copies of the commercial invoice or equivalent document and transport documents, leaving an implicit obligation to submit the originals of licenses, permits or certificates related to compliance with other formalities, which constitutes a gap with the TFA.

Consequently, the possibility should be explicitly provided for submitting electronic documents or copies of all documents that justify or support the transit declaration, provided they allow the declaration to be transmitted electronically, but requiring some documents in original form is in violation of international instruments.

### General Recommendations and Transit Recommendations

1. Electronic transmission of documents supporting the declarations: In terms of import and export, the requiring of electronic transmission of supporting documents must be expressly stated.
2. International Transit: The legal provisions of CAUCA should expressly establish that electronic copies of all documents supporting the customs transit declaration can be accepted for both international and internal transit.
3. Accompaniment of goods during transit: In cases where goods must be accompanied with a document during transit, it should be expressly provided that printed copies are allowed instead of the original documents.
4. Prohibition of requiring original documents: An express provision should be included that prohibits the requiring of original documents supporting a transit declaration.

### Technological Gaps and Recommendations

The possibility of accepting electronic copies with the same validity of the original documents is linked to the possibility of using the electronic signature. All countries have approved their electronic signature laws, which provides the legal basis for implementing the electronic signature and the validity of electronic documents as originals. However, the total and harmonized implementation at the regional level has not been achieved due to the fact that regional standards that allow reciprocal recognition in the region have not yet been agreed upon.

The Central America region has two models of electronic certification. One of them centralizes certification in government entities (Costa Rica, El Salvador and Panama). In the other model (Nicaragua, Honduras and Guatemala), the centralizing entities certify and publish the certified entities. In order to achieve total integration and reciprocal recognition in the region, it is necessary to reach agreements regarding common security standards.

Achieving genuine interoperability between the different agencies operating at the borders and the customs administrations of all the countries in the region requires full harmonization of minimum security standards so that certification granted by one country is valid in the others.

It is recommended that negotiation of these regulations should be included by COMIECO on its agenda, and that the agreement should be set out in a regional resolution for reciprocal recognition in the region as per said rules.

## Section 10.3 - Use of International Regulations

This paragraph refers to the convenience of countries using international standards and international best practices in matters of import, export and transit to set the legal bases and to keep the regulations on import, export and transit procedures up to date. It includes not only customs but also all government entities at the borders.

## Analyzed Regulations

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| CAUCA  RECAUCA  Central American Strategy (as a whole)  CAFTA-DR: Artículo 7.4  EU-CAAA: Art. 53, 54 y 118  EFTA-CA: Art. 4. |

### Analysis of Central American Regulations and Goals

CAUCA and RECAUCAdo not contemplate the provisions of this subsection in detail. However, RECAUCA expressly authorizes the customs to **“**create and apply customs procedures and propose amendments to the standards in order to adapt them to technical andtechnological changes in accordance with the requirements of international trade and the criteria of simplicity, specificity, uniformity, effectivenessand efficiency...”, implicitly, though not directly, allowing international standards to be incorporated into regional regulations.

The Central American Strategy, in defining the medium- and long-term Plan of Action, provides for adoption of international standards with the aim of improving the quality of information exchange between the countries’ control institutions, by adapting and adopting the international data exchange protocols defined in specialized multilateral organizations (WCO, IMO, ICAO, OIE, WHO, and others). To this end, it proposes to establish automatic and systemic exchange of comparable data, if possible, by applying virtual validation systems. This implies the adoption of uniform structures for definition of the data.

### International Agreements

EU-CAAA expressly encourages the use of international standards through the mechanism of cooperation between European and Central American countries. In fact, Articles 53 and 54 establish the following:

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| EU-CAAA  Part III. Cooperation  Title VI. Economic and Trade Development  Article 53. Customs Cooperation and Mutual Assistance  1. The Parties shall promote and facilitate cooperation between their respective customs services in order to ensure … the simplification of customs procedures and the facilitation of legitimate trade while retaining their control capabilities.  2. The cooperation shall give rise, among others, to….  (a) exchanges of information concerning customs legislation and procedures, particularly in the following areas:  (i) simplification and modernisation of customs procedures …  Article 54. Cooperation and Technical Assistance on Customs and Trade Facilitation  The Parties recognise the importance of technical assistance in the field of customs and trade facilitation in order to implement the measures laid down in the Chapter 3 (Customs and Trade Facilitation) of Title II of Part IV of this Agreement. The Parties agree to cooperate among others in the following areas….  (c) the application of mechanisms and modern customs techniques, including risk assessment, advance binding rulings, simplified procedures for entry and release of goods, customs controls and company audit methods;  (d) introduction of procedures and practices which reflect as far as practicable, international instruments and standards applicable in the field of customs and trade, including WTO rules and World Customs Organization (hereinafter referred to as the "WCO") instruments and standards, inter alia the International Convention on the Simplification and Harmonization of Customs Procedures, as amended (Revised Kyoto Convention) and the WCO Framework of Standards to Secure and Facilitate Global Trade; and  (e) information systems and automation of customs and other trade procedures.  Part IV. Trade  Title II. Trade in Goods  Chapter 3. Customs and Trade Facilitation  Article 118. Customs and Trade-Related Procedures  1. The Parties agree that their respective customs legislation, provisions and procedures shall be based upon:  (a) the international instruments and standards applicable in the field of customs including the WCO Framework of Standards to Secure and Facilitate Global Trade as well as the International Convention on the Harmonized Commodity Description and Coding System….  2. The Parties agree that their respective customs legislation, provisions and procedures shall, to the extent possible, draw upon the substantive elements of the International Convention on the Simplification and Harmonization of Customs Procedures, as amended (Revised Kyoto Convention) and its Annexes…. |

CAFTA-DR: Article 7.4 expressly states that the parties shall follow international standards to facilitate trade:

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| Article 7.4: Trade Facilitation  1. The Parties shall intensify their joint work in the field of standards, technical regulations, and conformity assessment procedures with a view to facilitating trade between the Parties. In particular, the Parties shall seek to identify trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures that are appropriate for particular issues or sectors. Such initiatives may include cooperation on regulatory issues, such as convergence, alignment with international standards, reliance on a supplier’s declaration of conformity, and use of accreditation to qualify conformity assessment bodies.  2. On request of another Party, a Party shall give favorable consideration to any sector-specific proposal the Party makes for further cooperation under this Chapter. |

### International Best Practices

The EFTA-CA establishes a clear and general rule in this regard:

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| Annex VII. Trade Facilitation  Article 4. Simplification of International Trade Procedures  1. The Parties shall apply customs, trade and border procedures that are simple, reasonable and impartial….  4. The Parties shall use efficient trade procedures, with a view to reducing costs and unnecessary delays in trade between them, based, as far as possible, on international standards, in particular the standards and recommended practices of the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), the International Organization for Standardization (ISO) and the World Customs Organization (WCO). |

According to RKC (Annex E), countriesshould consider the possibility of adhering to the international instruments relating to customs transit included in this Convention, or at least take into account the standards and practices recommended therein when negotiating bilateral or multilateral agreements with other countries to create international customs transit regimes.

### Identified Gaps

Neither CAUCA nor RECAUCA have specific legal provisions that encourage countries to use international regulations, or parts thereof, to serve as a basis for the establishment of formalities and procedures for the clearance of goods being imported, exported or transited.

Nor do they include the obligation of countries to participate, within their means, in the periodic review of international rules by the respective international organizations.

No obligation exists for countries to establish procedures, through national Trade Facilitation Committees or within the Trade Facilitation Group created by COMIECO, for the exchange of information on best practices related to the implementation of international regulations.

While this is a TFA best endeavor regulation, there is a gap between CAUCA, RECAUCA and the region’s goals and effective compliance with TFA.

### Recommendations

1. Amending CAUCA to include an express mandate for regular review and ongoing adaptation to international regulations: CAUCA should become a general body of regulations that dictates specific provisions, can be easily and quickly amended, and can be adapted to the changing needs of trade and to new technological tools.
2. Effective implementation of the TFA should include exchange and periodic review mechanisms.
3. Although the Central American Strategy is consistent with the TFA, it would be desirable for a more specific objective to include the use of international standards to establish the formalities and procedures for the clearance of goods within the long-term measures, and that among the measurement and evaluation indicators; the use of relevant international standards should be included as one of the points to be measured and evaluated.
4. Efficient and rapid mechanisms should be created for stakeholder participation in alerting of inefficient procedures or formalities causing unnecessary delays and in the consequent adoption of rules in line with international regulations.

## Section 10.4. – Single Window

This section encourages countries to strive to establish a single window that allows traders to submit the documentation and/or information required for import, export and transit to the relevant authorities through a single point of entry. This information shall be submitted only once, and the authorities involved in the single window may not request such information again, unless under exceptional circumstances.

Once the single window is established, countries should notify the Committee of the details of its operation.

Finally, countries should strive to use information technology in the operation of the single window.

This paragraph is of direct interest to all agencies involved in border controls.

### Analyzed Regulations

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| CAUCA: Art. 39.  RECAUCA  Central American Strategy  SAFE Framework |

### Analysis of Regional Regulations and Goals

Neither CAUCA nor RECAUCA have specific provisions that make reference to the obligation to create or maintain single windows to present the documentation and/or information required for the import, export or transit of goods, through a single point of entry.

Further, they do not include any legal provisions stating that the documentation transmitted through a single window cannot be requested again by the agencies involved.

Article 39 of CAUCA provides that state and private agencies related to customs must electronically transmit any permits, authorizations and other information inherent to the traffic of goods to customs, as well as proof of payment of tax and customs duties. This transmission must be carried out in accordance with the procedures agreed by these offices or agencies and customs. Moreover, the information transmitted electronically between official units is considered to constitute authentic documentation and will bear full witness to the transmitted original document.

However, this article does not indicate that the transmission of permits, authorizations and other information relating to the traffic of goods shall be carried out through a single point of entry.

The Central American Strategy does contemplate the importance of single windows for foreign trade. As part of the regional model for CBM, one of the cross-cutting themes is the implementation of a Central American digital trade platform or CADTP. The CADTP would consist of a regional computer platform to integrate, among others, single window information and processes. This platform would constitute a regional single window management system that would take advantage of the registries, processes, functions and data of national platforms. In addition, for countries that do not yet have a single window, a system for the management of import, export and transit permits and certificates of origin would be offered. Likewise, the functionalities of the Central American digital platform for trade would include being the regional platform for single windows.

As part of the measures to implement the CBM model and the medium and long-term action plan, one of the Central American Strategy’s strategic actions is to strengthen the countries’ single windows, “integrating all border control institutions into them and adjusting the set of documents related to the import, export and transit of goods and the movement of people (FAUCA, DUT, DUA, DM, and other types of customs documents) as necessary for interoperability.”

In this sense, the Central American Strategy is consistent with the TFA and is aimed at its effective compliance.

### International Best Practices

The SAFE Framework deals very precisely with the issue of single windows, highlighting their importance:

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| 1.3.8. Single Window  Governments should develop cooperative arrangements between Customs and other Government agencies involved in international trade in order to facilitate seamless transfer of risk intelligence at both national and international levels. This would allow traders to electronically submit the required information to a single designated official authority, preferably Customs. Thus the Customs will seek closer integration of trading processes and information flows in the global logistics chain, for example, by making use of commercial documents such as invoices, and purchase orders as well as the export and import declarations. |

Korean single window experience:

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| The Korean experience of implementing the single window is a prime example of the process involved in complying with TFA provisions. In the case of Korea, the single window has been implemented in four different stages and is still being updated and continually improved.  During this process, the main challenges were:   * Encouraging declarants to use the single window. In 2006, two years after the system was created, the utilization rate was only 4.3%, while in 2010 it was 91.6%; * The low initial utilization was due to the fact that the platform lacked some fundamental functions, such as electronic payment of fees; * Coordinating all public agencies involved in the import, export and transit processes, as this includes harmonization of processes, forms and formalities, which requires strong political support. In 2008, this project was given priority status. To date, 39 official institutions have been integrated, and it is possible to share information between them and Customs. * Connecting private sector entities. Over 430,000 entities are connected to this window, including customs agents, shipping carriers, shippers, warehouses, etc. The main benefits that Korea has obtained from this initiative are a considerable reduction of the time needed for the different customs procedures and significant savings for all the companies involved in the customs process, which in the Korean case amounted to 2.1 billion dollars in 2010; |

ASEAN single window

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| The single window experience of the Association of Southeast Asian Nations (ASEAN) is of special interest for Central America, as it is a regional initiative that connects and integrates the national single windows of ASEAN Member States  This measure seeks to promote the economic integration of the countries in Southeast Asia and allows for the establishing of facilities between these nations in customs matters such as requirements, time frames, and even preferential tariffs. This tool is still under development, as countries such as Brunei and Vietnam have not yet joined, but other countries such as Indonesia, Malaysia, Singapore and Thailand are already using it to exchange electronic certificates of origin.  The ASEAN Single Window is an excellent example of regional economic integration for Central America to emulate. However, this first requires effective implementation of national single windows. |

### Identified Gaps

Although the requirement for the creation of single windows is a best endeavor norm destined not only for customs but fundamentally for the other entities that operate at the borders, we consider it necessary for CAUCA to refer to the participation of customs in the single windows. Likewise, the consequent obligation not to request the same documentation or documentation already received must be regulated, except in extraordinary circumstances.

Given the importance of single windows in foreign trade for expediting import, export and transit procedures, it is believed that the lack of specific regulation in areas related to customs is a CAUCA gap with regard to the region’s goals and effective compliance with the TFA.

### Recommendations

1. Special regional rules should be created to regulate other border agencies and use other regional legal mechanisms, as well, for creating national and regional one-stop foreign trade windows that meet the following standards:
2. Integration of import, export and transit processes;

Integration of all authorities with competence in matters of border control;

Establishment of the obligation to enter into cooperation agreements for information exchange and communication with other customs offices;

Integration of private sector entities involved in the logistics supply chain, such as customs agents, cargo agents, warehouses, and shippers; and

Interoperability.

1. Express provisions should be included in CAUCA to prohibit authorities involved in single windows from requesting the same documentation and/or information already received through the window, except under extraordinary circumstances such as a fortuitous events and force majeure.
2. Express provisions should be included to establish the obligation of participating entities to notify the decisions and/or results of analyses of the documentation and/or information received through the single window.

### Technological Gaps and Recommendations

The single window is the only virtual infrastructure that provides interaction through a single point of entry. The national single window should serve as a liaison point for interoperability at the regional level.

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| ANALYSIS | GAPS | RECOMMENDATIONS |
| For exports and imports: There are two types of single windows: physical and virtual. Virtual single windows depend entirely on the use of technology. | All the countries in the region have a window for electronic exports, which includes all government agencies relevant to exports.  In some countries in the region, there are electronic import windows, although they are limited to several government agencies relevant to foreign trade.  Some countries continue to face restrictions on the implementation of electronic signatures. | For exports, countries must implement the electronic certificate of origin. For imports, all countries must include all agencies relevant to foreign trade.  For the electronic signature, see technological gaps, Article 7.2 of this document. |
| Regional single window. | Countries do not yet have  an electronic single window that includes a system to manage export, import and transit permits, as well as certifications of origin. | Implementation of operational single windows at the national level with adoption of UN and CADTP recommendations.  Conceptual adoption and regional adaptation of the WCO common data model for all types of messages linked to international trade operations, not only strictly customs-related ones but also messages corresponding to other technical control institutions, and international unification of same.  At the national level, electronic signatures and documents must have the same validity as paper issuances. |
| Regional information exchange. | Inter-operability of information among government agencies relevant to foreign trade is quite limited. | At the national level, all transactions should be 100% electronic for export, import and transit of goods.  All documents that are necessary for inter-operability and related to the import, export and transit of goods should be harmonized and adapted at national level. |
| Electronic payment at the national level. | Countries have not yet fully implemented their electronic payments, both for Customs and for other agencies involved in foreign trade. | Establish nationwide online services for integrated payments, issuance of permits, licenses and customs duties and charges. |
| Electronic TIM at main border crossings. TIM consists of the transfer of goods, under fiscal control, from one national customs office to another. | All countries have completed implementation of the TIM platform as part of the window for customs procedures in transit operations. | The TIM platform is implemented in all countries, although the quarantine module is not yet utilized. |
| Electronic transmission of customs forms. | There are still regional constraints on the information being exchanged and the type of declarations, with a limited effect on the simplification process. (Electronic transmission of FAUCA is still limited.) | Protocols for interconnection between countries should be established, allowing for expedited procedures of advance information. |

**International Best Practices: Korea and Singapore**

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| The Korean customs service estimates that the establishment of its single window generated economic benefits reaching total earnings of US $3.47 billion in 2015. The Korean experience confirms that in order to create a one-stop international trade window permitting advance information exchange among countries and contributing to trade facilitation and cargo security, the data to be declared by public agencies around the world must be standardized. They have therefore actively joined in the WCO’s efforts to develop the data model and promote harmonization of coding and data at national and international levels, as a result of the entity’s trade facilitation efforts.  Another success story is Singapore. The national single window for trade, TradeNet, has brought together more than 35 border control agencies since 1989, and has allowed for large gains in government productivity. In 2015, TradeNet’s time for processing a permit or document was less than one minute. This is achieved using a single document through a single interface and paying a fee of $2.88. Over 8,000 users converge on TradeNet, and it has more than 2,600 subscribers. This system processes around 30,000 declarations daily and more than 9 million declarations annually. |

Regional and International Best Practices: CADTP and TFA article: Formalities in Relation to Import, Export and Transit

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| **The CADTP** relates this article to the following computing concepts:   * Platform for case resolution * Process optimization * Automation of risk criteria * Business intelligence solutions regarding records * Interoperability: other agencies, other windows at the regional level, information interoperability * Platform for public entity procedures and paperwork * Platform to address the requests of exporters and importers * Platform for compliance with obligations to public entities * Liaison of business communities: ports, airports, border posts.   **Article 10.4 of the TFA, in its strategic WCO document**, “Strategic Leadership in Information Technology: IT Guide for Executives – WCO” suggests:   * Adoption of international protocols for data exchange. * Conceptual adoption and regional adaptation of the WCO common data model for all types of messages linked to international trade operations, not only those of a strictly customs nature, but also messages corresponding to other technical control institutions that have been unified internationally. * Adjustment of institutional computer systems to assimilate the WCO common data model. * Definition of a multi-functional set of indicators that help establish objective parameters to demonstrate the performance of border posts, their monitoring and relative comparison. |

## Section 10.5 - Pre-Shipment Inspection

This section is divided into:

**5.1-** This subsection provides that countries shall refrain from requiring the use of pre-shipment inspection in matters of tariff classification and customs valuation.

**5.2**- This subsection states that, without prejudice to their right to use pre-inspection types other than those for classification and valuation, the countries are encouraged not to introduce or apply new requirements for their use. This pre-inspection refers to the mechanism provided for in the Pre-Shipment Inspection Agreement and does not affect pre-inspections outside of this agreement such as inspection for sanitary or phytosanitary purposes.

### Analyzed Regulations

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| CAUCA. It does not record this mechanism.  RECAUCA. It does not record this mechanism.  Multilateral Agreement on Pre-Shipment Inspection |

### Analysis of Central American Regulations and Goals

CAUCA and RECAUCA do not contemplate any provisions on this matter.

The Agreement establishing the WTO, Annex 1A (Multilateral Agreements on Trade in Goods, Agreement on Pre-Shipment Inspection) (“the Agreement”) was analyzed. The Agreement defines pre-shipment activities in Article 1, paragraph 2, as all activities related to the verification of the quality, quantity, and price, including the exchange rate of the corresponding currency and the financial conditions or customs classification of the goods to be exported to the user member territory.

Of the pre-shipment inspection activities defined in the multilateral rules, only those related to tariff classification and price are referred to in subsection 5.1 of the TFA as a determinant of the customs valuation. Thus, aspects related to verification of quantity, quantity, exchange rate and financial conditions are not covered by the prohibition on countries to require the use of inspections.

As for inspections whose use is not prohibited (those not related to classification and valuation), the TFA encourages countries not to introduce or apply new requirements on their use. In other words, they are encouraged to maintain the *status quo*.

Notwithstanding the foregoing, internationally traded goods may be subject to inspections other than those provided for in the Agreement, which are not subject to the prohibition set forth in subsection 5.1 or the restriction included in subsection 5.2. These activities are mentioned in footnote 12, which states that “this paragraph refers to pre-shipment inspections covered by the Agreement on Pre-Shipment Inspection, and does not preclude pre-shipment inspections for health purposes and phytosanitary products.”

### Identified Gaps

Upon review of the Central American legislation, no use of the pre-shipment inspection was found, which means that its regulations coincide with the TFA, and there are no gaps.

## Section 10.6 - Recourse to Customs Agents

This section covers the following points:

* Countries shall not introduce compulsory recourse to customs agents; and
* The rules concerning the granting of licenses to customs agents shall be transparent and objective.

### Analyzed Regulations

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| CAUCA: 18-23  RECAUCA: Section III (76-98) |

### Analysis of Central American Regulations and Goals

CAUCA defines the capacity and strictly personal and non-transferable nature of the agent, in addition to establishing the agent’s solidarity and obligations. It refers to RECAUCA regulations regarding licensing, responsibilities, duties, etc.

RECAUCA regulates all matters related to the licensing of and license requirements for customs agents in detail. Its articles 87 and 88 define the cases in which their intervention is not mandatory, from which can be inferred that, in the cases not foreseen in these articles, their involvement is mandatory. In summary:

Article 87.

* Operations carried out directly by the governments of the countries: In the case of customs operations carried out by the government and its agencies, municipalities and the autonomous or semi-autonomous institutions of the State;
* When the goods subject to customs operations or procedures are in any of the following situations:

In the case of a free trade operation under a bilateral or multilateral agreement;

When the goods are small, non-commercial shipments or are received or dispatched through the international postal system without commercial character or through expedited delivery or courier systems.

When the goods are as follows:

* Traveler’s baggage and goods other than luggage;
* Goods made by corporate entities represented by a special proxy customs agent;
* Goods that do not pay tariffs, such as: in-flight supplies, relief shipments and non-commercial imports, when their value does not exceed one thousand Central American pesos; and
* Other modalities, operations and procedures expressly stated by the Regulations.

Article 88 sets forth the optional intervention of customs agents in the following cases:

* Definitive and temporary exports with re-importation in the same state or temporary exports for outward processing;
* Free zones and customs warehouse;
* Temporary admission for inward processing; and
* Other regimes specified expressly by the Regulations.

The Central American Strategy provides for customs agents but does not establish them as mandatory.

### International Agreements

CAFTA-DR does not mention anything on this subject. Article 118 (4) of the EU-CAAA states that countries should have clear, transparent and proportionate legislation and that, where customs agents are mandatory, legal entities should be allowed to operate with their own customs agents who have been licensed by the competent authorities. It expressly leaves out any other situation in accordance with other multilateral negotiations.

### International Best Practices

This section of the TFA is based on standard 8.1 of the RKC:

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| 8.1. Standard  Persons concerned shall have the choice of transacting business with the Customs either directly or by designating a third party to act on their behalf.  Guideline 8.1  This Standard gives the “person concerned”, who is usually the exporter or importer and the owner of the goods, the option of either dealing directly with Customs or designating a third party to deal with Customs….  While some Customs administrations are liberal in their dealings with third parties, some have imposed certain restrictions on third party transactions. These restrictions are to ensure that the third party acts with a certain degree of professionalism and responsibility, thereby allowing Customs to fulfil its own responsibilities to ensure compliance with Customs law.  Some administrations require third parties by law, regulation or Customs ruling to be licensed. These licensing requirements may stipulate specified criteria that the third party must meet such as age, education, professional competence or moral and financial integrity. Additional criteria generally are that the third party have a registered business premise and meet professional standards for record-keeping. In some countries, third parties must pass qualifying examinations to meet these requirements. Customs’ authority in approving third parties is covered by Standard 8.2.  Note: Emphasis added |

Japanese customs have achieved excellent results by allowing customs agents to be AEOs:

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| AEOs and Customs Agents  In 2008, in order to ensure and facilitate world trade, Japanese Customs introduced their AEO program and included customs agents among potential professionals who could be certified. Being involved in the international movement of goods, customs agents are one of the entities that can help maintain the security of the logistics supply chain. The requirements for a customs agent to obtain certification are the same as for a carrier or depositary. For example, AEO agents must have at least three years of experience, cannot have violated any customs laws, must be able to use the electronic system for customs procedures, must have registered premises, etc.  Source: WCO Report on Customs Brokers, June 2016. |

### Identified Gaps

**Regarding the obligatory nature of the use of customs agents**: RECAUCA considers the recourse of customs agents as mandatory for definitive import operations and leaves open the possibility that by regulation it can be made mandatory for any other regime. These provisions would appear to be in violation of the provisions of the TFA.

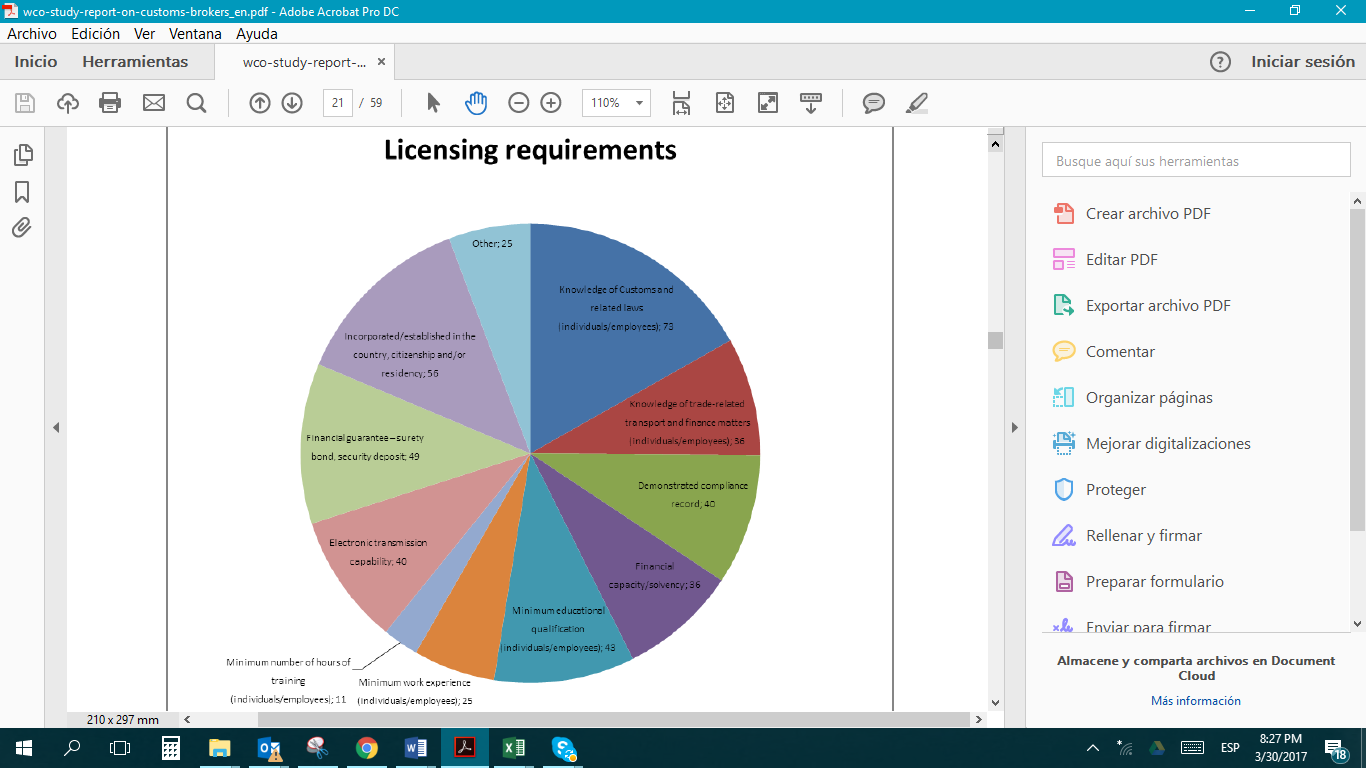
However, the TFA is clear in its mandate: as of the entry into force of this agreement, the members will not introduce the obligatory recourse to customs agents. This means that if it already exists, it should not be eliminated, but if it does not exist it cannot be introduced in the legislation. In the case of a country examined individually, it is clear that those countries that contain the obligation do not have to eliminate it unless the legislation changes; and those who do not contemplate it, cannot introduce it.

The complex part of analyzing this article is that CAUCA and RECAUCA constitute applicable law for the Central American countries and therefore, RECAUCA should be examined as an existing standard that need not be changed in order to eliminate the obligatory nature of customs agents.

In fact, as RECAUCA had already contemplated the obligatory nature of customs agents from the moment it took force, it is not in violation of the TFA and therefore there is no obligation to eliminate mandatory use, but only to refrain from introducing it if there were any changes after the TFA took force.

**Regarding the licensing processes**: In general, RECAUCA establishes complex licensing requirements for Customs Brokers. The complexity of these requirements discourages the participation of qualified professionals, who choose not to be certified, thus opening the doors to a lack of protection of declarants who use non-certified professionals and a lack of responsibility of these to customs. The WCO has expressed its concern about the emergence of informal intermediaries:

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| 2015 Report on Customs Agents by the WCO  Another challenge mentioned by the WCO is the issue of compliance and integrity of brokers. The appearance of informal brokers who operate with no license and ID is a practice not only deleterious to professional brokers and traders; it also raises concern from a compliance perspective. 46% of WCO members have noted this as a problem area. 14% point to it as a very serious problem. |

The WCO has therefore proposed a number of innovative ideas to improve the certification of customs agents (Customs Brokers), which could be incorporated into RECAUCA. WCO prepared the following chart to show trends in the requirements for certifying customs agents:

Source: WCO Report on Customs Brokers. June 2016

### Recommendations

1. Regarding the obligation not to introduce: CAUCA and RECAUCA already contemplate this obligation for certain customs activities, so they are not forced to eliminate this condition. Due to the different realities and complexities in certain countries of the region, the appropriateness of eliminating it depends on considerations that go beyond legal ones.
2. Concerning the conditions for licensing, reforms must be made to adapt these conditions to the TFA and to international best practices.

## Section 10.7 - Common Border Procedures and Uniform Documentation Requirements

Article 10.7 of the TFA establishes as a general principle, the uniform application in each country’s territory of the same procedures and document requirements for customs clearance and release. In addition, it comprehensively regulates the exceptions that may apply and states the ends to which each exception should be consulted.

### Analyzed Regulations

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| CAUCA: Arts. 63,84,91,33,35  RECAUCA: Arts. 353, 354, 331, 245, 327, 392-402, 403, 406, 407-422, 403, 406, 407-422, 335, 359, 423-539, 358  COMIECO Resolution 271/11: Arts. 12, 14 y 16  COMIECO Resolution 338 de 2014  Central American Strategy (as a whole)  CAFTA-DR: Arts. 3.5, 3.6 y 3.7  EU-CAAA |

### Analysis of Central American Regulations and Goals

CAUCA establishes, in a very general manner, its scope of application to the customs territories of the State Parties and establishes further on in several articles the specific matters in which each country can differentiate its procedures, documentation and requirements. RECAUCA also provides that, unless otherwise stated, as a result of international agreements, the customs regulations set forth by the Central American Uniform Customs Code and this Regulation, shall apply uniformly in the customs territories of the State Parties.

The exceptions allowing differentiation of requirements and procedures are given in the following table:

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| --- | --- | --- |
| TFA | CAUCA | RECAUCA |
| Possibility of differentiating procedures and documentations based on the nature and type of goods. | Article 63. Banned Goods  Banned import or export goods shall be retained by the Customs Authority and, where appropriate, placed at the disposal of the competent authority.  Article 41. Hazardous Goods  Entry into national territory of explosive, flammable, corrosive, contaminating, and radioactive goods, as well as other hazardous goods that do not have prior permission from the competent authority shall not be permitted. Upon authorization of entry, hazardous goods shall be stored in the places legally for that purpose. | Article 353. Hazardous and Perishable Goods. Priority shall be given to shipments of hazardous goods such as explosive, flammable, corrosive, contaminating or radioactive goods, as well as perishable or easily decomposed goods and others that so warrant as per the judgment of the Customs Authority.  Article 354. Bulk Goods. In the case of imports of bulk goods, when the sum of the weight or volume surpasses the goods recorded in the goods declaration by no more than five percent, no administrative sanction shall be applied, and payment of the respective customs taxes shall be required through correction of the corresponding goods declaration, which may be submitted after the goods have left the customs area.  When the sum of the weight or volume shows a shortage of up to five percent, such shortage shall be recorded at the request of the interested person.  Article 331. Provisional Declaration. The goods declaration may be authorized provisionally by the Customs Service, in the case of clearance of goods in bulk and others as established by the higher authority of the Customs Service. |
| Possibility of differentiating procedures and documentations based on the means of transport. | - | Article 245. Advance Transmission of the Cargo Manifest. The shipping carrier shall provide the Customs Service with the possibility of differentiating procedures and documents based on the information in the cargo manifest, transmitted via electronic data transmission... This information shall be supplied within the time limits determined by the Customs Service, or as follows: a) maritime traffic, at least twenty-four hours before arrival of the vessel to the customs port; b) air traffic, a minimum of two hours prior to arrival of the aircraft; c) deconsolidation companies and express delivery or courier companies, prior to arrival of the aircraft; or d) ground transportation, in advance form and exceptionally upon arrival of the means of transport.  Article 327. Clearance with Partial or Gradual Release. For shipments where, given their nature, the goods cannot be transferred by the same means of transport, the goods may be cleared with a single goods declaration in the following cases: a) railway operations; b) disassembled machines or complete production lines or disassembled prefabricated construction; c) bulk goods of the same kind; d) sheet metal and wire on rolls; e) paper reels; and (f) shipments of goods of the same quality and, where applicable, make and model, provided that they are classified in the same tariff item. (…).  Articles 392 to 402 of Chapter IV, Customs Transit, regulate requirements, procedures and responsibilities for each mode of transit, internal or international. Articles 403 to 406 of Chapter V, Multimodal Transport, and Articles 407 to 422 of Chapter VI, Transit by Sea or Air, state different requirements and procedures depending on the mode of transport used. |
| Possibility of differentiating procedures and requirements based on risk management. | Article 84. Targeting and Random Verification. The self-determined declaration shall be subjected to random targeting, by applying risk analysis methodologies to determine the need for immediate verification of the declared goods. This verification does not limit the post-inspection powers of the Customs Authority. | Article 335. Risk Analysis Methodology. The goods declaration accepted by the Customs Service shall be submitted to risk analysis to determine whether there is a need for immediate verification of the declared goods. When, in accordance with the risk analysis, it is necessary to carry out immediate verification of the declared goods, the customs agent or the declarant or the special proxy customs agent shall submit to the Customs Service all documents supporting the goods declaration. |
| Possibility of differentiating documentation procedures and requirements for granting total or partial exemption from import duties or taxes. | Article 91. Classification of Customs Regimes  Goods may be destined for the following customs regimes:  (…);  b) Temporary or waiver regimes: Customs transit; temporary import with re-export in the same state; temporary admission for inward processing; customs warehousing or Customs warehouse; temporary export with re-import in the same state; and temporary export for outward processing; and  c) Duty-free regimes: Free trade zones; re-import and re-export.  Without prejudice to the aforementioned regimes, other customs procedures may be determined as each country may see fit for their economic development. | Article 359. Goods Benefited by Trade Agreements. Goods benefiting from preferential tariff treatment under trade agreements shall be included in the goods declaration and shall be accompanied by the certificate or certification of origin in accordance with said agreements. Goods benefiting from preferential tariff treatment under trade agreements may be included in the goods declaration with non-benefiting goods, provided they are accompanied by the certificate or certification of origin.  Articles 423 to 539 of Title VI, Chapters VII to XV, regulate the regimes of: temporary import with re-export in the same state; temporary import of vehicles for tourism, and other cases of temporary import of vehicles; in-flight supplies; customs warehouse; free trade zone; temporary export with re-import in the same state; temporary export for outward processing; re-export and re-import.  The application of these regimes is subject to the meeting of specific customs obligations, which differ from the payment of taxes.  The goods which may be subject to the aforementioned regimes; the content of import declarations; the procedure for their application; the requirements, time limits, guarantees, obligations, and termination, among other things, all differ from the requirements and procedures of the definitive import regime. |
| Possibility of differentiating procedures for applying the electronic transmission system. | Article 33. Evidentiary Value  Any documents and other data transmitted electronically or digitally, by means of digital signature, shall have the same value and evidentiary effectiveness as if they had been signed in handwritten form.  Any document, electronic message or digital file linked to a certified digital signature shall, without proof to the contrary, be presumed of the authorship and responsibility of the holder of the corresponding digital certificate in force at the time of its issuance.  Article 35. Proof of Computerized Acts  The data received and recorded in the Customs Service computer system shall constitute proof that the customs official or employee, customs officer assistant, declarant or any person authorized by the Customs Service performed the corresponding acts and that the information was provided by them using their digital or electronic signature and confidential password or equivalent. | - |
| Possibility of differentiating procedures to apply the SPS electronic transmission system. | This is not contemplated. | Article 358. Declaration of Goods of Central American Origin. Goods originating in the State Parties shall be declared in the Central American Single Customs Form, by electronic transmission, under the conditions set forth by the regional rules that regulate it. |
| Possibility of differentiating documentation procedures and requirements in alignment with the SPS Agreement. | - | This is not contemplated. |

### Analysis of COMIECO Resolutions

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| COMIECO 271/11  Possibility of differentiating documentation procedures and requirements in alignment with the SPS Agreement. | **Article 12. Import Requirements:**  1. State Parties shall ensure that all sanitary and phytosanitary regulations that have been adopted, including import requirements, are published and available.  2. The competent authority of the exporting State Party shall ensure that the exported products meet the sanitary and phytosanitary requirements of the importing State Party.  3. The importing State Party shall ensure that its import conditions are applied in a proportionate and non-discriminatory manner.  4. State Parties undertake to harmonize the instruments used for control, inspection, approval and certification processes.  **Article 14.** Pursuant to the obligations and rights encompassed in this Regulation and for control purposes, the competent authority of the State Parties shall determine the points of entry or inspection sites (including seaports and river ports, border posts, international airports and postal customs offices and fiscal warehouses and deposits) where it shall verify compliance with the sanitary and phytosanitary requirements for imports and exports and, if necessary, apply the corresponding measures.  **Article 16.** Pursuant to the rights and obligations encompassed in this Regulation, for any products requiring an official certificate to guarantee compliance with sanitary and phytosanitary requirements, State Parties shall ensure that it is issued by the competent authority, as appropriate. |
| COMIECO Resolution 338 of 2014. | Based on the criteria for classifying goods according to the level of risk, the following categories are defined:  Category A: Goods or Consignments of High Sanitary and Phytosanitary Risk.  Category B: Goods or Consignments of Medium or Moderate Sanitary and Phytosanitary Risk.  Category C**:** Goods or Consignments of Low or Negligible Sanitary and Phytosanitary Risk.  **5**. Requirements for the commercialization of goods or consignments according to the established category.  5.1 Category A: Goods or Consignments of High Sanitary and Phytosanitary Risk: These goods require the Notification of Entry by the State Party of destination, Sanitary or Phytosanitary Certificate and inspection upon their entry to the State Party of destination.  5.2 Category B: Goods or Consignments of Medium or Moderate Sanitary and Phytosanitary Risk: These goods require the Sanitary or Phytosanitary Certificate and shall be subject to random inspection upon their entry to the State Party of destination.  5.3 Category C: Goods or Consignments of Low or Negligible Sanitary and Phytosanitary Risk: These goods shall be subject to random inspection upon their entry to the State Party of destination. |

### International Agreements

CAFTA-DR:Articles 3.5 (Temporary Admission of Goods), 3.6 (Goods Re-entered after Repair or Alteration)and 3.7 (Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials) establish the cases in which different procedures and requirements can be determined.

EU-CAAA does not regulate this subject.

### Identified Gaps

A comparative analysis of the multilateral mandates expressed in Article 10.7 above and Central American legislation, clearly shows strong accordance between the exceptions provided for in the regional legislation and the scope stated in the TFA. In fact, there are common procedures and uniform regulations of general application, under the heading of Common Provisions for Customs Clearance. There are also differentiations based upon the nature, type of goods, and means of transport employed; documentation requirements on the basis of risk management; and procedures and requirements aimed at granting full or partial relief from import duties or taxes or applying electronic transmission systems or procedures compatible with the SPS Agreement as foreseen by the TFA.

### Recommendations

There are no recommendations on this topic.

## Section 10.8 - Rejected Goods

**Section 8.1:** This regulates the status of goods presented for import which are rejected by the competent authority of the importing country for not complying with prescribed technical regulations or sanitary or phytosanitary regulations. The Member shall permit the importer to consult or return the rejected goods to the exporter or other person designated by the exporter.

**Section 8.2:** This regulates the cases in which the option provided in the previous section is offered and the importer does not exercise it within a reasonable period of time. In this case, the Customs may adopt a different course of action to deal with non-conforming goods.

### Analyzed Regulations

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| CAUCA  RECAUCA  COMIECO Resolution 271 of 2011: Art. 8  COMIECO Resolution 338 of 2014  COMIECO Resolution 037 of 1999  Central American Strategy (as a whole)  CAFTA-DR  EU-CAAA  SAFE Framework  COMRIEDRE 65 |

### Analysis of Central American Regulations and Goals

Neither CAUCA nor RECAUCA regulate the actions or procedures that customs must follow to guarantee effective exit of the rejected goods from the country.

Only COMIECO Resolution 271 of 2011 (Art. 8) includes a provision to this respect: the authority of a country has a maximum of two business days after confirmation of a legal, technical, sanitary or phytosanitary noncompliance to notify the exporting country, explaining the reasons for rejection.

The Central American Strategy does not contemplate anything concerning this matter.

### International Agreements

CAFTA-DR and EU-CAAA do not regulate this subject.

### Identified Gaps

This topic is not expressly regulated in general legislation or in technical regulations or sanitary or phytosanitary regulations. In fact, the regulations for SPS (Resolution 271/11 and 338/14) and for standardization, metrology and authorization procedures (Resolution 0037/99) do not contemplate it precisely within TFA guidelines.

Article 8 of Resolution 271 establishes the obligation to notify the exporting State Party of the reasons for noncompliance and rejection of the goods, but it does not include the obligation to allow the importer to re-dispatch or return the rejected goods to the exporter or another person designated by the exporter, as provided for in the TFA.

### Recommendations

1. Customs mechanisms should be provided that guarantee effective exit of the rejected goods from the country. In cases where the importer does not take action within a certain time frame, it is recommended to include rules in CAUCA or RECAUCA to regulate the participation of customs to ensure effective and expeditious exit of the rejected goods from the country.
2. The possibility should be provided for importers to re-dispatch rejected goods. This keeps them from sustaining significant economic losses, provided that the rejection is not grounded in circumstances affecting the legitimate interests protected in the SPS Agreement or in the Agreement on Technical Barriers to Trade.

## Section 10.9 - Temporary Admission /Inward and Outward Processing

This section covers the following topics:

**Import for re-export in the same state:** This item concerns full or partial waiver of import duties and taxes when goods: (i) are introduced for a specific purpose; (ii) are intended for re-export within a specified period and (iii) have not undergone any modification beyond depreciation and normal use.

**Inward and Outward Processing**: This section defines inward and outward processing and establishes that the countries must allow total or partial exemption in such cases.

### Analyzed Regulations

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| CAUCA: 91 – 107  RECAUCA: 466, 479 and 480 |

### Analysis of Central American Regulations and Goals

CAUCA regulates full and partial waiver of customs taxes in articles 91 to 107. These special regimes include those mentioned in Section 10.9.

With a view to subsequent analysis, the following CAUCA articles are cited verbatim:

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| Article 98. Temporary Admission for Inward Processing  Temporary entry for inward processing is entry into the customs territory with waiver of import duties of goods from abroad **that are intended to be re-exported after undergoing processing, preparation or repair or other legally authorized processes**. Upon compliance with the requirements, formalities and conditions laid down in the Regulation, a percentage of the goods subject to processing, preparation or repair or other authorized processes under this regime may be definitively imported, as determined by the competent authority.  Article 102. Temporary Export with Re-import in the Same State  Temporary export **with re-import in the same state** is the customs regime by which, with waiver of export taxes, where applicable, temporary exit from the customs territory is allowed for national or nationalized goods for a specific purpose and specified time period, under the condition that they are **re-imported** **without having undergone any processing, preparation or repair abroad**, in which case upon their return they shall be admitted with full import tax exemption. The period for re-import shall be as established by the Regulation.  Article 103. Temporary Export for Outward Processing  **Temporary export** for outward processing is the regime that allows exit from the customs territory, for a specified time period, of domestic or cleared goods for **processing, preparation,** **repair** or other permitted operations abroad, with waiver of export taxes as applicable, **and for re-importing** under the tax treatment and within the time period established in the Regulation.  Article 105. Re-import  Re-import is the regime that allows entry into the customs territory of domestic or cleared goods **which were definitively exported** **and are** **returning in the same state**, with relief from taxes.  Article 107. Re-export  Re-export is the regime that allows exit from the customs territory of **foreign goods which arrived in the country and were not definitively imported**. Re-export of abandoned goods or of goods suspected, on sufficient grounds, of a criminal customs offence or misconduct shall not be permitted.  NOTE: Emphasis added. |

RECAUCA details several of the topics covered in CAUCA as follows:

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| Article 466. Definitions  For the purposes of this Chapter, the following definitions shall apply:  a) Inward processing operations:  i. Manufacture of goods, including their assembly, installation or adaptation to other goods;  ii. Processing of goods;  iii. Repair of goods, including their restoration and servicing; and  iv. Use of certain goods not found in compensating products but that allow or facilitate procurement of these products, even if they disappear in whole or in part during their use.  b) Compensating products: Products resulting from processing operations.  c) Production coefficient: The quantity or percentage of compensating products obtained in the processing of a specified quantity of import goods.  d) Shrinkage: The effects that are consumed or lost in the development of processing operations and whose integration to the product cannot be verified.  e) Waste: Residues of the resulting goods after the processing operation to which they are subjected.  Article 479. Re-import  For the re-import of goods subject to the inward processing regime in the customs territory **and which were** **re-exported**, upon their return to the customs territory due to return by the foreigner, the raw materials and foreign intermediate goods used for their production, and which were imported under the suspensive regime, shall be subject to payment of taxes.  **Article 480. Returns**. Finished products that **have been exported or re-exported after undergoing inward processing in the customs territory** and which are returned to the same for repair, may enter under the temporary admission regime for inward processing, after provision of the corresponding security.  Note: Emphasis added. |

### Identified Gaps

#### Erroneous Terms in CAUCA or RECAUCA Wording:

Pursuant to the TFA, Inward Processing is the regime that allows for entry into the customs territory of certain goods for their processing, preparation or repair for their subsequent export, through the full or partial waiver of import duties and taxes.

In turn, Outward Processing is the regime that allows for temporary export of goods to be processed, altered or repaired.

Article 98 of CAUCA has an error in its wording which, in addition to being contrary to the TFA, is contrary to the very concept of inward processing. Indeed, this article states that goods introduced into the country for inward processing shall be re-exported after processing, preparation or repair. The use of the term re-export is incorrect, since a good that has been subject to inward processing cannot be re-exported, as it is a new product different from the one brought into the country’s territory. The only possible term is, therefore, “export.”

Article 102 is correct in using the term re-import, since the same good that was exported temporarily returns to the country’s territory without having undergone any alteration, i.e. the same good that was temporarily exported is re-imported. However, this article contradicts the provisions of Article 105 which defines “re-import” as the regime under which goods definitively exported return to the country in the same state (without undergoing processing, alteration or repair).

Article 103 of CAUCA repeats the same error of Article 98 when using the term “re-import” in referring to goods that are totally different from the ones that left the country’s territory under the temporary export regime, under which the goods were subject to changes, alterations or repairs that modified their nature, so they cannot be re-imported, but only “imported.” Precisely because of this, Article 103 is contrary to the definition of re-import laid down in Article 105 of CAUCA, which defines re-import as the return to national territory of goods in the same state in which they were definitively exported.

As a result of misuse of the words “re-import” instead of import and “re-export” instead of export in the aforementioned CAUCA articles, RECAUCA includes similar errors in different articles, such as 477, 479 and 480.

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| The use in Central American legislation of the “re-export” regime to designate the exit from the customs territory of foreign goods temporarily imported for processing had its origin in the unofficial translation of the RKC by ALADI, where it was called “re-export.” However, both the original RKC English version and TFA Article 9.2.b properly refer to it as export.  Nevertheless, the version of the Convention in English appropriately terms it “exportation” in Annex f, Chapter 1 E3/F2 with the following wording: *“inward processing” means the Customs procedure under which certain goods can be brought into a Customs territory conditionally relieved from payment of import duties and taxes, on the basis that such goods are intended for manufacturing, processing or repair and subsequent* ***exportation.****”* |

#### Complexity in the Application of RECAUCA in Relation to Other International Agreements

A clear example of enforcement complexity is found in Article 526 of RECAUCA, entitled “Requirements for Exemption of Re-imports” and applicable to goods previously exported for outward processing, compared to provisions regulating the same matter in international agreements such as CAFTA-DR:

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| RECAUCA Article 526: Requirements for Exemption of Re-imports | CAFTA-DR, Article 3.6 Goods Re-entered after Repair or Alteration |
| In order to enjoy the benefits of this regime, upon re-import of the goods, the declarant shall meet the following requirements:  a) In the case of goods repaired without cost or replaced, within the period of the performance guarantee:  i. The declaration of goods for re-import is duly submitted and accepted within the period of permanence of the temporary export, attaching copy of the execution of the performance guarantee or equivalent document.  ii. The identity of the goods is fully established, in the case of their repair. In the case of replacement by identical or similar goods, the provisions of the third paragraph of Article 104 of the Code shall apply.  b) In all other outward processing cases:  I. The declaration of goods for re-import is duly submitted and accepted within the period of permanence of the temporary export.  ii. The identity of the goods should be fully established or the incorporation of temporarily exported goods into the compensating products to be re-imported may be determined.  The re-import of the goods referred to in sub-section (a) of this Article shall be carried out with full exemption from taxes, except:  In case of replacement, when the replaced goods have a higher value; in which case, such taxes shall be paid only on the resulting difference.  When the performance guarantee is not recognized, in which case the corresponding taxes shall be paid on the added value of the goods and the expenses incurred by reason of the re-import.  For the cases provided for in sub-section (b) of this Article, the corresponding taxes shall be paid only on the value added to the goods exported and the expenses incurred in connection with re-import. If the outward processing was carried out in the customs territory of one of the State Parties, and if the added elements, parts or components originate from those State Parties, re-import shall not be subject to the payment of customs duties. | 1. No Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of another Party for repair or alteration, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration.  2. No Party may apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of another Party for repair or alteration.  3. For purposes of this Article, repair or alteration does not include an operation or process that: (a) destroys a good’s essential characteristics or creates a new or commercially different good; or (b) transforms an unfinished good into a finished good. |

### Recommendations

1. Provide for temporary admission for inward processing to terminate with re-export of the repaired good or export of the good resulting from processing or manufacture.
2. Amend the definition of re-import as the regime that allows entry to the customs territory of goods that were temporarily or definitely exported and that return in the same state.
3. Modify the concept of temporary export for outward processing encompassed in Central American legislation. Indeed, the concept must be amended:
4. To include exit from the customs territory, for a specified time period, of domestic or cleared goods for processing and manufacture operations abroad.
5. To terminate the temporary export regime for outward processing with the re-import of the repaired product or with the import of the product resulting from the manufacture or processing.
6. Include “importation in fulfillment of warranty,” in legislation as an independent figure, reforming what is currently provided in Article 526 of RECAUCA. Such a regime would allow:
7. Re-importing without payment of customs duties of a good repaired abroad, in fulfillment of a warranty provided by the manufacturer or supplier; or
8. Importing of a good to replace another, previously exported good that has been damaged or is defective or inappropriate for the purpose for which it was imported, also in fulfillment of a warranty provided by the manufacturer or supplier.
9. Simplify the requirements for goods to be re-imported after repair or alteration free of customs duties. For this purpose, the simple and clear wording used in CAFTA-DR could be used.

# Article 11- Freedom of Transit

This article is divided into 17 sections that regulate different matters related to freedom of transit. The sections will be analyzed by thematic blocks.

## Sections 11.1, 11.2 and 11.3- Transit-Related Charges, Regulations and Formalities

According to these sections, the regulations or formalities imposed by a country on traffic in transit should not be prolonged beyond the causes that gave rise to their adoption, and the country should endeavor to adopt them in the least trade-restrictive manner that is reasonably within its reach. It specifically provides that such formalities should not be applied in a manner that would constitute a hidden restriction on traffic in transit.

Likewise, it is expressly prohibited for transit to be subordinated to the collection of transit-related duties or levies, except for transportation costs and levies charged as administrative expenses caused by transit or cost of services rendered.

The third section refers to the fact that countries should not, on their own initiative, create legal provisions limiting or impeding certain traffic in transit operations, or prohibiting traffic in transit for certain goods, unless for legitimate policy reasons and in accordance with multilateral regulations.

These three sections are analyzed together, as they all refer to the more general characteristics that, according to the TFA, must be complied with by all regulations governing the transit of goods. All these measures are of mandatory compliance.

These standards specifically target:

* The customs administration;
* Ministry of Transport; and
* Other agencies involved in border controls.

### Analyzed Regulations

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| CAUCA: Art. 94  RECAUCA: Art. 401, 402  COMRIEDRE Resolution 65 of 2001: Art. 3, 15, 43 and 44.  COMRIEDRE Resolution 66 of 2013  EU-CAAA-CA: Art. 119 |

### Analysis of Central American Regulations and Goals

Regarding clause 1.1. The Regulation on the International Customs Transit System, through Resolution 65 of 2001, approved by the Ministers Responsible for Economic Integration and Regional Development (COMRIEDRE 65), establishes in a very general way that its objective is to facilitate, harmonize and simplify procedures used in international customs transit operations carried out by land.

In terms of international air traffic, international maritime traffic and multimodal transport, there are no legal provisions that restrict the use of such figures for certain goods or for certain circumstances. However, there is no legal provision at the level of CAUCA, RECAUCA or COMRIEDRE 65, which expressly states that the formalities foreseen for these modes of transit should not constitute a disguised restriction on traffic in transit.

In terms of cargo, Article 94 of CAUCA clearly establishes that the customs transit is the regime under which the goods subject to customs control can be transported from one customs to another with total suspension of customs duties. This provision is applicable to traffic by land, air or sea.

### International Agreements

With respect to the first sections, the EU-CAAA states under Article 119 thatany restrictions, controls or requirements must pursue a legitimate public policy objective and be non-discriminatory, proportionate and uniformly applied. With regard to the second paragraph, it states thatthe shall allow transit of goods without levying any customs duties, transit duties or other transit charges, except charges for transportation or those corresponding to transit-derived administrative expenses or cost of services rendered and to provision of an appropriate guarantee.

### International Best Practices

The RKC clearly establishes that transit-related levies and duties should not be imposed on goods in transit, except in the occurrence of an unforeseen event:

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| Specific Annex E. Transit  Chapter 1. Customs Transit  Field of Application  3. Standard  Goods being carried under Customs transit shall not be subject to the payment of duties and taxes, provided the conditions laid down by the Customs are complied with and that any security required has been furnished.  Termination of Customs Transit  25. Recommended Practice  Failure to follow a prescribed itinerary or to comply with a prescribed time limit should not entail the collection of any duties and taxes potentially chargeable, provided the Customs are satisfied that all other requirements have been met. |

The Government of the Hong Kong Special Administrative Region created and implemented a computerized system for road cargo (ROCARS) and, in order to encourage its use by the private sector, decided to fully underwrite the cost of the system without requiring any payment from users.

### Identified Gaps

In the cited provisions and, in general, the provisions of CAUCA, RECAUCA and COMRIEDRE 65, the express legal provisions that limit, restrict or discriminate against traffic in transit are not found.

Nevertheless, CAUCA and RECAUCA do not expressly include the principle of freedom of transit and do not include detailed provisions for a clear procedure for the flow of international maritime transit, international air transit and multimodal transport operations. Therefore, it is believed that there is a gap in this regard as compared to the TFA.

With regard to duties or levies, the definitions of the customs transit regime in both CAUCA and COMRIEDRE 65 expressly provide that goods in transit are not subject to duties and taxes, provided that the respective formalities are met. As such, it is considered that there is no gap between the regional legislation and the TFA.

However, there is no express reference to the fact that goods in transit shall not be subject to charges “**except for transportation costs and levies charged as administrative expenses caused by transit or cost of services rendered**.” This aspect should be expressly reflected in CAUCA to ensure that the transit will be excluded from costs other than the expenses and levies charged to recover the costs of the services provided. The lack of an express mention in this sense constitutes a gap with the TFA.

Finally, the regional provisions do not provide for voluntary restrictions or limitations to the transit regime, but there is no express provision in CAUCA that establishes this principle, which constitutes a gap with the TFA.

### Recommendations

* An addition should be made to Article 94 of CAUCA, which defines the customs transit regime, so that it expressly states that this regime shall not be subject to the collection of levies, except those derived from transportation costs and those charged as administrative expenses incurred by transit or recovery of costs for services rendered.

Moreover, using the Road Cargo System (ROCARS) implemented by the Government of the Hong Kong Special Administrative Region as an example of international best practice, a provision should be included in CAUCA to allow a general exemption to users of the transit regime from the collection of charges in recovery of costs for services rendered when the goal is to encourage the use of a new computer platform or a program that facilitates the transit regime.

* CAUCA should add an express legal provision that:

includes the principle of freedom of transit and the condition that restrictions, controls or requirements established in RECAUCA for this customs regime should pursue the legitimate public policy objectives of the signatory countries, cannot discriminate against any signatory countries or third countries, should be uniform for all countries, should be proportionate and should be uniformly applied; and

expressly states that the provisions of RECAUCA cannot include voluntary restrictions or limitations to the transit regime.

* CAUCA should also include an express provision for the creation of clear and simple procedures governing international maritime transit, international air traffic, international ground transit, and multimodal transport, as well as the obligation to create comprehensive, rapid and expeditious procedures for these modalities.

## Section 11.4 – Reinforcement of Non-Discrimination against Traffic in Transit

This clause imposes on the countries an obligation not to treat products passing in transit through their territory less favorably than if such products were being transported from their place of origin to the place of destination without passing through the territory of other member countries.The above implies that a country cannot impose greater controls or requirements on the goods coming from an exporting country, if the goods transited through a third country, than the controls or requirements provided if the goods had traveled directly from the exporting country.

This section is of direct interest to the following authorities:

The customs administration,

The Ministry of Transport, and

Other agencies involved in border controls.

### Analyzed Regulations

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| COMRIEDRE 65: Art. 1, 2 and 16.  EU-CAAA: Art. 119  RKC |

### Analysis of Central American Regulations and Goals

COMRIEDRE 65 states in Article 1 that its objective is to establish a non-discriminatory reciprocal treatment mechanism for international cargo transportation services between Costa Rica, El Salvador, Guatemala; Honduras, Nicaragua and Panama. Article 2 states that the countries shall authorize the following modalities of transit to all goods coming from or originating in signatory countries and/or third countries, provided that the transit operation begins in a signatory country:

1. From a customs office of departure in a signatory country to a customs office of destination of another signatory country;
2. From a customs office of departure in a signatory country to a non-signatory third country in transit through one or more signatory countries other than that of the customs office of departure; and
3. From a customs office of departure to a customs office of destination located in the same signatory country, provided it transits through the territory of another signatory country.

Similarly, Article 16 establishes non-discrimination of customs seals by determining that any seals affixed in the customs office of departure of a signatory country shall be accepted by the other signatory countries as if they were their own, over the duration of the international customs transit.

### International Agreements

#### Association Agreement between Central America and the European Union

Article 119 cites the principle of no less favorable treatment by providing that, without prejudice to legitimate customs control and the supervision of goods in transit, each country shall afford traffic in transit to or from the territory of any of the parties a treatment no less favorable than that granted to traffic in transit through its territory.

### International Best Practices

The RKC (Annex E) establishes a good practice:

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| 17. Recommended Practice  Customs seals and identification marks affixed by foreign Customs should be accepted for the purposes of the Customs transit operation unless:   * they are considered not to be sufficient; * they are not secure; or * the Customs proceed to an examination of the goods.   When foreign Customs seals and fastenings have been accepted in a Customs territory, they should be afforded the same legal protection in that territory as national seals and fastenings. |

### Identified Gaps

CAUCA and RECAUCA do not include an express provision on the non-discriminatory treatment to be afforded to goods under the customs transit regime, when they pass in transit from their place of origin through any other country. COMRIEDRE 65 specifically provides for non-discriminatory treatment, but only for signatory countries and international land transit of cargo. No mention is made of non-discriminatory treatment for international maritime transit or international air transit.

The importance of this principle merits its explicit inclusion in a provision under CAUCA, and it should cover countries other than the signatories of the Central American Agreement. As it is conceived today, the regulation creates discrimination for non-signatory countries, which constitutes a gap with the TFA.

### Recommendations

* CAUCA should include an express provision that contemplates:

Inclusion of reciprocal and non-discriminatory treatment for signatory countries and third countries in the regulations on the transit regime, in all their forms, in RECAUCA or other legal instruments at the Central American level; and

The principle of domestic treatment, prohibiting less favorable treatment of goods passing through their territory when they are in transit through any other country, as if they were transported from their place of origin without passing through any other country.

* CAUCA should include a provision expressly stating that customs seals affixed in the customs office of departure of a third country or of a signatory country shall be accepted by the other signatory countries as if they were their own, provided that they fulfill the security characteristics laid out in RECAUCA.
* By virtue of the legal provision in CAUCA, RECAUCA should confirm the acceptance of the seals and expressly indicate the conditions for considering such seals secure, following good international practices.

In the events mentioned above, where reference is made to non-signatory countries of the Central American Integration System, it should be expressly provided that the treatment and principles set forth herein shall apply, provided that the third countries in question grant similar treatment or reciprocity to the Central American countries.[[8]](#footnote-9)

## Sections 11.5, 11.6, 11.7, 11.8, 11.9 and 11.10 - Procedures and Controls Applicable to Transit

These paragraphs establish the main facilities that the customs transit procedure should have. The first paragraph, which refers to encouraging countries to create physically separate infrastructure for traffic in transit, seeks to facilitate and, above all, expedite the movement of goods in transit.

The most important aspect of this paragraph is that it is not in any way an obligation that members acquire, but rather it is simply about making them make an effort taking into account their own economic and other limitations.

The other paragraphs refer to the minimum facilities that traffic in transit must have in each of its stages (pre-start phase, post-acceptance phase and end of the regime stage).

Specifically, it states that countries should not impose formalities, documentation requirements or customs controls in relation to traffic in transit except for the identification of merchandise and to verify compliance with traffic regulations. Once admitted into the territory of the country, they must continue without being subject to charges, delays, or restrictions, until they leave the territory of the country and the transit operation ends.

In this regard, countries should facilitate procedures allowing the advance processing of documents and not applying technical regulations or evaluation procedures that constitute technical obstacles.

These paragraphs are of special interest for:

* Customs
* Ministry of Transport
* Quarantine Services (Ministry of Agriculture)
* Immigration

### Analyzed Regulations

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| CAUCA: Arts. 9, 10, 55  RECAUCA: Arts. 102, 103, 330, 390, 391, 392, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 411, 412, 413, 414, 416, 417, 419, 420, 421, 422, 571.  COMRIEDRE Resolution 65 of 2001 Arts. 65: 5-13, 14, 17, 18, 19-25, 30, 31  COMRIEDRE Resolution 66 of 2013  EFTA-CA: Art. 6 Annex VII |

### Analysis of Central American Regulations and Goals

CAUCA only includes the definition of the regime.

RECAUCA develops some of the formalities and regulates some aspects of internal transit. It provides that international ground customs transit shall be governed by the provisions of RECAUCA and regulates certain aspects of air traffic and maritime transit, creating simplified procedures that should be authorized. Additionally, it lays down, very basically, the concept of multimodal transport.

Article 571 of RECAUCA statesthat customs may authorize classification, redistribution and transshipment of express delivery consignments in international or internal transit in the places designated for such purposes and under customs control. These must always be authorized areas within the airport.

The Central American Strategy includes, as part of the implementation of the CBM model, creation of infrastructure and equipment to meet the operational demands of each border crossing and control requirements. The Central American Strategy states that the road infrastructure shall allow for separation of users according to pre-established segments based on the homogeneity of their main characteristics, including international transit.

Consequently, in this regard the Central American Strategy is consistent with the TFA. In any case, similar objectives for transit infrastructure in ports and airports should be included in the near future.

As for the pre-transit stage, Article 330 states that, for the purposes of Article 80[[9]](#footnote-10) of CAUCA, the goods declaration may be submitted in advance, prior to arrival of the goods, when they are destined to the following regimes:

1. Definitive importation and its modalities;
2. Temporary importation with re-export in the same state;
3. Temporary admission for inward processing;
4. Free Trade Zones;
5. Re-import, including any goods re-imported under temporary export regimes with re-import in the same state and temporary export for outward processing;
6. Others as determined by the customs service.

It also provides that goods entered under consolidated transport documents are not subject to advance declaration.

That is to say, Article 330 as analyzed does not expressly include the possibility of advance submission of the declaration in the customs transit regime, thus delegating to the customs service of each country the power to determine whether or not an advance declaration may be submitted.

**COMRIEDRE 65 of 2001**

It regulates everything related to the declaration of transit, the documents annexed to the declaration, the verification procedures of the declaration, including the selective-random process. It also regulates everything related to transportation units and seals, carriers and the database with respect to the latter.

**COMRIEDRE 66 of 2013**

The Ministers of Integration and Regional Economic Development, through Resolution 44 of 2013, modify the Customs Regulations for International Transit, establishing a Single Transit Declaration (DUT), which integrates the necessary information, according to the regulations, a single harmonized form. However, this resolution also provides that the carrier will “print the form” to be presented physically. It does not foresee the electronic or anticipated transmission of the declaration.

The Central American Strategy will facilitate compliance with formalities and help speed up clearance, international transit and internal transit control by including cross-cutting issues in the regional CBM model such as the digital platform for Central American trade and classification and implementation by country and border peers, and by including the adoption of international standards, information interoperability, comprehensive risk management and reliable operators in the short-, medium- and long-term measures for implementing the model. Consequently, this Central American Strategy is in alignment with the parameters of the TFA.

### International Agreements

Neither the CAFTA-DR nor the EU-CAAA includes a specific standard on the creation of specialized infrastructure for transit operations.

The EFTA-CA, in Annex VII, sets out a different practice for determining which goods in transit are to be examined:

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| Article 6. Risk Management  1. Each Party shall systemically apply objective risk management procedures and practices to determine which persons, goods, or means of transport are to be examined to address risks related to the entry, exit, transit, transfer or end-use of goods in its customs territory.  2. Each Party's border procedures and customs controls shall not be more onerous than necessary and shall facilitate the clearance and movement of low risk goods.  3. Each Party may exchange information related to the risk management systems applied by its respective customs authorities, respecting the confidentiality of the information, and may transfer knowledge and offer technical assistance to the other Parties.  Note: Emphasis added. |

### International Best Practices

As these are such extensive and well-regulated issues, there are many recommended practices. The following are the main recommendations as dictated by the RKC and the SAFE Framework.

#### Revised Kyoto Convention

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| Specific Annex E. Transit  Chapter 1.  Field of application  4. Standard  National legislation shall specify the persons who shall be responsible to the Customs for compliance with the obligations incurred under Customs transit, in particular for ensuring that the goods are produced intact at the office of destination in accordance with the conditions imposed by the Customs.  5. Recommended Practice  The Customs should approve persons as authorized consignors and authorized consignees when they are satisfied that the prescribed conditions laid down by the Customs are met.  Formalities at the office of departure  (a) Goods declaration for Customs transit  6. Standard  Any commercial or transport document setting out clearly the necessary particulars shall be accepted as the descriptive part of the Goods declaration for Customs transit and this acceptance shall be noted on the document.  7. Recommended Practice  The Customs should accept as the Goods declaration for Customs transit any commercial or transport document for the consignment concerned which meets all the Customs requirements. This acceptance should be noted on the document.  (b) Sealing and identification of consignments  8. Standard  The Customs at the office of departure shall take all necessary action to enable the office of destination to identify the consignment and to detect any unauthorized interference.  9. Recommended Practice  Subject to the provisions of other international conventions, the Customs should not generally require that transport-units be approved in advance for the transport of goods under Customs seal.  10. Standard  When a consignment is conveyed in a transport-unit and Customs sealing is required, the Customs seals shall be affixed to the transport-unit itself provided that the transport-unit is so constructed and equipped that :  (a) Customs seals can be simply and effectively affixed to it;  (b) no goods can be removed from or introduced into the sealed part of the transport-unit without leaving visible traces of tampering or without breaking the Customs seal;  (c) it contains no concealed spaces where goods may be hidden; and  (d) all spaces capable of holding goods are readily accessible for Customs inspection.  The Customs shall decide whether transport-units are secure for the purposes of Customs transit.  11. Recommended Practice  Where the accompanying documents make it possible unequivocally to identify the goods, the latter should generally be transported without a Customs seal or fastening. However, a Customs seal or fastening may be required:   * where the Customs office of departure considers it necessary in the light of risk management; * where the Customs transit operation will be facilitated as a whole; or * where an international agreement so provides.   12. Standard  If a consignment is, in principle, to be conveyed under Customs seal and the transport-unit cannot be effectively sealed, identification shall be assured and unauthorized interference rendered readily detectable by :   * full examination of the goods and recording the results thereof on the transit document; * affixing Customs seals or fastenings to individual packages; * a precise description of the goods by reference to samples, plans, sketches, photographs, or similar means, to be attached to the transit document; * stipulation of a strict routing and strict time limits; or * Customs escort.   The decision to waive sealing of the transport-unit shall, however, be the prerogative of the Customs alone.  13. Standard  When the Customs fix a time limit for Customs transit, it shall be sufficient for the purposes of the transit operation.  14. Recommended Practice  At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend any period initially fixed.  Customs seals  16. Standard  Customs seals and fastenings used in the application of Customs transit shall fulfil the minimum requirements laid down in the Appendix to this Chapter.  18. Recommended Practice  Where the Customs offices concerned check the Customs seals and fastenings or examine the goods, they should record the results on the transit document.  Formalities en route  19. Standard  A change in the office of destination shall be accepted without prior notification except where the Customs have specified that prior approval is necessary.  20. Standard  Transfer of the goods from one means of transport to another shall be allowed without Customs authorization, provided that any Customs seals or fastenings are not broken or interfered with.  21. Recommended Practice  The Customs should allow goods to be transported under Customs transit in a transport-unit carrying other goods at the same time, provided that they are satisfied that the goods under Customs transit can be identified and the other Customs requirements will be met.  22. Recommended Practice  The Customs should require the person concerned to report accidents or other unforeseen events directly affecting the Customs transit operation promptly to the nearest Customs office or other competent authorities.  Termination of Customs transit  25. Recommended Practice  Failure to follow a prescribed itinerary or to comply with a prescribed time limit should not entail the collection of any duties and taxes potentially chargeable, provided the Customs are satisfied that all other requirements have been met. |

#### SAFE Framework

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| Section III. Pillar 1 – Customs-to-Customs  2. Standards and Technical Specifications for Implementation  2.1 Standard 1 – Integrated Supply Chain Management  The Customs administration should follow integrated Customs control procedures as outlined in the World Customs Organization's (WCO) Customs Guidelines on Integrated Supply Chain Management (ISCM Guidelines).  2.1.2. General control measures  iv. Sealing  In the interest of supply chain security and the integrated Customs control chain, in particular to ensure a fully secure movement from stuffing of the container to release from Customs control at destination, Customs should apply a seal integrity programme as detailed in the revised Guidelines to Chapter 6 of the General Annex to the Revised Kyoto Convention…. Such seal integrity programmes, based on the use of a high-security mechanical seal as prescribed in ISO 17712 at the point of stuffing, include procedures for recording the affixing, changing and verification of seal integrity at key points, such as modal change.  Additionally, Customs should facilitate the voluntary use of technologies to assist in ensuring the monitoring and/or integrity of the container along the supply chain.  2.2 Standard 2 – Cargo Inspection Authority  The Customs administration should have the authority to inspect cargo originating, exiting, transiting (including remaining on board), or being transhipped through a country. |

Argentina implemented the Customs Transit Security Initiative (ISTA), based on SAFE standards focusing on risk analysis, high-risk containers, electronic information transmission, security assessment, information technology application, performance measurement and guarantee systems; this has enabled it to ensure consignment integrity and operational transparency and security at a low cost, and to prevent diversion of goods, loss of goods and other wrongdoings.

### Identified Gaps

No specific legal provisions in CAUCA and RECAUCA encouraging availability, where feasible, of physically separate infrastructures for traffic in transit, except for those related to express delivery shipments referred to by RECAUCA have been found. Measures to implement the CBM model in Central America, which are part of the Central American Strategy, are intended to provide specialized physical infrastructure at border control posts to speed up transit.

However, the lack of legal stipulations in CAUCA to allocate, where feasible, specialized physical infrastructure for transit, and the fact that in RECAUCA such infrastructure is limited to express delivery shipments only, do not in themselves constitute gaps with respect to the TFA. Indeed, as we already mentioned, the TFA encourages members but does not oblige them to implement infrastructure. Besides, this effort is reflected in the Central American Strategy, where it is correctly advanced in line with the TFA.

As regards pre-transit formalities, CAUCA only defines the regime, and RECAUCA delegates to each country’s customs service the authority to determine whether advance declaration for the transit regime is required, and expressly prohibits use of the advance declaration for consolidated cargo. It also regulates some matters pertaining to international customs transit by land and certain aspects of air and sea transit.

The simplified procedures established in RECAUCA for sea and air transit are not clear and entail meeting a series of requirements for authorization and a period of 30 days. If the simplified procedure is not authorized, procedures for international land transit are applied to sea and air transit.

Furthermore, RECAUCA includes several legal provisions on multimodal transport but does not establish any procedure or formality for its approval or processing, which leaves a void. This lack of precision and foresight constitutes a gap with regard to the TFA, since in practice it may create barriers to trade. For example, although CAUCA only requires a regional database of registered customs carriers, for the purposes of international transit, RECAUCA additionally requires a list of the vehicles that will be used by the carriers for internal transit. If a different vehicle is used, that database needs to be updated.

Moreover, COMRIEDRE 65, when regulating international transit, requires each signatory country to keep a register of national carriers who engage in the international transport of goods and to include identification of the means of transport, in addition to carrier identification, in this register.

This creates a gap with respect to recommended practice 9, under Specific Annex E of the RKC, which states that customs should not require advance approval of transport units for transport of goods under customs seal, in line with the provisions of other international agreements.

On the other hand, while COMRIEDRE 65 makes it obligatory to affix customs seals or take special customs measures when seals cannot be affixed because of the nature, weight or size of the goods, it does not contemplate any legal provision to relieve international transit and internal transit of such formalities, even if the goods are easily identifiable and are considered to pose no customs risk.

This situation can be considered a gap with respect to recommended practice 11 of RKC Specific Annex E, which states that a customs seal or fastening should not be required when the accompanying documents make it possible to unequivocally identify the goods, except in three cases: (i) where the customs office of departure considers it necessary in the light of risk management; (ii) where the customs transit operation will be facilitated as a result; and (iii) where an international agreement so provides.

It is important to note at this point that, as both the provisions of COMRIEDRE 65 and recommended practice 17 of the RKC state, customs seals are to be afforded national treatment, that is, they are to be accepted in the signatory countries as if they were their own. It would be desirable for national treatment of the seals of signatory countries, as set out in Resolution 65, to be extended to those of all WTO member countries, since the seals affixed by customs offices in third countries are not given such treatment. This constitutes a gap with the TFA.

In any case, this is an issue that merits discussion with the authorities of the State Parties, as there is a bias in that transit operations are considered a source of irregularities.

Furthermore, the best practice of requiring the use of high-security seals should be implemented, as prescribed by ISO/PAS 17712 standards or their replacements, in accordance with the SAFE Framework.

Regarding transit-related (that is, post-acceptance) formalities, both CAUCA and RECAUCA (for internal transit) and COMRIEDRE 65 (for international land transit) define a time limit and prescribed route for goods in transit.

The RKC states that the obligation to follow a specific itinerary with traffic in transit should only be imposed when considered necessary. Notwithstanding the foregoing, this same Convention establishes, in other standards, that sufficient time should be given for the purpose of the transit, and that the interested person should be able to request an extension of the period initially provided.

Additionally, the RKC is very flexible in providing for acceptance of a change of the office of destination without advance notice, except where customs has required prior approval. RECAUCA, however, only establishes the carrier’s obligation to prevent the goods from circulating under unauthorized conditions in the event of accidents or other circumstances of force majeure or fortuitous event. COMRIEDRE 65 treats the issue in a slightly clearer way, though it only contemplates the possibility of extending the time and/or route in circumstances of force majeure or fortuitous event, which should be noted on the declaration.

Finally, regarding the transshipment of goods from one transport unit to another, while the RKC is clear in establishing that goods can be transferred from one transport unit to another without customs authorization, provided that customs seals or fastenings are not broken or tampered with, COMRIEDRE 65 is more restrictive and conditions the possibility of transshipment to advance requests and customs authorization and surveillance. CAUCA and RECAUCA do not allow for the possibility of transshipment.

Along this vein, there is a gap between regional legislation and standards 13, 19 and 20 and recommended practices 14, 21 and 22 of RKC Specific Annex E. Given that the issue is very sensitive, however, it should be discussed in-depth with the authorities of the State Parties before draft standards are proposed, since as they are worded the analyzed regional provisions do not openly contravene the TFA.

With regard to Section 8, none of the analyzed regional legal provisions require the application of technical regulations or conformity assessment procedures as per the meaning of the WTO Agreement on Technical Barriers to Trade for goods under the international or internal customs transit regime.

However, in terms of internal transit, when RECAUCA regulates, in Article 393, the supporting documents for the goods declaration, allowing the customs authorities to require licenses, permits, certificates and other documents related to the restrictions and non-tariff regulations to which the goods and other authorizations are subject, it leaves open the possibility for requiring technical regulations and certificates of conformity, which constitutes a gap with the TFA. It would be advisable for CAUCA to have an explicit article that expressly excludes international customs transit from the application of technical regulations and/or conformity assessment procedures in the terms of the WTO Agreement on Technical Barriers to Trade.

Finally, as regards the formalities necessary to end transit, CAUCA does not regulate the termination of customs transit. RECAUCA does regulate termination, requiring inspection of the means of transport without mentioning the possibility of applying the risk management system. This is a gap as per the TFA.

COMRIEDRE 65, for its part, also requires inspection of the means of transport without providing for application of the risk management system or the possibility for carriers to be reliable agents and therefore subject to preferential treatment. In addition, delivery to the customs of both original documents and copies is required.

This is a gap as per the TFA.

### Recommendations

* Infrastructure: Although there is no gap between the TFA and CAUCA and RECAUCA regarding the creation of physically separate infrastructures for traffic in transit, where feasible, in order to align Central American legislation with the Central American Strategy, CAUCA should include a provision in which customs and other authorities involved in border traffic are encouraged to create, as far as possible, physically separate infrastructures to handle traffic in transit.
* General parameters: CAUCA should include express provisions establishing parameters for regulatory standards of international and internal transit, in all its modalities, to:

Include global procedures for certain goods and/or for certain users, which do not pose a risk to customs and authorities involved in border control, provided they comply with prior formalities and have prior authorization and/or registration, for which clear, simple and expeditious procedures should be created;

Create these procedures for air, sea and land transport, as well as for multimodal transport;

Expressly include the data or elements that should be recorded in the database for registering carriers authorized to perform international transit and internal transit operations, in any form, whether natural or legal persons, either foreign or national. This is to limit the demand of requirements not essential to public policy and to avoid a lack of uniformity between the different countries in the region;

Expressly prohibit required recording of the names of drivers of vehicles and means of transport;

Allow for transport without requiring customs seals or fastenings when the goods are easily identifiable from the accompanying documents and do not pose a risk to customs and border authorities;

Allow for providing national treatment to customs seals, and require that the seals comply with the high security standards prescribed in ISO/PAS 17712 or those replacing them, as stated in the SAFE Framework;

Expressly provide for the possibility of presenting an advance declaration for the customs transit regime, in any of its modalities and for any type of goods and for consolidated and deconsolidated cargo;

Include the requirement of deadlines and prescribed routes only where the transit operation is considered to constitute a risk to customs or other border control authorities, in which case the deadlines should allow sufficient time and justifiable requests for extensions should be possible;

Allow goods to be transferred from one transport unit to another without the authorization of customs, provided that the customs seals or fastenings are not broken or tampered with;

Expressly state that the goods shipped under the international or internal transit regime are not subject to the application of technical regulations or evaluation procedures in accordance with the WTO Agreement on Technical Barriers to Trade;

Establish that inspection of goods or empty means of transport shall only apply when the operation constitutes a risk to customs and authorities involved in border control;

Define the cases of noncompliance with the traffic regime that may be classified as contraband, including the definition of the aforementioned crime; and

Consider cases of simplified transit declarations, in accordance with international best practices (use of manifests, simplified transfer systems, etc.).

* International and Internal Transit Security Initiative: A provision should be included mandating the design and enforcement of an international and internal transit security initiative, based on SAFE Framework standards, to facilitate and control transit operations. It is recommended that a time limit be set for this and that SIECA lead the initiative, following international best practices, such as the implementation of ISTA in Argentina, by providing assistance and support for capacity building in developing and least-developed country members, as referred to in Article 21 of the TFA.

## Sections 11.11, 11.12, 11.13, 11.14 and 11.15 - Guarantees

These refer to the requiring of a warranty (in the form of a bond, deposit or other instrument) to ensure compliance with the transit of goods. Once the transit has concluded, the guarantee should be released. It is suggested that countries allow operators to use comprehensive security covering multiple transits. In any case, countries should publish the information needed to obtain individual or comprehensive security. In addition, in these sections it is established that the use of customs escorts or convoys should only be required in high-risk circumstances; in all other cases, the security should suffice.

The entities directly interested in these provisions are:

* Customs

### Analyzed Regulations

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| CAUCA: Art. 106.  RECAUCA: Art. 105 and 407.  COMRIEDRE 65: Art. 29 |

### Analysis of Central American Regulations and Goals

Article 106 of CAUCA refers to the possibility of using the same type of guarantee to secure eventual payment of taxes on goods in transit.

In RECAUCA, Article 105 gives countries the task of establishing the guarantees for the transit system. Article 407 states the possibility for countries to establish the guarantee for transit by sea.

#### COMRIEDRE 65

Article29 states that transport units are, under the terms of COMRIEDRE 65, the enforceable, valid and executory guarantees for eventual applicable duties and taxes on goods transported under the international customs transit regime.

The Central American Strategy does not make reference to requirements, conditions, facilities or release of security for protecting import, export or transit regimes.

### International Best Practices

**As per the RKC (Standard 15, Annex E)** Customs should only impose the conditions of escort or prescribed itinerary where necessary.

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| 15. Standard  Only when they consider such a measure to be indispensable shall the Customs:  (a) require goods to follow a prescribed itinerary; or  (b) require goods to be transported under Customs escort. |

### Identified Gaps

CAUCA does not regulate the regime of transit guarantees, and RECAUCA delegates to the State Parties the authorization to regulate them, thus allowing each country to demand different guarantees during the passage of the goods in transit. Delegation of this issue to each country, rather regulating it generally for the region, constitutes a gap as compared to the TFA and a barrier to trade according to the RKC.

Neither CAUCA nor RECAUCA provide for comprehensive security for the transit regime. Similarly, there are no legal provisions for cases in which there is no need to provide security, such as for carriers registered as reliable operators.

CAUCA, RECAUCA and COMRIEDRE 65 do not expressly mention any requirement to use escorts or convoys for transit operations in high-risk circumstances, but rather leave the determination of itineraries and escorts to each country’s discretion.

### Recommendations

CAUCA should include express provisions on the security regime applicable to international transit and internal transit, which should be uniform for all countries, and it should order publication of the regulatory provisions in RECAUCA on guarantees.

Such provisions should include the carrier’s right to set up comprehensive security covering several transit operations and give carriers the option of using the transport units as security for the transit operation.

A specific risk management system for transit declarations could also be considered, given that the information in this regime is substantially lower than in import or export regimes. This differentiated system must be consistent with the guarantees.

On the other hand, it would be important to consider cases in which facilities can be granted on the guarantee, for example the exemption, global guarantees with a reduction percentage, the exemption or fulfillment commitments according to the type of traffic. In the same way, assumptions can be considered in which an increased guarantee can be determined.

RECAUCA should include an express provision making the obligation to transport goods under customs escort applicable only when the operation poses a risk for customs and/or other authorities involved in border control.

## Sections 11.16 and 11.17 – Cooperation and Coordination

These refer to cooperation between countries to strengthen freedom of transit and to achieve understandings on fees, formalities and requirements, and efficient operation. The advisability of allocating a national transit coordinator is also mentioned.

These two provisions are best endeavor standards, in which countries agree to strive for compliance with the established recommendations but are not required to achieve results.

The following authorities are directly interested in these two final sections:

* Customs,
* The Ministry of Transport, and
* Other agencies involved in border controls.

### Analyzed Regulations

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| CAUCA: Art. 17.  RECAUCA: Arts. 339, 400  COMRIEDRE Resolution 65 of 2001: Arts. 34, 35, 36.  COMRIEDRE Resolution 66 of 2013  EU-CAAA: Art. 119.  INTERNATIONAL TRANSIT OF GOODS (TIM) |

### Analysis of Central American Regulations and Goals

Article 17 of CAUCA defines mutual recognition and establishes that it may be used among countries to facilitate the entry, exit and transit of goods. It mentions using regional conventions and regulations to achieve these mutual recognition procedures.

Article 399 of RECAUCA provides that the customs office of destination will communicate electronically, or by other means, the arrival of the means of transport in transit, as well as the irregularities presented in the reception. This article also provides for collaboration in providing information between the customs destination and the customs of arrival, as well as administrative actions in case of noncompliance with the requirements by the operators. Article 400 also provides for the cancellation of the transit system through the computerized route to the delivery and receipt of the merchandise by the customs office of destination.

Article 34 of COMRIEDRE 65 obliges the countries to designate a coordinator at national level and a person in charge in each customs office to watch over the fulfillment of that resolution and to attend and resolve consultations, complaints and any related situation. Articles 35 and 36 (i) designate a coordinator at the national level and a person in charge at each customs office, who ensure compliance with COMRIEDRE 65, attend to and resolve queries, complaints and any situation that arises in the application thereof and (ii) create the Commission, composed of an official of the national customs service of each signatory country and establish that SIECA will exercise the Secretariat of the Commission and assist it in the exercise of its functions. The COMRIEDRE 66 of 2013, modifies the COMRIEDRE 65, by means of the introduction of the Unique Declaration of Transit (DUT), that integrates the information of the goods, migration and quarantine.

### International Agreements

The EU-CAAA (Art. 119) provides that countries shall promote and implement regional transit arrangements with a view to reducing trade barriers.

### International Best Practices

The International Transit Manual of the World Customs Organization refers to the exchange of information on transit between customs as one of the essential elements for an effective transit system. When the customs office where the transit declaration is lodged shares information about the merchandise with the other customs services on the route, then the need to enter another declaration, documents or additional information is reduced. The entry of additional documents could be omitted. The exchange of traffic information also improves risk management and facilitates the movement of goods.

There are several successful models for the exchange of information on international transit operations by electronic means, such as the New Computerized Transit System of the European Union and the International Transit System for Merchandise of Mesoamerica.

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| Computerized Traffic System of the European Union (NCTS)  It is a computerized transit model that communicates the operator with the customs of origin, transit and destination. This system has managed to improve the exchange of data between customs, better planning of resources; elimination of fraudulent manipulation of documents; implement selective controls based on risk analysis; and the reduction of the number of investigation procedures.  International Transit of Goods (TIM)  In Mesoamerica, including the countries of the Central American Integration System, the TIM has been implemented since 2008. This system interconnects systems of the customs and other agencies that intervene in the main borders of the Mesoamerican Pacific Corridor, through a single transit declaration (DUT) that integrates the necessary information for the transit of goods. The implementation of the TIM has been successful and has resulted in tangible benefits for cross-border trade in the region. This system has managed to reduce border crossing times, improve risk management, traceability and predictability of transit operations; optimize collection; improve competitiveness and reduce the environmental footprint of transport vehicles. |

### Identified Gaps

Since the TFA provision under review is a best endeavor standard and CAUCA expressly includes mutual recognition as a mechanism to facilitate the transit of goods, and COMRIEDRE 65 covers the obligation to designate a national transit coordinator and creates a Technical Commission comprised of one national service official from each signatory country, there is no gap between these provisions and the TFA regarding international land transit.

However, as there is currently no legal provision for the countries to designate coordinators in order to meet the needs of international sea and air transit, a recommended practice would be to legally and expressly provide for designation of national coordinators for these transit modalities. The Central American Strategy lacks specific guidelines on the assignment of national transit coordinators.

CAUCA, RECAUCA and COMRIEDRE 65 do not currently refer to the TIM system. Although this emerges as a pilot initiative of the Inter-American Development Bank under the Mesoamerica Project, which covers other countries outside the regional Economic Integration System, it has proven to be a successful model that interconnects the border control agencies. The TIM System has the potential to expand to integrate maritime, air and multimodal traffic, as well as other elements of border control, such as migratory and security information. The TIM can also expand to the main land border crossings, ports and airports.

### Recommendations

Although there is no literal gap between CAUCA, RECAUCA and the TFA in this regard, it is believed that in order to make greater progress on cooperation and coordination among member countries with an aim to facilitate transit, the following recommendations should be taken into account:

* CAUCA should provide for designation of a transit coordinator in each country in the terms currently envisaged by COMRIEDRE 65, and designation of the coordinator should extend to sea transit, air transit and multimodal transport.
* It should be foreseen in CAUCA that customs will exchange information on international customs transit through a single declaration, seeking the harmonization of information requirements, and interoperability with the systems of the customs of the party countries and the other agencies that intervene in the borders.
* The designation of a national coordinator at the level of each country regarding land transit should be raised to CAUCA level, under the terms currently established by COMRIEDRE 65, and the designation of the coordinator for maritime traffic, air traffic and multimodal transport.

SIECA, in its capacity as Secretariat of the Commission, could be entrusted with the task of meeting with other WTO members with a view to an understanding on procedures and best practices for facilitating the transit of goods.

### Technological Gaps and Recommendations

The use of technology in transit is indispensable. It is understood that adequate conditions exist for designing and implementing the following technological functionalities established by the CADTP, among others:

* **Electronic trade record management:** to expand records and exchange of data on trade operators at the regional level;
* **Risk management: to** harmonize electronic criteria, profiles and risk detection processes at the regional level;
* **Declarations management**: to increase the types of electronic records of the regional systems (International Goods Transit System and the Central American Unified Customs Information System) and build capacities to manage projects such as the Central American Single Customs Document (DUCA);
* **Electronic exchange of information:** to enhance information flow and diversity among national authorities for sharing at the national level; and
* **Business intelligence services:** to implement tools for monitoring existing and future regional systems.
* Expand the operational and functional scope of the International Merchandise Transit System (TIM), integrating maritime and air traffic, and multimodal transport (TIM Multimodal). The TIM must also be extended to the main ports and regional logistics corridors, both terrestrial, maritime and air.

# Article 12 - Customs Cooperation

Article 12, under the topic of Customs Cooperation, first deals with measures to promote awareness and fulfillment of obligations by traders; second, with the exchange of information on best compliance management practices related to customs procedures; and third, with the exchange of information between customs administrations in order to verify goods declarations for importation or exportation.

## Analyzed Regulations

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| CAUCA: Arts. 16, 72 and 73  RECAUCA: Arts. 22, 291-309 and 333  Resolution 271/2011  COMRIEDRE Resolution 65: Art. 40  Central America Strategy  RKC: Rule 3.27, 3.28, 3.9. Annex H, 23  CAFTA-DR: Art. 5.12  EU-CAAA: Art. 53, 54 |

## Section 12.1.1 - Measures for Promote Compliance and Cooperation

Section 12.1.1 contains three measures aimed at promoting the fulfillment of obligations by traders. The first one refers to the knowledge that traders should have in terms of compliance; the second deals with the promotion of voluntary compliance by giving traders the possibility of rectifying their actions without sanction; and the third refers to the application of rigorous measures in case of noncompliance.

Article 12.1.1 should be analyzed in conjunction with Articles 1 and 3 of the TFA and 6.3 as we feel the recommendations presented therein are applicable.

### Analysis of Regional Regulations and Goals

Section 12.1.1: Except for the matter of Early Resolutions issued at the request of individuals, CAUCA and RECAUCA are not concerned with promoting trader knowledge of the standards and procedures regulating their actions and of the obligation to comply with them.

In matters of voluntary correction of submitted declarations, Article 333 of RECAUCA makes it possible for declarants to apply for correction of their declarations as soon as incorrect information or omissions are detected:

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| Article 333. Procedure for correction of a declaration  Any time a declarant has reason to believe a declaration contains incorrect information or omissions, he should immediately file an application for correction. If the application is admitted, he should submit the corrected goods declaration and accompany it, as appropriate, with proof of payment of any taxes plus interest, where applicable.  If notice of an audit has already been given when the application for correction is filed, said application will automatically be included in the audit procedure, provided that the audit has not yet concluded. For these purposes, the inspected subject should inform the acting officials of the existence of the application, which will be taken into consideration in the final settlement of the customs tax obligation. In any case, the application for correction will be resolved upon completion of the audit.  The inspected subject may correct the goods declarations, taking into account the following aspects:  a) The correction shall be in the form of a request subject to approval by the customs authority;  b) In cases of determinations by the customs authority, the inspected subject may rectify the goods declaration after receiving notice of the audit’s conclusion and until the resolution determining the tax obligation is firm;  c) Correction of the goods declaration may also cover any item or element that affects the tax base of the duty.  Filing of the application or the corrected goods declaration shall not prevent performance of the audit or determination of responsibilities. |

With regard to the implementation of punitive measures, CAUCA defines three types of customs violations: administrative, tax and criminal, and refers determination of sanctions to RECAUCA and the domestic legislation of the countries. RECAUCA, however, does not establish any violations or sanctions. Nor does it establish anything on mitigation or any of the matters provided in the TFA.

CAUCA and RECAUCA leave sanctioning to national legislations. However, the importance of these disciplines is recognized in TFA Article 6.3, which establishes, among other principles, the gradual and proportional nature of sanctions and their dependence on the facts and circumstances of the case. It also considers voluntary and timely confession of the circumstances of a violation for potential mitigation of the sanction. Article 12.1.1 should therefore be analyzed in conjunction with Article 6.3 of the TFA and the analysis and recommendation included therein should be considered applicable.

### International Agreements

CAFTA-DR does not regulate this. EU-CAAA regulates the matter in Articles 53 and 54:

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| EU-CAAA  Part III. Cooperation  Title VI. Economic and Trade Development  Article 53. Customs Cooperation and Mutual Assistance  1. The Parties shall promote and facilitate cooperation between their respective customs services in order to ensure that the objectives set out in Chapter 3 (Customs and Trade Facilitation) of Title II of Part IV of this Agreement are attained, particularly in order to guarantee the simplification of customs procedures and the facilitation of legitimate trade while retaining their control capabilities.  2. The cooperation shall give rise, among others, to:  (a) exchanges of information concerning customs legislation and procedures, particularly in the following areas:  (i) simplification and modernisation of customs procedures;  (ii) facilitation of transit movements;  (iii) enforcement of intellectual property rights by the customs authorities;  (iv) relations with the business community;  (v) free circulation of goods and regional integration;  (b) the development of joint initiatives in mutually agreed areas;  (c) the promotion of coordination between all relevant border agencies, both internally and across borders.  3. The Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of Annex III to Part IV of this Agreement.  Article 54. Cooperation and Technical Assistance on Customs and Trade Facilitation  The Parties recognise the importance of technical assistance in the field of customs and trade facilitation in order to implement the measures laid down in the Chapter 3 (Customs and Trade Facilitation) of Title II of Part IV of this Agreement. The Parties agree to cooperate among others in the following areas:  (a) enhancing institutional cooperation to strengthen the process of regional integration;  (b) providing expertise and capacity building on customs issues to the competent authorities (certification and verification of origin, among others) and technical matters to enforce regional customs procedures;  (c) the application of mechanisms and modern customs techniques, including risk assessment, advance binding rulings, simplified procedures for entry and release of goods, customs controls and company audit methods;  (d) introduction of procedures and practices which reflect as far as practicable, international instruments and standards applicable in the field of customs and trade, including WTO rules and World Customs Organization (hereinafter referred to as the "WCO") instruments and standards, inter alia the International Convention on the Simplification and Harmonization of Customs Procedures, as amended (Revised Kyoto Convention) and the WCO Framework of Standards to Secure and Facilitate Global Trade; and  (e) information systems and automation of customs and other trade procedures. |

### International Best Practices

The RKC provides for a “compromise settlement,” an agreement under which the Customs “consent to waive proceedings in respect of a customs offence subject to compliance with certain conditions by the person(s) implicated in that offence.” These conditions could be that the agreement was preceded by voluntary and timely correction or that the background information of the person implicated and the seriousness of the misconduct warrant it. In fact, this Convention stipulates the following:

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| Chapter 3. Clearance and Other Customs Formalities  Lodgement, registration and checking of the Goods declaration  3.27. Standard  The Customs shall permit the declarant to amend the Goods declaration that has already been lodged, provided that when the request is received they have not begun to check the Goods declaration or to examine the goods.  3.28. Transitional Standard  The Customs shall permit the declarant to amend the Goods declaration if a request is received after checking of the Goods declaration has commenced, if the reasons given by the declarant are deemed valid by the Customs.  3.29. Transitional Standard  The declarant shall be allowed to withdraw the Goods declaration and apply for another Customs procedure, provided that the request to do so is made to the Customs before the goods have been released and that the reasons are deemed valid by the Customs.  Specific Annex H. Offences  Chapter 1. Customs offences  Definitions  For the purposes of this Chapter :  "administrative settlement of a Customs offence" means the procedure laid down by national legislation under which the Customs are empowered to settle a Customs offence either by ruling thereon or by means of a compromise settlement;  "compromise settlement" means an agreement under which the Customs, being so empowered, consent to waive proceedings in respect of a Customs offence subject to compliance with certain conditions by the person(s) implicated in that offence;  Administrative settlement of Customs offences  23. Standard  The severity or the amount of any penalties applied in an administrative settlement of a Customs offence shall depend upon the seriousness or importance of the Customs offence committed and the record of the person concerned in his dealings with the Customs. |

### Identified Gaps

1. Awareness of traders of rules and procedures regulating their actions and the obligation to comply with them: except for the topic of Early Resolutions issued at the request of individuals, CAUCA and RECAUCA do not promote the traders’ knowledge of the rules and procedures that regulate their actions and the obligation to comply with them. Despite the importance of publicity for raising the awareness of traders regarding fulfillment of their obligations, the issue is not addressed in Central American regulations.
2. Correction of declarations: RECAUCA allows for voluntary correction by importers, after approval by customs, but it does not contemplate exemption or mitigation of sanctions. On the contrary, it expressly states that correction of the goods declaration by importers does not prevent the exercise of any oversight actions or the “corresponding determination of responsibilities.” Correction by the importer thus ceases to be an incentive for complying with the customs obligation and strays from the objective of Article 12 of the TFA.
3. The absence of a sanctions system that includes classification of offenses and specification of their resulting penalties creates legal gaps and leads to discretionary decision-making and a lack of transparency.

### Recommendations

In addition to the recommendations made in analyzing TFA articles 1, 3 and 6.3, it is important to reiterate the appropriateness of considering timely recognition of errors or omissions in declarations as mitigating factors for any sanctions that may arise.

In establishing a Central American sanctions system, the “compromise settlement” should be take into account, whereby customs may refrain from initiating a proceeding if there is a voluntary and timely correction by the offender, if their background and the seriousness of the offense so warrant.

## Section 12.1.2 - Exchange of Information on Best Compliance Management Practices

This section encourages countries to exchange information on best practices in managing compliance with customs procedures (including in the context of the Committee) and to cooperate on technical guidance, assistance and capacity building for the purpose of managing compliance measures and improving their effectiveness.

### Analysis of Central American Regulations and Goals

Neither CAUCA nor RECAUCA regulate the exchange of information on best management practices and capacity building.

Resolution 271/11 (Central American Regulations on Sanitary and Phytosanitary Measures and Procedures) sets forth an obligation of cooperation among countries:

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| Chapter V. Cooperation  Article 18  Parties shall cooperate with one another in order to prevent the introduction and dissemination of regulated pests and diseases of quarantine concern, as well as in the implementation of measures, joint studies, specialized analysis, training of officials, exchange of information and others. |

### International Agreements

CAFTA-DR, under Article 5.12 (Capacity Building) provides that the parties recognize the importance of trade capacity building activities in facilitating the implementation of this chapter.

EU-CAAA states something similar in Article 54:

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| Article 54. Cooperation and Technical Assistance on Customs and Trade Facilitation  The Parties recognise the importance of technical assistance in the field of customs and trade facilitation in order to implement the measures laid down in the Chapter 3 (Customs and Trade Facilitation) of Title II of Part IV of this Agreement. The Parties agree to cooperate among others in the following areas:  (a) enhancing institutional cooperation to strengthen the process of regional integration;  (b) providing expertise and capacity building on customs issues to the competent authorities (certification and verification of origin, among others) and technical matters to enforce regional customs procedures;  (c) the application of mechanisms and modern customs techniques, including risk assessment, advance binding rulings, simplified procedures for entry and release of goods, customs controls and company audit methods;  (d) introduction of procedures and practices which reflect as far as practicable, international instruments and standards applicable in the field of customs and trade, including WTO rules and World Customs Organization (hereinafter referred to as the "WCO") instruments and standards, inter alia the International Convention on the Simplification and Harmonization of Customs Procedures, as amended (Revised Kyoto Convention) and the WCO Framework of Standards to Secure and Facilitate Global Trade; and |

### Bilateral Convention on Mutual Administrative Assistance in Customs Matters of the WCO

In this regard, the Bilateral Convention on Mutual Administrative Assistance in Customs Matters of the WCO is of particular importance. It is a suitable instrument for efficient and timely exchange of information between customs. By virtue of this agreement, the contracting parties, through their customs administrations, shall provide each other, either on request or on their own initiative, with administrative assistance for proper enforcement of customs law, preventing, investigating and combating customs offenses, and assuring the security of the international trade supply chain. Assistance is provided by contracting parties in accordance with its legal and administrative provisions and within the limits of their competencies and available resources.

The information that may be required and provided under the Convention on Mutual Administrative Assistance may refer to:

1. new enforcement techniques that have proved their effectiveness;
2. new trends, means or methods of committing customs offenses;
3. goods known to be the subject of customs offenses, as well as transport and storage methods used in respect of those goods;
4. persons known to have committed a customs offense or suspected of being about to commit a customs offense; and,
5. any other data that can assist customs administrations with risk assessment for control and facilitation purposes.

In addition, any information communicated under this Convention shall be used only by the customs administration for which it was intended and solely for the purpose of administrative assistance under the terms set out in this Convention. On request, the contracting party that supplied the information may, notwithstanding the foregoing, authorize its use for other purposes or by other authorities, subject to any terms and conditions it may specify. As regards to confidentiality and protection of information, any information communicated under this Convention shall be treated as confidential and shall, at least, be subject to the same protection and confidentiality as the same kind of information is subject to under the national legal and administrative provisions of the contracting party where it is received.

Two types of agreements may be used to consent to administrative assistance in customs matters:

* Legally binding agreements, known as agreements, conventions and protocols; and
* Non-legally binding agreements, commonly referred to as Memoranda of Understanding.

The WCO notes that many members prefer legally binding agreements. The exact format may vary according to their national legislation. An important reason for having a binding agreement is to adapt to the strict provisions on confidentiality and protection usually included in national legislation and the use that may be given to the information exchanged between customs administrations. A legally binding international agreement signed between states aims to create rights and obligations in international law.

A non-legally binding agreement may be executed in the form of a memorandum of understanding (MOU), which does not include mutual commitments but rather a form and text expressing intentions. An MOU is used between two members when they prefer to avoid the formalities of a legally binding agreement.

### Identified Gaps

Central American legislation does not provide for the exchange of information between customs on best practices in the management of compliance with customs procedures.

Nor does it cover the issue of cooperation on technical guidance, assistance and capacity building for the purpose of managing compliance measures and improving their effectiveness.

### Recommendations

The concept of bilateral conventions on mutual administrative assistance in customs matters should be included in Central American legislation. Such agreements could be executed between two or more countries, highlighting that the format and content proposed by the WCO may be changed during the negotiation, making them binding or optional at the discretion of the parties.

## Section 12.2 - Information Exchange

Pursuant to this subsection, upon request and subject to the provisions of this article, countries undertake to exchange the information provided for in subsections (b) and (c) of Section 6.1 (specific information stated in the export or import declaration, or the declaration, as far as it is available, together with a description of the level of protection and confidentiality required of the requesting member; specific information submitted as justification for the export or import declaration... in order to verify a declaration of import or export in concrete cases where there are reasonable grounds for doubting the truthfulness or accuracy of the declaration).

**Sections 12.3-12.12** refer to the exchange of information between countries where there is reason to believe that a particular import or export declaration contains false or inaccurate information.

**12.3 Verification:** Requires that requests for information exchange be well-founded.

**12.4 Request:** This shall be submitted in writing (paper or electronic media), describing the information to be included in the request.

**12.5 Protection and Confidentiality:** This refers to the need for the applicant to maintain confidentiality of the information received in compliance with their internal regulations and the conditions imposed by the country sending the information.

**12.6 Providing Information**: This refers to how the country receiving the request should respond to it, including a term of 90 days to do so. It also refers to the possibility for the country to which the information is requested to require its express authorization in order to use the information requested for criminal, judicial or non-customs proceedings.

**12.7 Deferral or Denial**: This refers to the cases in which a country may refuse to provide the required information.

**12.8 Reciprocity**. This refers to the capacity of the requesting country to respond reciprocally to a potential request from the country to which the request is addressed.

**12.9** **Administrative Burden.** This refers to the consequences of requests for information in terms of resources and costs for the country to which the request is addressed.

**12.10 Limitations. This refers to what the country to which the request is addressed is not under the obligation to do.**

**12.11** **Unauthorized Use or Disclosure. This refers to the measures to be taken when there is a breach of the conditions by the country that requested the information.**

**12.12 Bilateral and Regional Agreements**. The provisions of the TFA do not preclude any other agreement between countries under other bilateral or multilateral agreements.

### Analysis of Central American Regulations and Goals

Regional legislation in this area is limited to CAUCA and RECAUCA. Article 16 of CAUCA regulates mutual assistance between countries to allow the exchange of information between them, describing what may be included in the request and establishing the grounds for requesting information:

* For the purpose of ensuring control of the cargo;
* For accurate determination, settlement and collection of taxes;
* To prevent and combat customs and tax fraud, evasion and circumvention; and
* To establish better sources of information in customs and tax matters, respecting the principles of confidentiality.

Article 22 of RECAUCA only states that the exchange of information between the customs services of the countries shall be governed by the conventions on mutual assistance and technical cooperation that are executed between tax and customs administrations and by the binding bilateral or multilateral agreements of those states.

COMRIEDRE 65 sets forth:

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| Article 40  The national customs services of the signatory countries shall adopt mutual cooperation measures to control the accuracy of documents relating to goods transported in international customs transit operations, and the authenticity of customs seals.  When the Customs Authorities of a country find inaccuracies in a Declaration or any other form of irregularity in connection with a transport operation carried out pursuant to the provisions of this Regulation, they are obliged to communicate it as soon as possible to the Customs Authorities of the other signatory countries. |

### International Agreements

Article 3.24 of CAFTA-DR regulates this matter, establishing the grounds under which the request for exchange of information is appropriate and the requirements and procedure for that request. However, this article is limited only to textile or clothing goods.

### Identified Gaps

Central American legislation enshrines the principle of cooperation between customs to provide information but neither regulates the procedure for obtaining it nor clearly determines the obligations and rights of each party. These deficiencies may render nugatory the right to request information or may constitute a source of unnecessary and unjustified requests.

CAFTA-DR has a very limited scope, since it refers only to the textile sector, and in particular to the issue of origin. As such, it is not a good model to follow.

The best approximation to the mandate of Article 12.2 of the TFA can be found in the Central America - Mexico Agreement, which gives request requirements and the concept of “reasonable doubt” as a condition for filing a request. However, the most complete procedure and regulation is included in the TFA.

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| Central America - Mexico Agreement  Article 6.6: Cooperation  3. Where a Party has reasonable suspicions of any illegal activity related to its import laws or regulations, it may request the other Party to provide specific information normally collected in the course of the importation of goods, always provided that the Party sending the information does not contravene its national legislation.  4. For the purposes of paragraph 3, “reasonable suspicions of any illegal activity” means a suspicion based on information on relevant facts obtained from public or private sources, including one or more of the following:  (a) historical evidence of noncompliance with import laws or regulations by an importer or exporter;  (b) historical evidence of noncompliance with import legislation or regulations by a manufacturer, producer or other person involved in the movement of goods from the territory of one Party into the territory of the other Party;  (c) historical evidence that one or all of the persons involved in the movement of goods from the territory of one Party into the territory of the other Party, for a specific product sector, has not complied with import legislation or regulations; or  (d) other information that the requesting Party and the Party to which the request for information is made agree is sufficient in the context of a particular request.  5. The request made by a Party pursuant to paragraph 3 shall be submitted in writing, specifying the purpose for which the information is required and if such request is of an urgent nature; it shall also identify the required information with sufficient specificity for the other Party to locate and provide it in accordance with its national legislation.  6. The Party to which the information is requested shall, in accordance with its national laws and any relevant international agreements of which it is a party, provide a written response containing such information.  7. Each Party shall endeavor to provide to the other Party any additional information that would assist that Party in determining whether imports or exports to or from the territory of that Party are in compliance with the laws or regulations on imports of the other Party, in particular those related to the prevention of illegal activities, such as contraband and other similar activities. |

### Recommendations

Agreements on Information Exchange: The possibility should be included in Central American regulations of signing bilateral or regional agreements between countries for the exchange of information, providing, by way of a guide, the matters that may be discussed and agreed by the countries. These matters would correspond to those identified in the Facilitation Agreement and in particular to the information included on import or export declarations and supporting documents attached by the declarants. In any case, countries would be free to add or include specific topics according to their needs.

On the other hand, considering that cooperation transcends the exchange of information, a provision could be included concerning technical assistance in, for example, risk management: definition of risk indicators, selection measures and subsequent evaluation.

# General Conclusions

To conclude this report on legal gaps and recommendations, it is important to once again recall its objectives:

1. To clearly state the changes that are needed for effective compliance with the TFA;
2. To determine whether the TFA guidelines are within the scope of application of CAUCA and RECAUCA; and
3. To identify the region’s specific objectives in matters of integration, modernization and trade facilitation.

The report can be summarized by responding to these objectives, with the following conclusions:

1. It is necessary to make profound and structural changes to CAUCA and RECAUCA so that they are instruments that achieve the effective implementation of the TFA. In this sense, it is necessary that both CAUCA and RECAUCA not only adapt to effectively meet the TFA, but also contain internal mechanisms for constant revision and adaptation that allow them to:
2. be adjusted regularly in accordance with international best practices, and
3. not be barriers to technology but, on the contrary, promote the use of new and changing technological tools, these being fundamental for the modernization and facilitation of trade.

In this regard, it is recommended that countries undertake a comprehensive and substantial reform of CAUCA and RECAUCA and not partial reforms, whose objective nowadays is to produce more modern legal instruments, more adaptable to the constant changes required by trade and technology.

1. CAUCA and RECAUCA as they currently are cannot cover areas or institutions outside the customs area. It is not up to CAUCA and RECAUCA as mere customs codes to regulate the other entities that participate in the borders. However, the absence of other comprehensive regional legislation and the development and modernization of customs leads us to conclude that there must be specialized regulations that expressly regulate these entities in their border tasks and in coordination with customs.

It is recommended to create a regional legislation that regulates trade in a general way and that is mandatory for all entities operating at the borders.

During the workshop held June 5 and 6 in Costa Rica, it was proposed to draft a COMIECO resolution that complements CAUCA and RECAUCA and that, in a coordinated and harmonious manner, regulate all other entities operating at the border in related to these activities related to border operations. This resolution would have the advantage not only of fulfilling the objective of including and regulating the other entities operating at the borders but could be drafted and agreed with relative ease and would not require approval of the respective legislative powers of the countries.

The Ministers of COMIECO are fully authorized to issue this resolution that coordinates all border entities. In fact, according to Article 18 of the Tegucigalpa Agreement[[10]](#footnote-11), the Presidential Declaration of Punta Cana[[11]](#footnote-12) and as demonstrated in the Central American Strategy, COMIECO has the competence and even the mandate to design and implement the effective coordination of border entities.

1. Certain disciplines in the TFA require specific regulations that are technically relevant and adjustable according to innovations in international logistics. This is the issue in the international transit of merchandise, Courier, AEOs, single windows, fines and penalties regimes, import permits for production goods and controlled marketing. This regulation must take into account the functions and cross-cutting issues that apply to customs, as well as other border agencies.
2. Dictate, as soon as possible and without waiting for the realization of the previous proposals, the COMIECO resolutions derived from the current regulatory framework, in order to comply with the articles of the TFA that may be implemented in the countries of the Central American Economic Integration system through this way. These instruments are those relating to the extension of the scope of the obligations of the TFA to other entities that intervene in the border; TIM; couriers; AEOs; one-stop windows; fines and penalties regimes; import permits for production goods and controlled marketing, etc.
3. Recommend to all member states a full and urgent update of their internal regulations under the auspices of the TFA and that they be in the current provisions of CAUCA.
4. Incorporate within each country governance models, indicators and targets in the main provisions of the TFA and request countries that their Comptroller services audit the main indicators derived from the obligations of the TFA, and that include in their goals not only the tax collection, but also transparency in management, simplification of procedures and facilitation of trade.
5. The integration and modernization of the region should set the tone for the reform. Consequently, we propose that the reform of CAUCA and RECAUCA take advantage of the reform opportunity offered by the TFA but with bolder, more specific and more adapted goals to the region’s objectives.

With these conclusions, this report of Analysis of Legal Gaps and Recommendations to determine the necessary changes in CAUCA and in RECAUCA ends. The Central American region now has a great opportunity to implement changes and reforms in its legal bases and in its integration goals to achieve its maximum potential.

1. This Resolution will be analyzed exclusively within the context of Article 5 of the TFA. [↑](#footnote-ref-2)
2. General RKC Annex, Chapter 9: Standard 3.5. Compensation Standard 9.7 When the Customs cannot supply information free of charge, any charge shall be limited to the approximate cost of the services rendered. Normally, Customs provides specific information or rulings free of charge. However, as previously mentioned, this is not always possible. When costs are incurred in providing the aforementioned information, such as an expert opinion or a laboratory analysis, these types of costs may be legitimately charged to the applicant. Standard 9.7 forces Customs to limit compensation to the cost incurred for providing the information. [↑](#footnote-ref-3)
3. Nicaragua suggested that each country could establish deadlines for positive silence (tacit consent) to enter into effect, because there are cases that are very drawn-out and complicated. Guatemala was opposed to including tacit consent because its laws only allow it in expressly regulated, exceptional cases. [↑](#footnote-ref-4)
4. Costa Rica reserved the possibility of internal evaluation of the mandatory status. [↑](#footnote-ref-5)
5. After discussions at the workshop in Costa Rica on June 5 and 6, none of the countries, except Panama (which already is regulated with a global guarantee), agreed to a release with a guarantee for collections reasons and do not consider it to be an element that will facilitate trade. El Salvador proposed analyzing other best practices established in the laws in the United States and Spain, for example. [↑](#footnote-ref-6)
6. Articles 53, 54. [↑](#footnote-ref-7)
7. Documents supporting the goods declaration. The goods declaration shall be based, *inter alia*, on the following customs documents in accordance with the relevant customs regime:

   Commercial invoice, in the case of international purchases or sales, or equivalent document in all other cases;

   Transport documents, such as: bill of lading, consignment note, air waybill or another equivalent document;

   Declaration of the customs value of the goods, where appropriate;

   Certificate or certification of origin of the goods, where applicable;

   Licenses, permits, certificates or other documents related to compliance with the non-tariff restrictions and regulations to which the goods are subject, and other authorizations;

   Guarantees required due to the nature of the goods and the customs regime to which they are destined; and

   Document supporting the exemption or franchise, where appropriate.

   The documents listed above must be attached in original form to the goods declaration, save for the exceptions established in this Regulation, or they may be transmitted by electronic means to the computer system of the customs service; in this case, they shall produce the same legal effects as those written on paper.

   In the case of definitive imports and when so required by the customs service, the declaration of export, re-export or equivalent document of the country of export shall be attached to the goods declaration, as established by said Service. [↑](#footnote-ref-8)
8. This paragraph has been included as a result of the discussions with the countries during the June 5 – 6 workshop. [↑](#footnote-ref-9)
9. Article 80. Advance Declaration. The goods declaration may be submitted in advance prior to arrival of the goods in the country under the system of self-determination, in the cases set forth in the Regulations. [↑](#footnote-ref-10)
10. “It is the responsibility of the Council of Ministers Responsible for Economic Integration and Regional Development to execute the decisions of the MEETING OF PRESIDENTS on economic integration and to promote the integrationist economic policy in the region”. [↑](#footnote-ref-11)
11. Point 9 that instructs ministers who exercise border control to design a coordination strategy. [↑](#footnote-ref-12)