

Republic of Colombia
[Crest]
Freedom and Order

MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT
DECREE NUMBER 0728 DATED
APRIL 13, 2012

“By which regulation is made for application of the Tariff-Rate Quota for chicken leg quarters and rice from the Trade Promotion Agreement between the Republic of Colombia and the United States of America”

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA

Pursuant to Constitutional and legal powers, especially those conferred upon him by Article 189 (25) of the Political Constitution, subject to 1991 Law 7.

WHEREAS

Pursuant to the authority conferred by Article 189 (2) of the Political Constitution, the Government of the Republic of Colombia signed the Trade Promotion Agreement between the Republic of Colombia and the United States of America, its attached Charters and its Understandings, in Washington, D.C., United States of America, on November 22, 2006, henceforth the Agreement, and its Amendatory Protocol signed in Washington, D.C., on June 28, 2007, and the Attached Charter of the same date, henceforth the Protocol.

Through Law 1143 dated July 4, 2007, the Congress of the Republic of Colombia approved the “*Trade Promotion Agreement between the Republic of Colombia and the United States of America*”, its “*Attached Charters*” and its “*Understandings*”, signed in Washington on November 22, 2006; and through 2007 Law 1166 it approved the “*Amendatory Protocol to the Colombia - United States Trade Promotion Agreement*”, signed [in] Washington, D.C. on June 28, 2007, and the Attached Charter of the same date”.

Through Judgment C-750 dated July 24, 2008, the Constitutional Court declared the “*Trade Promotion Agreement between the Republic of Colombia and the United States of America*”, its “*Attached Charters*” and its “*Understandings*”, as well as its attachments and its Approbatory Law 1143 dated July 4, 2007 to be **ENFORCEABLE**; and through Judgment C-751 dated July 24, 2008, it declared the “*Amendatory Protocol to the Colombia - United States Trade Promotion Agreement*”, signed [in] Washington, D.C. on June 28, 2007, and the Attached Charter of the same date” and its Approbatory Law 1166 dated November 21, 2007, to be **ENFORCEABLE**.

Pursuant to Paragraphs 6 and 20 of the Colombian Notes to Annex 2.3, Appendix I of the Agreement, the Tariff-Rate Quota for the accrued quantity of merchandise for chicken leg quarters and rice corresponding to the tariff items listed in subsections (c) and (d) of the respective paragraphs must be allocated in compliance with the stipulated terms through an Export Trade Certificate of Review, according to the provisions of the U.S. *Export Trading Company Act of 1982, 15 U.S.C. §§4001-4021 (2000)*.

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It thus becomes necessary to regulate the conditions under which application of the Tariff-Rate Quotas for chicken leg quarters and rice will operate, pursuant to the Agreement.

HEREBY DECREES

**CHAPTER I
GENERAL PROVISIONS**

ARTICLE 1. PURPOSE. Through this decree the conditions are regulated for application of the Tariff-Rate Quota for the accrued quantity of merchandise for chicken leg quarters and rice corresponding to the tariff items listed in subsections (c) and (d) of Paragraphs 6 and 20, respectively, from the Colombian Notes to Annex 2.3, Appendix I, of the Agreement.

ARTICLE 2. DEFINITIONS. For purposes of this decree the following definitions will apply:

- 1. Agreement:** Trade Promotion Agreement between the Republic of Colombia and the United States of America, approved through 2007 Law 1143 and the Amendatory Protocol to the Trade Promotion Agreement between the Republic of Colombia and the United States of America, approved through 2007 Law 1166.
- 2. Tranche Allocation Agreement:** Certificate issued by the Export Trading Company to the winner under an open and public tender system through which a Quota tranche is allocated, whose format depleted the notification process with the National Customs and Tax Bureau – DIAN – through the Export Trading Company under the terms of this Decree.
- 3. Export Trade Certificate of Review:** Certificate issued by the United States Department of Commerce, according to the *Export Trading Company Act of 1982, 15 U.S.C. §§4001-4021 (2000)*, which authorizes the Export Trading Company to allocate tranches from the Quotas.
- 4. Quota:** Annual duty-free imported volume of chicken leg quarters established in Paragraph 6, and annual duty-free imported volume of rice established in Paragraph 20 of the Colombian Notes to Annex 2.3, Appendix I, of the Agreement.
- 5. Export Trading Company:** Understood as the company that has obtained the Export Trade Certificate of Review to administer the quota for chicken leg quarters or the one that has obtained it for administration of the rice quota, as applicable.
- 6. Representative Union Sectors in Colombia:** For purposes of participation in an Export Trading Company, these shall be understood as the union entity or entities nationally representing individuals or legal entities which are completely dedicated to the production or processing in Colombia of the product which is the subject of the Quota according to law, regulation and practice in Colombia.

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ARTICLE 3. SPHERE OF APPLICATION. The conditions established in this Decree govern the system for Quota application and control.

**CHAPTER II
MAIN PROVISIONS**

ARTICLE 4. QUOTA CONTROL. The DIAN will be responsible for carrying out control of the Quota and will take the steps thereby to allow it to verify that the

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merchandise being imported is protected under a current Tranche Allocation Certificate, that the annual duty-free amounts do not exceed that Quota and that if they do exceed it, the corresponding tariff be applied according to the Agreement.

ARTICLE 5. EXPORT TRADING COMPANY CONDITIONS. The Export Trading Company must provide the Ministry of Agriculture and Rural Development with the original or authentic copy of the Export Trade Certificate of Review, granted according to the provisions of the United States Export Trading Company Act of 1982, 15 U.S.C. §§4001-4021 (2000), officially translated into Spanish. The Export Trading Company must also provide the original or authentic copy of any other document which will allow the information described below to be proven when it does not appear on the Export Trade Certificate of Review:

1. Name, tax identification number or its equivalent, corporate name, address, place for receipt of notifications from the Export Trading Company.
2. Name of the legal representative and documents proving his appointment.
3. That the members of the Export Trading Company will not be involved in the holding and determination of results of the bidding. This job must be the responsibility of a third party hired by the Export Trading Company and who must be independent without any type of tie to the production, sale, distribution or exportation of the products subject to the Quota.
4. That the Quota will be allocated through an open and public tender system.
5. That the Representative Union Sectors in Colombia and U.S. industry, respectively, have equal participation in the Export Trading Company and an equal number of representatives on the Export Trading Company Board of Directors.

In case any of the products under the Quota are represented by more than one Representative Union Sector in Colombia, its participation on the Export Trading Company and its Board of Directors must be the result of agreement of such Sectors. In the absence of such an agreement, the participation of the Representative Union Sectors in Colombia and its number of representatives on the Board of Directors will be determined by the Ministry of Agriculture and Rural Development.

If there is no agreement between the Representative Union Sectors in Colombia and U.S. industry for proper formation of the Export Trading Company under the terms stipulated in this number, and until such an agreement is reached and the change required for the Business Export Review Certificate has been made, U.S. industry may have 100% of the participation in the Export Trading Company, and its Board of Directors may be composed of only representatives from that industry.

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6. That 50% of the earnings obtained by the Export Trading Company, after deducting operating costs, be for the Representative Union Sectors in Colombia. These earnings will be aimed at financing the direct development of projects for the development of markets and/or competition on behalf of the production sector subject to the corresponding Quota in Colombia. If there is no agreement regarding participation of the Representative Union Sectors in Colombia in the Export Trading Company under the terms stipulated in Number 5 above, the Export Trading Company may show that the percentage of earnings which would have been aimed at financing the direct development of market and/or competitive development projects on behalf of the sector under the corresponding Quota in Colombia has been placed into escrow and that it will be assigned to the Representative Union Sectors in Colombia once they agree to participate in the Export Trading Company and have

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made the modification required by the Export Trade Certificate of Review.

The Ministry of Agriculture and Rural Development must, within ten (10) business days of filing of the Export Trade Certificate of Review and supplementary documents required under this article, authorize the Export Trading Company to verify compliance with the above conditions.

PARAGRAPH ONE. The Export Trading Company must notify the Ministry of Agriculture and Rural Development of any change to the Export Trade Certificate of Review authorizing it within five (5) working dates from the date on which it occurs.

If non-compliance with any or all conditions shown above is verified from the modifications, the Ministry of Agriculture and Rural Development will withdraw the granted authorization so long as total compliance with the conditions is not proven to that entity. However, backing will not be withdrawn if the failure to comply is due to the lack of participation of Representative Union Sectors in Colombia in the Export Trading Company or to non-compliance with duties as members of the Board of Directors by one or more of its representatives therein.

PARAGRAPH TWO. Documents dealt with in this article must meet the requirements demanded by the Colombian legal system for the registration, efficacy and validity of the documents issued abroad in the country, especially those to which the "Convention Abolishing the Requirement of Legalization for Foreign Public Documents" signed at The Hague on October 5, 1961, approved through 1998 Law 455 and enacted through 2001 Decree 106, and the 1997 Resolution 2001 from the Ministry of Foreign Relations and the statutes amending it, refer.

ARTICLE 6. RESOURCE ALLOCATION REPORT. If the Representative Union Sectors in Colombia participate in the formation of the Export Trading Company, they must report to the Ministry of Agriculture and Rural Development within the first six (6) months of the year on projects intended to be performed on behalf of the Quota production sector in Colombia in which 50% of the resources corresponding to it through its participation will be set aside.

Prior to carrying out the investment projects, these must have the approval of the Ministry of Agriculture and Rural Development, an entity that will verify that the market development and/or competitive projects in question do, in fact, benefit the production sector subject to the corresponding Quota in Colombia.

ARTICLE 7. CONDITIONS FOR ACCEPTANCE OF THE TRANCHE ALLOCATION CERTIFICATE. For application of the Quota, acceptance will be required of the Tranche Allocation Certificate, which will be the responsibility of the DIAN after the following conditions are met:

1. The Export Trading Company is authorized by the Ministry of Agriculture and Rural Development under the terms of Article 5 of this Decree.

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2. The Export Trading Company notifies the DIAN:

- a) The formats of the Tranche Allocation Certificates to be used and their safety procedures and modifications.

The Export Trading Company will send at least three (3) original copies of the referenced Certificate to the DIAN.

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- b) Contact information for the person named as Administrator of the Export Trading Company. If the Administrator's contact information (address, phone number and email address) change, the Administrator will promptly supply this information to the DIAN.
- c) Conditions for participation, tranches to be allocated and dates of tender scheduled for the first year will be notified within fifteen (15) business days prior to carrying out the first scheduled tender. For subsequent years they must be notified within the first fifteen (15) business days of the month of December preceding the year of the Quota to be allocated.

Any change in the information shown in the above paragraphs must be reported to the DIAN within five business days from the date on which it occurred.

- d) Results of the tender and information identifying the persons to whom the Tranche Allocation Certificates were awarded, within five (5) business days from the corresponding award. Identifying information must also be reported concerning the person to whom the Tranche Allocation Certificate was transferred within five business days from the date on which the Administrator is notified of the transfer.

PARAGRAPH ONE. When the above conditions are met, the DIAN will accept the current Tranche Allocation Certificate as valid to apply the Quota. The importer who seeks to use the Quota Allocated Tranche must file the Tranche Allocation Certificate with the DIAN which, for Customs purposes, will be deemed to be the supporting document for the importation declaration.

If the Tranche Allocation Certificate is not accepted, the importation of merchandise will be subject to payment of the corresponding tariff pursuant to the Agreement. The Tranche Allocation Certificate may not be rejected for reasons other than for forgery or failure to meet the conditions for acceptance specified in this article.

PARAGRAPH TWO. If the DIAN proves forgery or alteration of the Tranche Allocation Certificate or any of the data therein consigned, it will move immediately to reject it and will inform the Export Trading Company so it may take the corresponding steps, notwithstanding the civil, administrative, criminal or tax responsibilities which may apply.

ARTICLE 8. TERM OF THE CERTIFICATE. The Tranche Allocation Certificate will have the term determined by the Export Trading Company and in no case may have any term beyond December 31 of the year for which it was issued.

ARTICLE 9. INFORMATION SYSTEM. The DIAN will implement an online public information system on which the quantities imported under the Quota with the Certificate number protecting them and the

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quantities imported outside of it will be recorded in real time, in both cases showing the tariff sub-headings.

In turn, the Export Trading Company will implement a website where it will publish all information related to the conditions for participation, tranches for allocation, dates of the scheduled tenders and the names of winners and awarded volumes.

These systems must be up and running at the time of application for the Quota in question for this Decree.

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**CHAPTER III
FINAL PROVISIONS**

ARTICLE 10. COMPLIANCE WITH OTHER PROVISIONS. The provisions of this Decree do not exempt the importer from fulfilling the remaining applicable legal provisions for the importation and/or trade of merchandise, among others, those established on Customs, tax, public health, hygiene and phytosanitary matters.

ARTICLE 11. TERM. This Decree takes effect with the date of its publication.

LET IT BE PUBLISHED AND OBEYED

Issued in Cartagena de Indias, D.T. y C.

[Stamped: **APRIL 13, 2012**]

[Signature]

The Minister of Finance and Public Credit

[Signature]

JUAN CARLOS ECHEVERRY GARZÓN

The Minister of Agriculture and Rural Development

[Signature]

JUAN CAMILO RESTREP SALAZAR

The Minister of Trade, Industry and Tourism

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[Signature]

SERGIO DÍAZ-GRANADOS GUIDA