



INTER-AMERICAN DEVELOPMENT BANK



**AUTORIDAD**  
DE PROTECCIÓN AL CONSUMIDOR  
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**-- Session I: Competition Provisions in Regional Trade Agreements --**

**Note by Colombia**

**1. What types of competition provisions were included in the RTAs that your country has signed?**

The Andean Community of Nations, of which Colombia is a member, adopted Decision 608 of 2005 which revoked Decision 285, its purpose being to define a set of substantive and procedural rules relating to protection of competition in the Andean countries (Bolivia, Colombia, Ecuador and Peru) through mechanisms which envisage actions against anti-competitive practice by agents operating in the region affecting one or more member countries of the Community.

In addition, Colombia is a member of CARICOM and other Regional Trade Agreements (RTAs) which do not contain provisions on restrictive practices.

It should also be noted that last year Colombia signed a Free Trade Agreement with the United States which includes certain provisions on competition such as: competition policy, state designated monopolies and enterprises, free competition legislation and anti-trust practices, designated monopolies, differences in pricing, among others<sup>1</sup>.

**2. Which negotiating party or parties have sought the inclusion of these provisions, and why?**

The Decision mentioned in answer to the previous question was proposed by the Andean Parliament which has autonomous powers to propose decisions for the region on its own initiative.

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1 <http://www.tlc.gov.co>

**3. What position, if any, did your country's competition authority take as to the merits of different types of competition provisions? What process, if any, was used to determine this position? Has this position changed over time?**

The Superintendency of Industry and Trade as the technical advisory body to the national Government on promotion of competition<sup>2</sup> and the Colombian authority responsible for monitoring compliance with the provisions on promotion of competition and restrictive trade practices in national markets<sup>3</sup>, in the course of negotiation of Regional Trade Agreements, provides technical support in the form of comments and principles while the negotiations themselves are headed by the Ministry of Trade, Industry and Tourism which is responsible for formulating policy in this area.

**4. What process, if any, was used by your government to consider the merits of including competition principles in the RTAs? Did that process change over time? Such a process could, but need not, have involved consultation with a national competition authority.**

As explained in the previous reply, the decision to include competition issues in regional agreements is a matter for the Ministry of Trade, Industry and Tourism which is responsible for formulating competition policy in Colombia. Consequently, the Superintendency of Industry and Trade in accordance with its functions is consulted on technical aspects relevant to the negotiations.

**5. Did officials from the competition authority negotiate directly the text on competition-related matters in RTAs? If not, to what extent was the competition authority kept informed of these particular negotiations? Did the level of consultation and cooperation between the competition authority and national trade negotiators deepen over time? If so, to what effect?**

As indicated above, officials of the Superintendency of Industry and Trade were certainly involved in Regional Trade Agreements, which in Colombia's case is Decision 608 of 2005, specifically in the consolidation and organisation of the text. However, the negotiations were headed by the Ministry of Trade, Industry and Tourism.

As a consequence of this, and given the functional organisation of this subject in Colombia, the level of consultation and cooperation between the Superintendency of Industry and Trade and officials of the Ministry of Trade, Industry and Tourism, as national negotiators, has indeed deepened.

Under legislative procedures, the policy-making body always requires the technical body to submit opinions and principles in the framework of negotiations. This results in efficiencies, since transaction costs are reduced by strengthening relations which in turn facilitate communication between departments.

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2 Article 2 paragraph 20 of Decree 2153 of 1992, concerning the reorganisation of the Superintendency of Industry and Trade and other provisions

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**6. Once the RTAs with competition provisions that your country is a party to have come into force, in what ways (if at all) were those provisions used subsequently by competition authorities or by national governments? What costs and benefits were associated with the use of such provisions? If these provisions were not used, what factors accounted for their non-use?**

Decision 608, the only Regional Trade Agreement in Colombia's case, was applied in the case of palm oil<sup>4</sup>, where the action began during the term of application of Decision 285 which was revoked by Decision 608 in 2005.

In terms of the question, it could be said that the cost to the national Government of submitting the palm oil case to the Andean Community of Nations was that it gave rise to a process which cut across national barriers. However, the cost did not exceed the benefits which arise from legislative unity – harmonisation – and the consequent legal certainty for operators in member countries of Regional Trade Agreements

**7. Given the experience of your country, what advantages, if any, do competition provisions in RTAs have over other international instruments to promote cooperation on competition law and its enforcement? What are the disadvantages of the former compared to the latter?**

Added to the fact that having similar and harmonised competition policies strengthens a region, the possibility of including *positive comity* in these treaties gives a degree of comfort to the organisations involved since the symmetry of legislative frameworks means legal certainty for them.

**8. On the basis of your country's and others' experience what, if any, types of competition provision in RTAs should be sought in future RTA negotiations?**

The Andean Parliament designated the Andean Competition Protection Committee as the responsible authority in the Community. This Committee has traditionally had the power to accept guarantees in order to end the process. The possibility of endowing the Committee with functions related to leniency programmes and review of transnational integration could be considered.

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4 Resolution 984, Andean Community of Nations