



Universidad Del Azuay

Faculty of Law

School of International Studies

Study of the import customs procedures of prohibited and unauthorized goods of the SENA E branch in Cuenca.

**Graduation work prior to obtaining a B.A. in
International Studies with a bilingual minor in Foreign
Trade**

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This degree work is dedicated to my parents, who with their unconditional support and endless love have given me the opportunity to reach this goal. My parents were my inspiration from the beginning of my student days through their constant example of struggle and effort, of never giving up until reaching the goal. This degree is just the beginning of all I will have to be grateful for with my parents because all of my accomplishments will be the result of their great job as parents. My desire to give back everything they have done for me and the example they have given has pushed me to give the best of me and it will continue to be my engine to always make them feel proud.

I thank all the people who have been part of this big part of my life. Especially those people who have always believed in me and supported me with immense patience: my parents Juan and Rocio; my sisters Veronica and Juanita; my brother Andrew, and my beloved nephew José Andrés.

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To my friends and colleagues; people with whom I undertook student projects, that provided what is not learned in the classroom and that generated lasting bonds of friendship.

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ABSTRACT

Foreign trade is of great influence in several countries with positive and negative effects. Therefore, it is regulated at the macro and micro level, especially since the imports of certain products may affect the interests of the state and its people. Unauthorized and prohibited imports have been established to safeguard the interests of each state. Goods of unauthorized imports are more numerous and can enter the country if they meet the prerequisites. Prohibited goods will simply not be allowed. Customs procedures may have certain exemptions; considering that if they are well managed, it can be beneficial to the country. It is not recommended that restrictions and prohibitions be the most widely used commercial tool since it can harm international trade relations. Measures must also be planned and instituted at the appropriate time in order to avoid legal instability and economic losses.

INTRODUCTION

Commerce moves the world; it is the most important activity because the market cycle all depends on trade. When there are needs that cannot be met by domestic supply any given country should look elsewhere and initiate international business. Foreign trade is a major source of revenue for states, but it can also be harmful in several respects. With this in mind, states have regulated the activities of foreign trade to protect its interests. In order to ensure a level playing field between States, the commercial sector has created international organizations that seek to facilitate trade between countries, ensuring that the applied measures do not interfere unnecessarily or unfairly to another state.

States have some mechanisms within their trade policy to protect certain interests that could be affected by the activities of foreign trade; these are mainly tariff and non-tariff measures. These measures affect mostly imports; considering exports generate greater benefits to the country they are generally less rigorously regulated. Imports, on the other hand, may have more harmful effects; therefore, regulations are devoted mostly to maintaining normal levels. Both tariff and non-tariff measures are designated by the appropriate government agency, keeping in mind that the international community has set general parameters that must be respected. The international community has its own supervisory bodies; while respecting the sovereignty of states, it seeks to promote greater cooperation between countries, relying on the basic economic interdependence of states.

Tariff measures are means of economic taxation, under different methods, for products seeking to enter the country. In addition, non-tariff measures are non-economic methods that restrict the entry of goods that pose a risk to the state. NTMs are more complex and require more care for the importer, as measures must be met before admission to the State; compared to the tariff measures that simply meet the payment. Within non-tariff measures there are conditional and final restrictions. Products are categorized according to the type of restriction they are designated as, whereas those with a conditional

constraint will be classified as an unauthorized importation and will need to meet certain requirements prior to importation.

For proper understanding of prohibited and unauthorized imported goods, it is necessary to review some basic definitions. Regulators at both the macro and micro level are the most reliable sources of information, so it is important to ascertain which regulations are in force. One of the most important keys is to review the resolutions that the categorizations of the goods are held to, recognize the general characteristics of each type of goods, and to effectively prevent the complications that can result in non-compliance with these regulations. On the other hand, every rule has its exception; and in this case, prohibitions on imports do as well. If a country can understand and identify steps before performing an import, with recourse to the correct sources, the importer can avoid operational, legal, and even economic losses. Economic conditions, and the levels of such conditions, must be theoretically evaluated. This study provides accurate and appropriate information to importers.

CHAPTER ONE

1. Theoretical Framework. Overview

Trade is the main economic activity of the world. The differences in resources in variety, quantity, and quality have led to a constant exchange between countries, whether raw materials, finished products and even services are made. This exchange process between countries is known as foreign trade, through which different needs and tastes can be met in almost every part of the world. Trading activities are very important and can be exercised by individuals or legal entities within a given state, but not all products have the ability to enter countries that have regulations.

Because of the importance of this activity specialized institutions in such matter exist. In Ecuador, the National Customs Service of Ecuador, known as SENA, is one such institution. The customs legislation to regulate commerce is the Book V of the Code of Production, Trade, and Investment (COPCI); Title Regulation of the Customs Trade Facilitation; Book V of the Code of Production, Trade, and Holdings (RCOPCI); and supplementary regulations of the Tax Code; among others. At the international level, control instruments have also been created seeking unity between States; gradually decreasing trade barriers and creating positive results, which improves the quality of life of its inhabitants.

The General Agreement on Tariffs and Trade, known as GATT, created in 1947, has been one of the most important trade agreements. The GATT fulfilled the function of regulating a large portion of world trade until 1994. After some modifications, the GATT served as a primary basis for the Uruguay Round in 1995 where the World Trade Organization (WTO) was created. The WTO is currently the lead agency, through agreements of states, to regulate aspects of global trade, analyze the implementation of the agreements by the Member States, collect the rules in force in each country to facilitate trade relations, receive inquiries and questions, resolve disputes, and function as a forum for negotiation. Its objectives revolve around those posed by the GATT; that is trade

without discrimination at any level, maintain environmentally friendly practices, generate competitiveness, create a stable legal framework, and reduce barriers to create more open markets.

Despite its primary goal of opening markets, it is logical that not all products can be treated equally; either due to their characteristics, the environment, or the circumstances. Therefore, classification of products with additional or special requirements for admission to each country is needed:

Where countries have faced trade barriers and wanted them lowered, the negotiations have helped to open markets to trade. However, the work of the WTO is not limited to the opening of markets, and in some cases its rules support maintaining trade barriers, for example to protect consumers or prevent the spread of disease. (OMC, *Quiénes somos*)

Little by little, categories for products have been defined in each country, and even regions, in which specific requirements for admission have been established by the State according to certain parameters. These categories are: authorized, unauthorized, and prohibited imports.

1.1 Difference between unauthorized and prohibited merchandise imports.

It is important to establish and understand the difference between each category to perform a correct classification of products before importation. Let's start by clarifying that goods shall mean, "All physical goods imported before being nationalized;" after this process it is known as "merchandise."

The first category is *authorized import goods*, and is one in which the goods are not required to comply with any prerequisite or specific authorization, but simply those customs formalities established by law prior to the release of the goods. The release of the goods may be best known as nationalization or interned in the State of imported goods. Technically the RCOPCI defines the release or removal

of goods as “the act by which the Customs Authority authorizes the respondent or person concerned to dispose of the goods in accordance with the purposes of the authorized customs procedure prior to the completion of customs formalities and enforceable requirements” (Art. 2, par. gg, p. 3). Much of the imported goods are included within this first category and the process involved is basic, so there is no major complication. In contrast, the other two categories require special treatment, therefore more information and care must be provided by the importers; these other two categories will be the main focus of this study.

The next category is what has been called in Ecuadorian legislation as *unauthorized importation of goods*, but may be better known internationally as import restrictions. This classification requires compliance prior to release of the product’s requirements; these requirements may be specific licenses or permits to legally designated institutions, compliance with certain physical characteristics of the product, import quotas, among others; i.e. they have technical obstacles, which are of the previously detailed type and are not related to tariff measures, but nevertheless they can be imported and nationalized in the State if it meets all requirements established for each case. The National Customs and Tax Administration (SUNAT) of Peru offers the following meaning for these types of goods: “The restricted goods are those which, by law, require the authorization of one or more competent bodies to be subjected to a certain regime’s customs” (*Restricted and Prohibited Goods*). The import restriction means, “the authorization or prior authorizations necessary as defined for each product.” However, for this definition to be understood completely, it is necessary that the meaning of *customs procedures* is known. Ecuadorian law, RCOPCI, reads *customs procedures* as, “customs treatment applicable to goods requested by the respondent, in accordance with the customs legislation” (Art. 2, par. Fff, pg. 4). Also, the Latin American Integration Association (LAIA), regional association of which Ecuador is a member, defines *customs procedures* as “the various specific purposes that are subject to the goods under customs authority in accordance with the terms stated by the interested party” (*Customs Procedures*).

In summary, a customs procedure is the chosen destination within the state for the importer's goods, depending on their characteristics and purposes to be fulfilled. Each customs procedure is regulated in the RCOPCI and COPCI. The following chapters outline the procedures that apply to unauthorized and prohibited imported goods, respectively.

Goods classified as a prohibited import, whose concept is easy to understand, are those which as the name itself suggests are prohibited from entering the country. These goods are not subject to prior authorization or certain quotas but simply by its nature or circumstances shall not be nationalized for use in the State. Goods that are determined by the competent State body as a prohibited import should arrive in the country through customs – where certain measures can be taken, for example, destruction of these goods. The RCOPCI, in Article 99, regulates the issue of import prohibited goods and indicates that “prohibited import goods - will be identified as such by the Board of Foreign Trade, COMEX” (24). However, for every rule there is an exception, since under certain customs procedures internment is possible, bearing in mind that certain conditions detailed in the law must be met. These procedures and requirements are detailed in a later chapter.

For an importer, it is always important that these concepts are clear for it is very common to cause confusion. As an intern, I do volunteer work in the local SENAE branch of Cuenca. It is here that I witness how importers became worried and even angry because they interpreted unauthorized merchandise importation as a synonym for prohibited import; one case was an owner of a mechanical workshop which sold auto parts. Many of the pieces and parts for vehicles require certification by the Ecuadorian Standardization Institute (INEN). At first the only information that he got was from a family member who informed him that the parts he wanted to import were restricted in the country, i.e. unauthorized goods; and according to the interpretation given to him it was better not to cause any problems because chances are they would confiscate his merchandise. Unfortunately, these goods could have been nationalized if they

would have met the requirements prior to entry into the country; this would have saved a lot time and worry, considering this was the man's main source of income.

For the recognition of these goods, it is necessary to know about the correct classification of goods within the National Import Tariff or Ecuadorian Tariff as it is called in the last reform accepted in May 2012. Ecuador's tariff is the set of numerical encodings divided by categories.

Illustration 1. - Ecuadorian Tariff

Código	Designación de la Mercancía	UF	Tarifa Arancelaria	OBSERVACIONES
0101.21.00	- - Reproductores de raza pura	u	15	

Source: Resolution No. 59, COMEX, 2012. Harmonization of terms, p. 13.

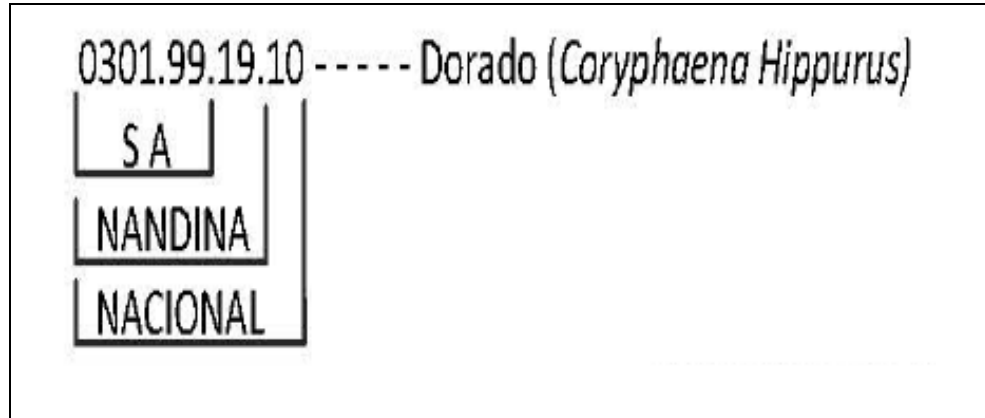
These numerical codes contained in the Ecuadorian Tariff have not been arbitrarily designated by state agencies. These codes have ten numbers which are the first two chapters, two that are the heading and subheading, and six of the Harmonized Commodity Description and Coding System, known as the Harmonized System (HS). This system was developed and regulated by the World Customs Organization (WCO) in early 1970, which includes the codes, classifications, general rules of interpretation, explanatory notes, and the end of each chapter and/or section. The SA serves the purpose of standardizing the coding of goods for trade, statistics, and bilateral or multilateral negotiations. Currently the SA is in charge of the Customs Cooperation Council who maintains and modifies updates every 5 years, unless there is an emerging case; about 200 countries make up the SA and is embodied in the International Convention on the Harmonized Commodity Description and Coding System. (WCO, *Tariff Guide*)

The WCO only covers up to 6 digits and leaves the rest of the numbers to be added according to the considerations of each State or group of States. In our case, the next two digits are the subheading of the Common Nomenclature NANDINA which is an instrument of the regional trade body: the Andean Community of Nations (CAN), of which our country is a member. “The NANDINA common nomenclature facilitates the identification and classification of goods, foreign trade statistics, and other trade policy measures of the Andean Community regarding the import and export of goods” (CAN, *Tariff Nomenclature*). The ninth and tenth digits are designated nationally to fulfill purposes of trade and economic policies. The addition of these two digits is allowed from international areas for the State to develop internal rules according to their interests and circumstances, and it is this mechanism that will regulate the goods and identify unauthorized and prohibited imports. The legal basis for digits 9 and 10 is expressly stated in the latest reform that took place in the Ecuadorian Tariff in its general considerations:

According to Decision 657 on updates of the Andean Integrated Tariff (ARIAN), Member Countries may establish national subheadings for classification of goods at a more detailed level than the NANDINA has provided; such subheadings are included and coded at a higher level of the numeric code of eight (8) digits of the NANDINA. They may also introduce Additional National Notes. . . (COMEX, *Resolution N°59*).

The ARIAN basically is the operating system that the CAN developed in order to have 10-digit subheadings of its member countries. Since there is no sub-heading created by the NANDINA, these will be completed with zeros. An example of HS is presented below.

Illustration 2. - Example of Tariff Item



Source: COMEX, 2012, *Resolution N° 59*, pag. 6.

Additionally, the 8 digits are used as tools to give differential treatment to similar goods,

Exceptionally, additional complementary four-character codes are used to identify goods that require the implementation of Community policies and measures. . .also additional supplementary four-character codes will be used to identify goods that require the implementation of specific national policies and measures that cannot be fully or partially encoded in ARIAN sub-headings. (SENAE, *Bulletin N°94-2006*)

Additional codes for national measures are known as TNAN, which establishes differentiation between similar goods such as parts of goods, called *Completely Knocked Down* (CKD), to which the TNAN code classifies its national aggregate level; this makes a difference in the tariff rate to pay. Another case might be screws that are classified under heading 7318.15.10.00 which have four differing TNAN codes; of these 0000 and 0001 state that they need a prerequisite of the INEN, while 0002 and 0003 show no restrictions.

Although it may seem complicated at first, it is important to know the theory and practice to accurately recognize the classification of products. In order to simplify this process, here are some recommendations: first clearly identify the nature and main functionality of the product; once certain, information is

necessary to review the chapters, which are the first two numbers; recognizing the correct chapter will facilitate the identification of the following numbers that specify the product features. For example, a karaoke device initially could be erroneously classified under heading 8518.10.00 that is specific for microphones; however, this is not the main function of the product, but rather playing audio and video with lyrics while picking up sound; the correct heading is 8521.90.10. Chapter 85 would have been well identified, but without considering the main function of the product, mistakes can still be made. One risk of erroneously classifying a product is the customs authority may subsequently re-classify the product under a different heading which may be restricted, or even worse prohibited.

Once the product is classified, we know the correct tariff rate to pay, any mixed duties or additional taxes, the physical units that will be important to know in order to enforce any provision or just for statistical purposes, corresponding notes and observations including whether there are any restrictions or import bans, plus any integration procedures. If there are any restrictions the same institution will indicate where the importer must go to comply with the prerequisite established. Depending on the source, different information may be given in addition to the basic information.

Customs, before, through the computer system SICE, offered a direct link to online inquiries, where all the details were presented; however, now through the new system called ECUAPASS additional and complementary information of great importance to all users is provided. Nevertheless, the link from the previous page is still up and running, but obviously it is better to use the updated system if you have access to it. The SICE Reporting System is only a guide and does not have updated information.

The link to the page is <http://sice1.aduana.gob.ec/ied/arancel/index.jsp>. The image below is an example of the information presented on this page.

Illustration 3. - E-consultation in the SICE

Ingrese un criterio de Búsqueda para la Consulta

Partida : y/o Descripción :

Sección XVI : MAQUINAS Y APARATOS, MATERIAL ELECTRICO Y SUS PARTES; APARATOS DE GRABACION O REPRODUCCION DE SONIDO, APARATOS DE GRABACION O REPRODUCCION DE IMAGEN Y SONIDO EN TELEVISION, Y LAS PARTES Y ACCESORIOS DE ESTOS APARATOS

Capítulo 85 : Máquinas, aparatos y material eléctrico, y sus partes: aparatos de grabación o reproducción de sonido, aparatos de grabación o reproducción de imagen y sonido en televisión, y las partes y accesorios de estos aparatos

Partida Sist. Armonizado 8517 : Aparatos eléctricos de telefonía o telegrafía con hilos, incluidos los teléfonos de usuario de auricular inalámbrico combinado con micrófono y los aparatos de telecomunicación por corriente portadora o telecomunicación digital: videofónos

SubPartida Sist. Armoniz. :

SubPartida Regional :

Código Producto Comunitario (ARIAN) 8517120010-0000 :

Código Producto Nacional (TNAN) 8517120010-0000-0001 : Para 5% de Producto Ecuatoriano Incorporado; Res 64 COMEX, Suplemento R.O. No. 730, 22/06/12

Código de Producto (TNAN)	0001
Antidumping	0 %
Advalorem	7.5 %
FDI	0.5 %
ICE	0 %
IVA	12 %
Salvaguardia por Porcentaje	0 %
Salvaguardia por Valor	
Aplicación Salvaguardia por Valor	
Techo Consolidado	0 %
Incremento ICE	0 %
Afecto a Derecho Especifico	
Unidad de Medida	Unidades (UN) % de Producto Ecuatoriano Incorporado = 5; Res 64 COMEX, Suplemento R.O. No. 730, 22/06/12
Observaciones	
Es Producto Perecible	NO

[Convenios](#) | [Restricciones](#) | [Medidas](#) | [Excepciones](#) | [Historial de Tasas](#)
[Retornar](#)

Source: Customs Service of Ecuador, SICE System.

As can be seen, all the necessary information, from the chapter to the description, as well as the applicable taxes is offered; if it is a perishable product, as well as the option to review the details of covenants, restrictions, measures, exceptions, and record rates. The restrictions image of our particular interest has been underlined in red, clicking on this option will have the following table:

Illustration 4. - Consultation of Restrictions SICE

Ingrese un criterio de Búsqueda para la Consulta

Partida : y/o Descripción :

Partida	Descripción	Producto	Autorizante	Tipo	Vigencia de Restricción	País	Régimen
8517120010-0001-0000	EN CKD	Registro de importacion, solo empresas reg. por MIPRO	MINISTERIO DE INDUSTRIAS Y PRODUCTIVIDAD	R	17/09/2011 - 31/12/3000		IMPO

[Retornar](#)

Source: <http://sice1.aduana.gob.ec/ied/arancel/index.jsp>

Here you can see exactly if the restriction is for imports or exports, as well as which entity provides the above requirement and effect.


The new ECUAPASS customs system works differently. To inquire about the tariff you can enter the customs page and re-route to ECUAPASS, the direct link is <https://portal.aduana.gob.ec/>. Before entering the system, one must meet certain software requirements. On the ECUAPASS homepage, the option of entering a username and password to login will be given; if you are not a registered user you can still access the consultation fee information but you do not have access to more advanced options. The most important thing to know in order to search in the customs system is the chapter number. The search can be performed by other criteria, such as a description of the item, but you have to know the specific name of the product in the tariff system and this is not always easy since they have technical, or very general, descriptions. For example, if we search for “all the others” as this description is used for numerous items the final result can be more confusing. This is why it is advisable to download the tariff in digital form, although it only contains the tariff code and description.


When the code of the item you want to query is introduced, several options are displayed depending on the effective date and the TNAN number; of these you must always select the number corresponding to the TNAN case that is in effect. When selecting a specific item, two tabs are presented; the first tab is general information on the item such as: name, measurement per unit, currency, etc. The second tab has several options to view the most relevant information available, first is the detail query quota, then the information on release and preferential tariffs, then the correlation of ARIAN nomenclature with other countries. The following option shows restrictions and prohibitions, fixed taxes applicable to the item, and tax variables. When selecting any of the options, the information will be presented in a new window. If “*No Existe el Archivo Consultado*” appears, this means that the item has no consultation, or no such restriction or prohibition. Below is a graphic guide to the use of ECUAPASS:


Illustration 5. - Tariff Guide for consultations in the customs system ECUAPASS

Subpartida	Código Complementario	Codigo Suplementario	Descripcion de Elemento	Codigo de Unidad Fisica	Fecha de Inicio de Vigencia	Fecha de Fin de Vigencia
94	0000	0000	MUEBLES; MOBILIARIO MEDICOQUIRÚRGICO; AR		01/Ene/2003	
9401.10.00.00	0000	0000	-ASIENTOS DEL TIPO DE LOS UTILIZADOS EN AER	NUMERO DE UNIDADES	01/Ene/1998	27/Mar/1998
9401.10.00.00	0000	0000	-ASIENTOS DEL TIPO DE LOS UTILIZADOS EN AER	NUMERO DE UNIDADES	28/Feb/2001	31/May/2001
9401.10.00.00	0000	0000	-ASIENTOS DEL TIPO DE LOS UTILIZADOS EN AER	NUMERO DE UNIDADES	01/Jun/2001	31/Ago/2001
9401.10.00.00	0000	0000	-ASIENTOS DEL TIPO DE LOS UTILIZADOS EN AER	NUMERO DE UNIDADES	28/Mar/1998	04/Ene/1999
9401.10.00.00	0000	0000	-ASIENTOS DEL TIPO DE LOS UTILIZADOS EN AER	NUMERO DE UNIDADES	01/Sept/2001	16/Dic/2008
9401.10.00.00	0000	0000	-ASIENTOS DEL TIPO DE LOS UTILIZADOS EN AER	NUMERO DE UNIDADES	05/Ene/1999	22/Feb/1999
9401.10.00.00	0000	0000	-ASIENTOS DEL TIPO DE LOS UTILIZADOS EN AER	NUMERO DE UNIDADES	01/Ene/2000	27/Feb/2001
9401.10.00.00	0000	0000	-ASIENTOS DEL TIPO DE LOS UTILIZADOS EN AER	NUMERO DE UNIDADES	23/Feb/1999	31/Dic/1999


Servicios Informativos	Soporte al Cliente
2.1 Información de soporte p...	2.1.1 Consulta de arancel
2.2 Rendimiento de la empresa	2.1.2 Consulta de tributos fijos
2.3 Seguimiento de cargas	2.1.3 Consulta de Tributos Variables de Mercancías
2.4 Empresas registradas	2.1.4 Consulta de porcentaje de liberación y preferencias
2.5 Estadísticas	2.1.5 Consulta de las mercancías con restricción
2.6 Catálogos	2.1.6 Consulta de detalle de CUPOS
2.7 Consulta de Verificación ...	2.1.7 Consulta de franja de precio
2.8 Nota de crédito	2.1.8 Consulta de correlación de nomenclatura arian con otras nomenclaturas
2.10 Devolución Condicionada	2.1.9 Consulta de nomenclatura de mercancías
2.11 Servicio de informació...	


 Opciones avanzadas si se inicia sesión

 **Adm. de nomenclatura y características de mercancías** Tipo de Información Asociada a la Mercancía

 Información general de la partida, toda la información es inalterable

* Tipo de Elemento	[SSA] SUBPARTIDA S.A.	* Descripción de Elemento	-ASIENTOS DEL TIPO DE LOS UTILIZADOS EN
* Subpartida	9401.10.00.00	* Código de Unidad Física	[11] NUMERO DE UNIDADES
* Código Complementario	0000	* Requiere Información de Vehículo	[N] NO
* Código Suplementario	0000	* Elemento Tacito	[N] NO
* Fecha de Inicio de Vigencia	17/12/2008	* Fecha de Fin de Vigencia	
* Código de Producto de Sistema Andino de Franja de Precios	--Selección--	* Código de Tipo de Producto de Sistema Andino de Franja de Precios	--Selección--
* Naturaleza Primaria de Mercancía	[GEN] GENERAL	* Tratamiento de Mercancía	[GEN] GENERAL
* Versión de Nomenclatura	4	* Código de Norma (Base Legal)	0
* Tipo de Norma	[ACU] ACUERDO	* Nombre de Norma	ACUERDO 001-2014 EMITIDO POR EL PLENO DE
* Comentarios de Apertura	DECRETO EJECUTIVO 1458, R.O. 489S 16/12/2	* Comentarios de Cierre	



 **Adm. de nomenclatura y características de mercancías** Tipo de Información Asociada a la Mercancía

 Información Especifica de la Partida

Tipo de Información Asociada a la Mercancía

Consulta de detalle de CUPOS	Seleccionar
Consulta de porcentaje de liberación y preferencias	Seleccionar
Adm. de correlación de nomenclatura arian con otras nomenclaturas	Seleccionar
Consulta de las mercancías de restricción y prohibición	Seleccionar
Consulta de tributos fijos de mercancías	Seleccionar
Adm. de tributos variables de mercancías	Seleccionar

Resultado : 0

Numero de Tratos	Tipo de Trato	Identificador de grupo	Subpartida	Código Complementario	Código Suplementario	Código de OCP	Código de País de Origen	País de Destino
 Información No existe el archivo consultado.  Mensaje cuando no hay registros para la consulta <input type="button" value="Aceptar"/>								

Consulta de las mercancías de restricción y prohibición

Resultado : 15

Código de Regimen	Tipo de Restricción	Código de Institución	Código de Requisito	Criterio de Aplicación
IMPORTACION A CONSUMO	PRESENTACION DE REQUISITO	MINISTERIO DE INDUSTRIAS Y P	REGISTRO IMPORTADOR	NINGUNO
IMPORTACIONES COURIER - CO	PRESENTACION DE REQUISITO	MINISTERIO DE INDUSTRIAS Y P	REGISTRO IMPORTADOR	NINGUNO
ADMISSION TEMPORAL PARA REE	PRESENTACION DE REQUISITO	MINISTERIO DE INDUSTRIAS Y P	REGISTRO IMPORTADOR	NINGUNO
ADMISSION TEMPORAL PARA PERF	PRESENTACION DE REQUISITO	MINISTERIO DE INDUSTRIAS Y P	REGISTRO IMPORTADOR	NINGUNO
FERIAS INTERNACIONALES	PRESENTACION DE REQUISITO	MINISTERIO DE INDUSTRIAS Y P	REGISTRO IMPORTADOR	NINGUNO
REIMP. DE MERCANCIAS EXPORT	PRESENTACION DE REQUISITO	MINISTERIO DE INDUSTRIAS Y P	REGISTRO IMPORTADOR	NINGUNO

Fuente: SENAE, Sistema ECUAPASS./

ECUAPASS is one of the safest methods of tariff consultation as it is the official customs system. You must become familiar with it and learn to manage it to get the necessary information.

Another query tool is the physical documents. Here, as physical document, we can see the official record which records all applicable laws. However, the official record collects all the laws and rules in general, which can be confusing; plus, it is not the most accessible way to find the appropriate item listing. The best tool is the one offered by *PUDELECO Editores S.A.*, which gives the most updated publications of the Import Tariff in digital and physical formats, presenting information in a very concise form as shown below:

Illustration 6. - Explanation of Columns - PUDELECO

EXPLICACIÓN DE COLUMNAS

DÍGITO VERIFICADOR	RESTRICIONES Y AUTORIZACIONES PREVIAS	IMPUESTO AL VALOR AGREGADO (IVA) %	TARIFA ARANCEL NACIONAL % AD-VALOREM CIF	UNIDAD FÍSICA	PARTIDA Y DESCRIPCIÓN	NOTAS	REGIMEN DE INTEGRACIÓN (% A PAGAR)														
							VENEZUELA	CAN	MERCOSUR				ALADI			PAR					
										AR	BR	PY	UY	CL	CU	MX	AR	BR	MX	CU	
8501.33	-- De potencia superior a 75 kW pero inferior o igual a 375 kW:																				
8501.33.10	--- Motores con reductores, variadores o multiplicadores de velocidad.....	u	0	12	0190 4007	0101	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8501.33.20	--- Los demás motores.....	u	0	12			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8501.33.30	--- Generadores de corriente continua.....	u	0	12			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8501.34	-- De potencia superior a 375 kW:																				
8501.34.10	--- Motores con reductores, variadores o multiplicadores de velocidad.....	u	0	12			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8501.34.20	--- Los demás motores.....	u	0	12			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8501.34.30	--- Generadores de corriente continua.....	u	0	12			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8501.40	- Los demás motores de corriente alterna, monofásicos:																				

Source: National Import Tariff, published by PUDELECO.

In this case, the restriction or prohibition is indicated in the notes with numerical codes.

The knowledge and use of tariff items is extremely important because it is the only way to safely recognize the classification to which each product belongs and prevent problems with the customs authority. In addition, you must choose a reliable source of consultation regarding updating new rules and changes of ECUAPASS encodings. Before importing, the item should be reviewed as often as necessary, including the heading, as well as the multiple options that can be given in a single item for the last digit, in order to avoid problems with the batch changes.

1.2 Control bodies and legal grounds establishing differentiation between permitted, prohibited, and unauthorized importation goods.

For the analysis of the existing legal basis related to the differentiation of the three types of goods permitted, prohibited and unauthorized importation; we will start with a macro approach. That is, we will begin with the legal bases on organizations with global reach, in this case the WTO agreements, then we will analyze the CAN, to which Ecuador belongs to and which has greater commercial impact; then we will finish with a study of the fundamentals in Ecuadorian law. Each of these indicates which agency or institution is responsible for regulating this issue.

1.2.1 WTO

First we have the WTO that was created based on the GATT, as we indicated before. The GATT was accepted in 1947 with thirty-eight articles for the primary purpose of facilitating trade for the benefit of States. In 1994, changes were applied to the GATT without changing its main purpose. The GATT, with its aim of reducing trade barriers, is the largest legal basis and support for permitted imported goods. However, it also reflects the need for other types of goods, which are regulated to exert sufficient trade and not exert too much unnecessary control. In Article Ten of the agreement, a preliminary survey is made, giving

right to prohibited and unauthorized importation goods. The regulation is as follows:

Article X - Publication and Administration of Trade Regulations

1. Laws, regulations, judicial decisions, and administrative rulings of general application to any contracting party enacted, pertaining to the classification or the valuation of products, the rates of customs duties, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or the payments transfer related to these, or the sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or any use of such products shall be published promptly so that governments and traders can become acquainted with them. (11)

This is important because the import restrictions must apply for a specific reason and necessity, as discussed below, but not hinder trade or harm importers or third parties. For these measures not to be harmful the necessary and complete information must be offered in a timely manner. Furthermore, in the following paragraph of the same article, it states that no action may take effect before its due publication.

The following article is for the general elimination of quantitative restrictions which promotes permitted imported goods. However, in paragraph two, exceptions that generally refer to the prohibition or restriction for compliance of tariff classifications and quality control are established; as well as restrictions on agricultural and fishery products. This section refers only to quantity restrictions; in this case, the import volume should be published, also known as quotas.

The twelfth article explains the standard for restrictions to protect the balance of payments. According to this article, the import restrictions may be imposed where a threat or significant decline in monetary reserves exists, or to increase them to normal levels; especially in developing countries. Restrictive measures must be duly justified, be valid only until the condition is met, not exceed the

limits necessary to solve the problem, decrease progressively according to the change in situation, and be removed when the target is reached.

Ecuador applied such restrictions in early 2009 due to its foreign debt crisis. The restrictions were applied to over 600 products, without discrimination of origin, with various methods, including: increasing tariffs, quotas, and allocation requirements prior to receiving permits. Ecuador made a report available of its actions by sending a report to embassies in other countries; citing as legal support the articles referenced above. (Consulate General of Ecuador in Miami, *report No. 01/SAEC/DGCM/09*)

Restrictions to safeguard the balance of payments are not the only protectionist measures that a country is authorized to take; there are also safeguards that are emergency measures when a sector of the domestic industry is in danger. Safeguards are regulated in Article XIX of the GATT, which are also found in the Uruguay Round Agreement on Safeguards to exercise greater control. GATT rules state:

Article XIX - Emergency Action on Imports of Particular Products

1. A) If, as a result of unforeseen circumstances and effect of obligations, including tariff concessions, incurred by a contracting party under this Agreement, imports of a product in the territory of that contracting party have in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products in the territory, that Contracting Party may, to the extent and for such time as may be necessary to prevent or remedy such injury, suspend all or part of the obligation in respect of that product or withdraw or modify the concession. (26)

In Article twenty, general exceptions, referring to the type of goods, or under what circumstances it may define restricted or prohibited goods imports, are regulated. More specifically, it states that nowhere in the GATT does it prohibit implementing measures to protect public morals, ensuring the health and life of

humans, animals, or the preservation of flora, concerning the import of gold and silver, protection of trademarks, copyrights or patents, internal application of customs rules consistent with the GATT, national heritage protection, and conservation of exhaustible natural resources. The following Article considers the exceptions for security, which states that nothing in the GATT should be construed to prevent the application of measures for the protection of national security, which includes every type of nuclear material, or reaction materials for the manufacture of nuclear material (27-29). A very important aspect that is not regulated in the GATT is the environment, hence the WTO established a Committee on Trade and Environment. This committee does not regulate environmental aspects; rather it is limited to the analysis and control of the impact on trade of environmental agreements established by members of the WTO, whereby in certain cases it must take measures in restricting or banning certain products.

The principle governing these, and all items in the GATT, like all trade issues, is the treatment of the most favored nation States that cannot be arbitrarily applied to either favorable or restrictive state measures. Exceptions for measures may arise as a result of formal negotiations, or the formation of intergovernmental bodies, as in the case of the CAN. These GATT provisions remain in force and are under compliance with the WTO. As a result, States have reached specific agreements regulating precise aspects on the subject of restricted and prohibited import goods. In the Uruguay Round Agreement, concession was reached on the Procedures of Licensing through ALS. This agreement determines that procedures for licenses should be as streamlined as possible, be fully justified, and should be reported to the Committee on Import Licensing to publish them for all WTO members. Regarding the control of goods by health issues, States formed the Agreement on Sanitary and Phytosanitary Measures:

The Agreement on the Application of Sanitary and Phytosanitary Measures sets out the basic rules for the regulation of food safety and animal health and plant health. The Agreement allows countries to set their own standards. But it also

says that it is necessary that the regulations are based on scientific principles and also apply only to the extent necessary to protect the health and life of humans and animals or plant life and not discriminate arbitrarily or unjustifiably between Members where identical or similar conditions prevail. (WTO, *Understanding the WTO Agreement on the Application of Sanitary and Phytosanitary Measures*)

All agreements that have been generated among WTO members are in effect, as stated in the GATT. These international instruments are of great importance because, although members are sovereign states, today globalization and trade interdependence does not allow them to live in isolation, therefore they must seek to generate and maintain mutually beneficial and peaceful relations. These rules generate stability for trade relations; the WTO, through its General Council, is the main body consisting of representatives of each Member State, who meet regularly to make decisions. In addition, it serves as the Review Body on Trade Policy which is responsible for analyzing the compliance of the provisions of the GATT and the agreements signed by member countries. The Organ Dispute Settlement, in which any query or complaint against a Member State is mediated, has the power to appoint a panel to study the situation, take reports from the Appellate Body, and authorize the termination of concessions, among other measures (WTO E-Learning. *Trade Remedies and the WTO*). This control does not allow states to arbitrarily implement measures that impede trade, at least not without consequences, that may be more harmful; this may lead to the annulment of concessions by third party countries and even embargoes in more extreme cases.

1.2.2 CAN

Regionally, we have the Andean Community of Nations (CAN), which was formed at the Cartagena Agreement. This regional organization has political, economic, and social objectives. Trade has an impact in these three areas; therefore, the CAN oversees the classification of goods, such as the NANDINA

tariff digit. The CAN has, as one of its main objectives, the application of the Common External Tariff, which is a harmonized tariff code through the NANDINA, and a formalized trade policy among its members. Decision 671 specifies each customs procedure for application in all Member States. Ecuador recently, with the new customs system ECUAPASS, has fully implemented the provisions of this decision. Decision 571 outlines the methods used for the valuation of goods.

States that are part of the CAN are currently Bolivia, Ecuador, Colombia, and Peru; all with full sovereign rights. Ratification of the Cartagena Agreement to form part of the CAN, however, generated certain international obligations in the hierarchy of laws. Therefore, to ensure the implementation of the agreements and avoid abuses or discriminatory acts, together with the CAN, various bodies with different powers were created; among these is the Court that handles conflict resolution, case analysis, and issues resolutions as needed. Importantly, CAN rules should also be consistent with WTO provisions. This is why even though the free transit of goods between the territories of the member countries is the main business purpose, it also recognizes exceptions for restrictions or prohibitions that are covered in the Cartagena Agreement in Article 73 that states:

Article 73-. "Levies" is defined as customs duties and any other charges of equivalent effect, whether fiscal, monetary, and exchange measures, which affect imports. These shall not include taxes and similar charges that correspond to the approximate cost of services rendered.

The term "restrictions of all" refers to any administrative, financial, and exchange measures by a Member Country which prevents or hinders imports unilaterally. The following will not be included in this concept concerning the adoption and implementation of measures:

- a) Protection of public morality;
- b) Application of laws and safety regulations;
- c) Regulation of imports and exports of arms, munitions, and other war materials and, in exceptional circumstances, all other military equipment, provided they

do not interfere with the provisions of existing treaties of unrestricted free movement between the member countries;

d) Protection of life and health of people, animals, and plants;

e) Import and export of metallic gold and silver;

f) Protection of national treasures of artistic, historic, or archaeological value;

g) Export, use, and consumption of nuclear materials, radioactive products, or any other material used in the development or utilization of nuclear energy. (20)

As we can see, these are the same reasons for derogations granted to us through the WTO, in spite of the GATT. The Cartagena Agreement also provides for the application of safeguards, as detailed in Chapter XI, with five items (95-99), due to a crisis in the balance of payments and / or threat to domestic industry. These measures should be reported immediately to the General Secretariat within thirty days which has the authority to approve, modify, or suspend the manner. Every application of restrictions can be made unilaterally, however they must always respect these rules and have sufficient justification, so as not to enter into conflict. Bolivia and Ecuador are granted special treatment to boost their level of development, which is below that of Colombia and Peru, but none are allowed to apply discriminatory measures.

1.2.3 Organizations and Ecuadorian Legislation

Ecuador's foreign trade law is the Organic Code of Production, Trade and Investment (COPCI), specifically Book V, and its regulations, which we refer to as RCOPCI. The state agency in charge of enforcing the laws is the National Customs Service of Ecuador, which we refer to as SENA E, which will retain control of legal entry, stay, and exit of goods throughout Ecuador. SENA E also issues resolutions that are part of the legislature instrument of trade. Additionally, presidential decrees are considered resolutions of the SENA E. In situations that do not fall within the jurisdiction of the above instruments, there are additional laws within the Tax Code, as well as within the Criminal Code.

The Council's Foreign Trade (COMEX) establishes goods as prohibited or unauthorized imports. In coordination with public and private entities, the COMEX will analyze each case to check compliance with all parameters set to the restriction or prohibition of the importation of goods. COMEX functions were divided before the Council of Foreign Trade and Investment (COMEXI), which is responsible for determining the policies of foreign trade and looks to remain consistent with WTO rules and international commitments. It is important to mention that the COMEXI has issued numerous resolutions before unifying all its powers to the COMEX, created through COPCI.

Ecuadorian laws are in accordance with WTO rules and the international treaties it has ratified. The classification of goods as "prohibited" or "unauthorized" is based upon the legal grounds previously stated. Several resolutions have published lists of goods as prohibited or unauthorized; such lists are not permanent or static due to changing circumstances and needs. The first instance we have was in 2003, when the COMEXI published resolutions 182 and 183. The legal framework, in which they are based, varies according to the purposes of each resolution; but, as an example, we have the second and third paragraphs of the introductory part of resolution 182 which says "Article XX of the GATT allows general exceptions ensuring the health and life of people and the preservation of the environment, among others; Article XXI of the GATT allows exceptions for national security;" (1) the list of prohibited goods for import in Ecuador is issued. The most relevant and recent resolutions and lists of goods will be part of the next chapters.

Goods as unauthorized and prohibited imports were appointed by resolutions of the COMEXI, the current COMEX, and certain executive orders. Once appointed, goods are regulated mainly by the COPCI and the RCOPCI. In the RCOPCI, section II of Chapter V regulates the goods that have been classified as unauthorized or prohibited imports. Concerning the unauthorized importation of goods, it states:

Art. 98.- Goods not authorized for importation.- In the case of finding goods that do not have control documents or import authorizations, nor were they obtained within thirty calendar days subsequent to their arrival in the country, nor having submitted a Customs Declaration, or within thirty calendar days after the report gauging the change in the tariff classification of the goods is determined, it shall be subjected to a mandatory procedure of reloading, without prejudice to the application of penalties that might arise. For customs purposes, the lack of control documents or import authorizations will not automatically designate the quality of merchandise as prohibited, except in cases expressly determined by law.

To comply with the regime, the consignee shall proceed with the filing of the Simplified Customs Declaration transshipment scheme, which shall state the means of transport on which the goods leave the country. If there are changes with respect to the information, changes can be made according to the procedures established by the Directorate General. (23-24)

Any unauthorized import merchandise that does not meet the prerequisites within the time limits will have to submit to reloading, this does not imply that the consequences for breaching the law disappear as a result of reloading the merchandise. The following article applies to the importation of prohibited goods:

Article 99.- Goods Prohibited for Import. - Shall be those identified as such by the Board of Foreign Trade, COMEX. Reemployment shall be binding in the case of import prohibited goods, except clothing, perishables, and educational materials that will be donated to the Secretariat of State in charge of social policy.

The customs administration is responsible for reloading from the primary zone district where the goods entered. Operative or administrative costs that might arise shall be paid by the taxpayer and / or consignee.

To comply with the regime, the consignee shall proceed with the filing of the simplified scheme of transshipment declaration, which shall indicate the means of transport on which the goods leave the country. If there are changes in relation to the information, they can be made according to the procedures established by the Directorate General.

The District Director of the National Customs Service of Ecuador shall authorize the destruction of goods, when reloading has not occurred within the time limits. This circumstance is without prejudice to the penalties provided in Article 190 h) of the Code of Production, Trade, and Investment.

In the event that the goods cannot be reshipped due to causes beyond the control of the importer, these being duly justified, then shall the customs office proceed with the instructions outlined in paragraph d) of Article 123 of the Organic Code of Production, Trade, and Investment. If there is no merchandise susceptible to free allotment or auction, such property shall be used for destruction, including the ability to undergo recycling processes. The fees for this purpose by the National Customs Service of Ecuador shall be fully assumed by the taxpayer and / or consignee.

The customs declaration of goods considered prohibited will be processed for reshipment or destruction. In the case of reshipment, the office will proceed to refund the load to its owner in Ecuador. (24)

Prohibited goods shall not, in any way, be nationalized and the only destinations allowed will be customs reloading, donation, free award, or destruction. Legal action taken will depend on the amount of imports both in the case of unauthorized and prohibited goods.

1.3 Other important concepts.

Before continuing with the development of this work, it is important to include some additional definitions that will be essential for proper understanding. These definitions are taken and based on Article Two of the RCOPCI.

First we must recognize that the customs authority, which is the SENA E, is the public institution in charge of implementing the trade laws, and determines and collects the taxes corresponding to the foreign trade activities, and exercises control of all activities and goods related to foreign trade to ensure compliance with the law. The customs authority is determined in Article 207 of the COPCI as “all the rights and powers of supranational rules, the law, and regulations of deprivation give way to the National Customs Service of Ecuador for the fulfillment of its purposes.” (37) All subjects, vehicles, and goods involved in foreign trade activities shall be subject to the customs authority, under which the SENA E carries out the activities it deems necessary and permitted by law.

Customs control shall be exercised on people, goods / commodities, transport, and loading units both in output and income during their stay in the country; plus depots and warehouses. This control may be exercised prior to the submission of the customs declaration, to be known as the previous control, as well as the preauthorization of the release of goods. As the concurrent control customs declaration is made; subsequent monitoring will be given after the goods have been lifted and can be made up to five years later. Customs control is usually based on the risk profile, but the customs authority allows any control deemed necessary. The risk profile is also based on the system for the verification tool to be used in the concurrent control designated. Capacity is the verification tool when the customs declaration is submitted and sub-classified. Automatic capacity is the electronic validation of the Customs Declaration when pre-inspection compliance requirements are needed in the unauthorized importation of goods. Documentary seating is reviewing all SENA E documents, as well as physical inspection as visual verification that the goods correspond with what is detailed in the documents.

It is also important to know that goods are not transported in the same way in all cases; this depends on the nature, size, and number. Goods can be transported in cargo units, which are containers, or outside of them. If the load is containerized,

cargo must be registered in both the transport document and cargo manifest by the number and size of container. Also, if the container needs to move to another district before being released then it must comply with the specific Service Manual for Geo-referenced Customs Monitoring of Goods of the SENA where it indicates that cargo must wear an electronic lock. Bulk cargo is that which is conveyed without any wrapping, such as raw beans, but can be contained in load units that can even have special features. On the other hand, if the charge does not come in a container and is handled and treated as individual units, it is known as bulk cargo. Without a doubt it is important that the charging unit, which as we have already explained is the container, is differentiated from the goods physical units. The physical units, “is the unit of measurement that indicates the current National Import Tariff for each tariff subheadings and should be included in the Customs Declaration.” (RCOPCI, Art. 2, par. nnn, pg. 5)

The document shall be the Bill of Lading if by land or sea, and Air Way Bill if done by air. In either case, the transport document shall bear the full information on the type of load; this document may be endorsed and is the contract of the carriage of cargo by a value that will be known as freight. The cargo manifest is the document sent by the carrier to bring the respective information of quantity and weight of what is being transported, in addition to data of the consignee, shipper, and consolidator if applicable.

All goods, whatever their presentation or manner of transport, shall comply with the payment of taxes on foreign trade. Tributes to foreign trade will be the first duties determined within the Tariff, the FODINFA which is the contribution to the Development Fund for Children will be 0.50% of the value of the goods to customs, tax special consumption (ICE) where appropriate, and finally the VAT. The tariffs are set in advance by the appropriate agency and can be of three types: ad-valorem, specific, or mixed. The ad-valorem is a percentage applied to the value of goods for customs purposes, the specific tariff rate is a fixed value that is calculated based on some characteristics of the goods, and a mixed tariff combining the two types of taxes.

On the subject of prohibited goods and unauthorized importation, it is important to explain the meaning of transshipment, destruction, abandonment, and free allotment. Reemployment is the customs procedure used for prohibited or unauthorized import goods that do not meet the prerequisites. In this procedure, the export of goods from the customs territory is processed and can be performed on request of the owner or consignee, provided they have not previously had a customs declaration, the cargo is not abandoned, or the consignee does not have any prior customs offenses. The customs authority may order reloading under any situation, except that the good is party to a criminal complaint. (RCOPCI, Art. 198-199)

The type of import goods referred to above may also result in destruction. The RCOPCI in Article Two, paragraph cc defines *total destruction* as, “deleting objects, products, or substances that totally disable their nature or function, leaving them with no commercial value” (3). Destruction completely disables the goods and all costs are the responsibility of the importer. In the case of abandonment, there are three types: explicit, tacit, and definitive. Explicit abandonment is requested by the consignee of the goods to the District Director, especially when there is no Customs Declaration. Tacit abandonment is automatically generated if the customs declaration is not filed for thirty calendar days following the arrival of the goods, for failure to pay the amount of taxes twenty days after its appointment, or for the expiration of stay in the customs warehouse for one year. Permanent abandonment shall be declared by the District Director in the case of not submitting a customs declaration within twenty-five working days after tacit abandonment; this also includes a second call for physical inspection or traveler’s luggage not being removed from the arrival area for five days (RCOPCI, Art. 247-248 and COPCI Art. 143). Free allotment is donating goods to public or private non-profit organizations that are registered in the Ministry responsible for social policy; the goods may be

delivered only if it relates to the role of the institution. In the case of prohibited goods, it may only be awarded to public companies. (COPCI Art. 203)

Now that we have the legal basis of prohibited goods and unauthorized importation, which are mainly concentrated in the GATT and WTO rulings, the CAN, and nationally in the RCOCP and the COPCI; we also need to differentiate between prohibited and unauthorized imported goods and define the terms necessary for proper understanding of the issue.

CHAPTER TWO

2. Unauthorized Import Goods

In this chapter I will focus on the unauthorized importation of goods, I will collect comprehensive information about these goods; resolutions, requirements and will review the current list to recognize the types of products that are included in it. In addition, I will explain the rules applied to these types of goods, including eligibility to access the exemptions in the customs procedures. To delineate the subject matter, and make it more understandable, I will explain what types of unauthorized merchandise imports is released more frequently in Cuenca, based on reliable sources of information available to elaborate on applicable processes.

2.1 Overview of the unauthorized importation of goods: list and characteristics.

The unauthorized import goods are numerous and require special attention before they can be admitted to the country. Such goods have existed for many years in the country; however, they have recently increased in number. This is due to the inclination of the government to opt for such measures to achieve certain ends as to ensure the health and welfare of consumers, protect the dollar through the

BOP economy, promoting the growth of the domestic industry, and protect to reduce imports of similar products in the country, among others. These are the reasons for repeated resolutions, decrees, and analysis for new import restrictions.

To begin, it is advisable to pre-check the product status with respect to the lists of restricted and prohibited items, as products change constantly. It is therefore necessary to have a complete and current source of information. The channels of information about what goods are restricted are mainly maintained by the COMEX and customs. As indicated above, COMEX can be considered a relatively new function, which is run by COMEXI. When this change was recently made there wasn't an effective means of communication, for approximately 2 years, during which the complete and necessary information were not offered; for example, there were no available resolutions, despite COMEXI being in effect during this time. Customs also has its website, besides the new customs system ECUAPASS. Their website underwent a complete change to adapt to this system, which became operational in October 2012. At the beginning, both had deficiencies in operation and did not contain all the information they had in their previous versions, for instance there was no update on restricted and prohibited goods.

This research work began precisely in this time of transition, so it has been difficult compiling a list of these goods. The first step was to go to the Cuenca SENAE district office where they referred me to their website, which suffered a lack of information; only three COMEXI resolutions were mentioned. I resorted to directly contacting some officials of the COMEX, but got no answer. Therefore, I further investigated other sources of resolutions issued by the COMEXI years ago which have served as a foundation for compiling my published and updated lists. Some of the most important decisions, detailed below, can be located on the Internet; however, the most reliable and direct source in this case was the Official Register. The Official Register, however, is not open to the public; people who wish to access publications must pay an

approximate value of \$400, annually. For this study, I turned to a lawyer who has a subscription to the Official Register who helped me get the resolutions that remain in force; and according to my investigation, are the most important in the area. I have reviewed all decisions related to the topic that have been issued by the COMEX until March 2014, they are used to delimit this study.

The old customs system, SICE, offered a list of unauthorized goods; upon review, it was consistent with COMEXI and COMEX resolutions, updated to October 2012. Currently in its advanced query capabilities, ECUAPASS offers filter searches by type of goods, but has had problems with certain items that may not appear despite being correct; in addition, the system does not allow the entire database to link to other sources. A summary of the relevant resolutions on the issue for a better understanding will be reviewed.

As a main reference, we have COMEXI Resolution 183 that was issued eleven years ago. This resolution publishes the list of unauthorized import goods in Annex 1, updated in January 2003; which used as a legal basis the provisions of the GATT and other international agreements. Items listed as not allowed in the country totaled 1,386. This list included the tariff heading, a detail of the goods, the delivery institution prior to permission, observations, and the indicated legal basis. This resolution has been used as a major reference in the field, and is shown on the website as an information source on products that need to meet a certain prerequisite.

Even with the importance given to this resolution, it is clear that in this long period of time, both its articles and its annex have been subject to all kinds of modifications. Modifications were made by numerous subsequent resolutions; in 2006 it was replaced by Resolution No. 364. This resolution is not available because it is no longer in effect; however, it has been used for reference and basis for several subsequent resolutions. Despite being a very important resolution, Resolution No. 372 was published with Annex B replacing the list of unauthorized importation of goods. Similarly, this resolution was in force for a

short time, because months later in the same year, COMEXI issued Resolution No. 379, in order to replace Annex B of resolution 372 with the list of its own Appendix 1, updating the list of unauthorized import products.

An important remark to make at this point is that the NANDINA tariff nomenclature has also had reforms and updates. When unauthorized merchandise imports were published both in resolution 183 and the 379 tariff codes that corresponded to the third amendment we call NANDINA570, but in 2007 the fourth amendment was made, known as NANDINA675, leaving these outdated resolutions. Thus, the following resolution to consider is No. 450 that was made in late 2008, which an updated and applied nomenclature of NANDINA675. This resolution also included Annex 1 which was a list of products subject to prior import that replaced the previously published controls. This resolution was the last to post a full update of the list of unauthorized goods, but in the years since its publication has had several modifications.

For approximately six years there was a problem with the balance of payments, so safeguard measures were implemented. Many resolutions, including quantitative restrictions on monetary values and / or physical units were imposed on certain tariff headings. However, as explained above, these restrictions can be maintained only until circumstances are maintained, in order to not become unnecessary barriers to trade; so logically many of these changes no longer apply. The last resolution, No. 450, is the basis for all resolutions and issued amendments of unauthorized goods. Similarly, the published list in resolution 450 will be my main reference for applying updates and corresponding changes.

Later judgments modified the published Resolution 450 list, specifically COMEXI resolution No. 465, amending the designated inspection agency for foreign trade activities related to agriculture, which was previously the Ecuadorian Agricultural Health Service (SESA) transferring all functions to the Ecuadorian Agency for Quality Assurance (AGROCALIDAD). This resolution restricts goods related to agriculture. Furthermore, new control documents were

established, such as: the importer of record and the destination customs document (DDA). “Destination Customs Document (DDA) is the official document issued by AGROCALIDAD which establishes whether the imported product meets the plant and phytosanitary requirements for entering the country.” (Paperwork Citizen Portal of the President of the Republic, Issuance of DDA). This resolution also determines that the certificate INEN1, Ecuadorian Standardization Institute (INEN) requirement, must be obtained when the goods are still in the place of origin. An exception is made in the INEN1 certificate requirement in cases where the total amount of FOB imports does not exceed \$2,000, except that it is not applicable in the case of textiles, apparel, and footwear.

In September 2010, Resolution No. 585 on the list of the products that will be subject to prior checking by the Ministry of Agriculture, Aquaculture and Fisheries (MAGAP) was created, leaving void any earlier provision publications with respect to goods checked by this institution. This was one of the last judgments given by COMEXI before moving all its functions to the COMEX.

The COMEX began to exercise fully their duties from January 2011 to March 2014 and has issued 123 resolutions. Several of these resolutions relate to import restricted goods, most were issued from 2013. The former list in the SICE system was used by customs before switching systems. This list was updated in October 2012. The list, however, in its current format is not very understandable or practical because it is extremely extensive, listing all TNAN digits. The ECUAPASS, as was indicated, provides a filter to search for goods subject to import restrictions; however, it is not possible to download the database. Furthermore, ECUAPASS has had certain problems for items that have not been loaded correctly; however, this has been corrected since its testing time. Although it is a better source for individual consultations, it is not for a unified list.

The first COMEX resolution to consider is resolution N ° 37 of January 2012 in which it states that the importer must not have any prior checking documents for the release of goods when the delivery institution certifies that it is not necessary. This is a very important exception but its application is for rare cases; for example, certain importers are signing agreements showing decreased imports in exchange not needing an INEN certificate of recognition for their products. By signing this agreement, the certificate is issued by the MIPRO certifying that no document is needed prior to checking.

Resolution 89, issued in late October, provides for the inclusion of 20 tariff items to the list, these previous requirements are the responsibility of the Ministry of Transport and Public Works. On the same date, Resolution No. 91, which includes restrictions on the import of ATV motorcycles, classified under heading 8703.21.00.90, was issued. The exception in this case is for those imported by the government. Furthermore, the resolution in List 93 includes decoders and satellite receivers, currently under the control of the Superintendent of Telecommunications. Resolution 102 established the need to comply with non-automatic import licenses issued by the MAGAP for various tariff items.

One of the latest decisions of the COMEX, and the most important at the same time, is No. 116. This is because it makes 293 tariff lines require the certificate of recognition of the INEN prior to importation. A certificate of recognition will be delivered from the review of a certificate of compliance endorsed by an accredited institution's country of origin. Despite the INEN issuing the certificate of recognition, it must first be evaluated by the Ecuadorian Accreditation Organization (OAE); this resolution was issued in November 2013. In January 2014, additional tariffs were added with the same prerequisites, exactly 16 new tariff items, by way of resolution No. 003 of the COMEX. Order N°006 added an additional four tariff items. However in the following resolution, No. 007, new items are not included in the list; rather, an exception to the compliance certificate of recognition was established, this applies only to monthly imports lower than \$ 2,000 and are subject to rules or technical regulations. This means

that the certificate of recognition is not needed, but the INEN1 certificate indeed is required.

Finally, Resolution No. 010 of March 21, 2014 addresses the derogate compliance certificate of recognition. In this case, the technical regulations of the products require a certificate of recognition. Also, differences for raw materials and milk formulas are established. For the correct application of these distinctions, customs created new TNAN code numbers for each case.

Based on all the above resolutions and lists that have been published, the final list attached as Annex IV has been developed. The final list has not been completely finished, reaching 1,810 tariff items. Comparing this list to the one originally published in 2003, through Resolution 183, regulations and restrictions have increased by about 425 tariff items in the list of unauthorized goods for import.

Reviewing the final list, plus all the resolutions they are based upon, I can determine the main characteristics of the goods contained in the list of unauthorized importation. Most are products for direct human consumption and services such as food, clothing, and transportation, among others. A feature to be controlled in products for human consumption, which has been gaining wide acceptance and interest, is quality. At present, there are many tariff lines restricted to control the quality offered to consumers, to include the information provided on the product labels.

However, humans aren't the only species that are protected by international and national laws, animal and plant life is also a priority because of their importance to the ecosystem and survival of people. In Ecuador, the fauna and flora have guaranteed rights that are embodied in the constitution. For example, the importation of certain animals, such as horses, must comply with prior control protocols to ensure they are not carrying any epidemic that could endanger other animals and even people. There are even items where tariff restrictions for

specific countries are set, not because of discrimination but due to the history of viral problems in that particular nation.

The logic behind requiring prior checks, especially products for human consumption, is supposed to be for ensuring the welfare and safety of people and their environment. Certain restrictions carry different connotations and purposes; it would be more difficult to seek approval by international bodies that may lead to consequences with the international community; therefore, nations are protected by the accepted goal of ensuring consumer welfare, which is in fact fully approved by international organizations, for example by the WTO. It is common knowledge that many of the current restrictions, beyond seeking to ensure the quality of the product, is intended to curb the level of imports, mainly to avoid problems with the dollarization of foreign exchange markets; in addition to encouraging domestic industry.

It may be unclear whether certain products are fully analyzed, as foods that supposedly receive a certificate of compliance to ensure safety and quality only achieve compliance by their labeling, which is not necessarily related to product quality. Another case might be means of transport, such as a vehicle, whose restrictions are seeking not only the welfare of the people but also the preservation of the environment; but, if there is an increased production of vehicles nationally, then that is a bit of a contradiction in policy.

To facilitate planning, and avoid problems in imports, it is important to identify the characteristics of the goods subject to import restrictions that can give us a rough idea about the condition of the product; however, with the ongoing development of standards, it is very useful to have the list of such goods constantly updated. Products for direct human consumption most often need to meet prerequisites. The specific and official information in this matter is provided by the government agencies in charge, the COMEX and the SENAE.

Identifying unauthorized importation of goods on time is perhaps the most important step, but it is also important to know these goods within the customs procedures to not hinder the importation process. To learn and apply correct procedures offers certain benefits and exemptions. Therefore, we will review the customs procedures in relation to the goods subject to import restrictions.

2.2 Import Regimes for consumption and Customs Warehouse regarding unauthorized importation of goods.

Within the issue of the unauthorized importation of goods, the fact remains that the customs procedure may change slightly. Each procedure is regulated by the RCOPCI and the COPCI, detailing the requirements for the implementation of each scheme. In this section, the import customs procedure for the consumer will be briefly explained, one of the most applied procedures, even for the unauthorized importation of goods; and the customs warehousing procedure.

The import regime for consumption is identified with code 10 and is applicable to goods imported for a commercial purpose or consumption, or for any activity involving final entry into the country. This system does not support any manipulation or alteration to the product before it is nationalized; in the case of any unauthorized merchandise, the import shall comply with all requirements prior to shipment. However, if the goods require control documents, or prior authorization that does not involve the physical change of the product, the RCOPCI, according to Article 98, grants, within thirty calendar days, the ability to obtain said authorization from the date of arrival in the country or from the customs authority to determine a change in tariff heading. This term applies without prejudice to whether or not a customs declaration was submitted.

To process the documents that require an inspection by an official institution in charge, one can request that it be performed simultaneously with the act of capacity after submitting the customs declaration, or one can exercise a privilege

given to importers that is outlined in Article 59 of the RCOPCI, that is performing a pre-recognition of a submission of the merchandise for customs declaration. This preliminary recognition also serves to verify that the goods are indeed how they are stated and they meet the physical characteristics of the case. If, in applying Article 59, it was determined that the goods, or part thereof, do not physically meet the standard for avoiding penalties then express abandonment to the District Director may be applied. Another measure that could be taken would be to request the reshipment of the goods as long as it has not been declared to another regime, it is not abandoned and there is no suspicion of criminal activity. If any irregularity is detected after the submission of the customs declaration then a transshipment of non-conforming goods would be ordered and the respective penalties would apply.

Relying on Article 98 of the RCOPCI may be beneficial and ideal for certain types of goods, such as perishable products, but it can be a very high risk to others. For example, the most important requirement for meat products is to preserve the safety of the product, therefore the time frame for the customs procedure should be minimized. In this example, the customs declaration is made immediately and inspection for certification by AGROCALIDAD is done simultaneously. In these cases, AGROCALIDAD should not take more than 48 hours to issue the report or any review, as indicated in the manual of requirements for AGROCALIDAD users, created in 2011. If everything is pursuant to the document, then the goods can be released if there are no other complications from the SENAE. On the other hand, maintaining the meat at an optimal temperature while inspections are being conducted represents a high cost for the importer. In this case, the best option is to take advantage of Art. 98 in order to save time and money.

A different case is to analyze the import of clothing when correct labeling is required in order to obtain the INEN certificate. If an error in the original labeling of the garments is found then reloading is ordered without exception, generating fines and affecting the risk profile of the importer. The risk in this

case is extremely high and it is recommended that, at least for the first time, a familiarity with the rules and information on labeling be obtained. Also, if any document cannot be obtained within 30 days it may result in the reloading of the merchandise.

Such risks with unauthorized import goods vanish at the customs warehousing procedure. The scheme, identified as code 70, designates the goods to the importer to be stored in the customs warehouse facilities previously authorized by SENA E to operate according to the provisions contained in Article 144 to 149 of the RCOPCI. Code 70 is specific to the public warehouse where any importer can store goods.

One benefit of this scheme is that the importer does not pay any trade tax until the regime change is made to nationalize the goods. The maximum term, by law, for the permanence of imports in the customs warehouse is one year, beginning from the day the merchandise is entered into the system. If the merchandise exceeds the allotted time, then it is automatically considered tacitly abandoned and will result in a fine. When the goods have fallen into tacit abandonment, the importer, or his representative, has up to 25 business days to change regime and remove the merchandise from the premises of the customs warehouse, according to Article 143 of COPCI, otherwise the goods will be declared completely abandoned by the district director of the SENA E.

Goods which can enter this scheme include those that are designated as unauthorized importation, even though they do not meet the prerequisites; since, unlike the system of import consumption, it is a temporary scheme, which allows changes in the merchandise classification, as long as it complies with all requirements, and provided it does not affect the status or nature of the product, nor change the tariff heading. The only property not admissible in the customs warehouse are those that are classified as prohibited imports, nor those who may represent a danger to national security or the welfare of living beings. Any changes necessary must be approved by the competent authority of the district

SENAE office and coordinated with the staff of the customs warehouse. In addition, if the change involves intervention of third parties, and/or working machinery, the request should be made to the SENAE detailing the changes.

If the law allows minor modifications to the property, permission is not required by the customs authorities. Article 148 of the RCOPCI clearly states, “The competent customs authority may authorize the operations necessary for the development of special customs regime in the Customs Warehouse. . .” (33). By using the word “may” instead of “shall” it is left to the discretion of the customs officials to grant any permits. It is important to stress that all goods, as well as any activities carried out, in the customs warehouse is under control by the SENAE.

Another of the advantages of this scheme is that it is not mandatory to nationalize the entire load at the same time, rather a partial withdrawal can be made but only what is necessary, and while leaving a deposit. This allows goods which are restricted to import quotas to be nationalized so as not to exceed their allocated quota. The responsibilities of the customs warehouse can be found in Article 135 of the COPCI which includes indemnification of the goods for any damage or loss of cargo, as well as the taxes that cover any financial burden to the SENAE. According to the COPCI, the deposit will cover the merchandise while stored in its facilities, including the transfer to the depot and any theft or destruction prior to leaving the port.

The procedure for performing an import to the customs warehousing is not complex, but it must meet specific requirements. First, in the shipping document all of the importer’s information must be included, in addition to the words clearly visible “*Régimen 70: Depósito Aduanero*” accompanied by the deposit name and code that has been designated by the SENAE. Preferably customs destination should be clearly marked on the packaging, if it does not there are no consequences. The next key document is the contract with the customs warehouse where details of the goods, the customs value, weight, quantity, and

description are specified. The “Contract for the Public Warehouse,” according to Article 148 of the RCOPCI must be made between the legal representative of the customs warehouse and SENA. A physical document serves as a backup for the transmission of the declaration transmitted in ECUAPASS, which will generate a code included in the customs declaration. This is done based upon the Paper Reduction Project, which seeks to reduce the use of physical documents to zero.

After transmission of the customs declaration and all corresponding documents, liquidation is generated, not of the real value of taxes that are assigned to the product, but \$40.00 to cover operating costs. When the fee is paid, the capacity will be determined before being mobilized to storage, even if the tank is located in another customs district. Goods, regardless of their form of transportation, are downloaded to a temporary store, authorized by the SENA, and remain there until the customs designates a permanent storage facility. Once in storage, the SENA can request an inspection and approval of labeling, re-labeling, re-packing, etc.

Although the law stipulates a maximum of one year until the regime expires, it is technically only for six months; if more time is needed, then the importer must request an extension from the SENA for six more months without penalty, thus completing the term of one year. To complete the Bonded Warehouse scheme there are several options: regime change, change of destination, and reassignment. The most commonly used is the change of regime to nationalize merchandise. Reassignment includes abandonment and destruction, while re-exportation would suspend any payment of taxes and the goods would be sent abroad.

Consumption regimes and warehousing are the best option because they are the most streamlined. The other import rules are a bit more complicated and involve longer processes. In addition, other systems have to meet different objectives to allow entry of the goods into the country. Specifically, import restricted goods have actually become a little more complicated due to the lack of flexibility on

the part of the customs authorities, even in regimes that legally grant some flexibility. However, the rate of consumption and import customs warehousing remain the preferred method for the importation of unauthorized goods.

2.3 Unauthorized goods imports leads to increased revenue for the Cuenca District.

The boundary for this part of the project was planned based on geographical criteria, which is why the analysis of goods leading to increased revenue, specifically in the customs district of the city of Cuenca, was performed. The aim of this definition is to narrow the field of focus of an extensive list of unauthorized goods down to specific tariff headings that are relevant to the district.

The limited sources of information have been a problem while trying to get specific information on the issues raised, due to the fact that there are not many studies or publications on foreign trade in general, and the search for statistical studies of Customs Districts and types of goods being imported have not been found. There are no statistics in the Cuenca office; however there is information on the amounts collected, but not the types of goods. Therefore, I have chosen to use another approach to determine which goods have led to higher revenue in Cuenca by analyzing the two largest importing companies in the city. These companies have not been difficult to identify, because of its size and large market share. The contribution in number of procedures they perform in the District is significant for its high level of imports. It was confirmed that, by having access to direct sources, while not all imports are nationalized in Cuenca there are certain products that have preference for release in the District of the city for specific reasons that are detailed below.

Both companies are headquartered in Cuenca, therefore national operations are controlled from this city. The first company belongs to one of the most

influential groups; they have a large market share and much economic power in Ecuador as a whole. Because its headquarters is in Cuenca, which means that its logistics center is in Cuenca as well, including its principal distribution center. The heads of the departments work in the main office, including the headquarters of imports; imports are coordinated from Cuenca. Due to the large size of the company roles have internally been divided according to product type. There is a busy food and beverage area, other appliances, other motorcycles, etc.; but all are unified under one corporate tax ID number. Before, most divisions shifted the burden of nationalization to Cuenca, mainly to ensure the safety of its goods, and to increase control. Furthermore, Regime 70 goods have a customs warehouse belonging to the same group but constituted as another company. However, some departments choose to reduce their flow of nationalization in Cuenca due to changes in the operation to transport goods between primary zones.

The new provisions of the SENA, which can be further reviewed in the *Specific Manual for Operation Freight Transfer from Primary Zones*, determine capacity; in the case of Regime 70, it should be done in the primary zone of arrival regardless of the district where the warehoused goods will be credited. In addition, for imports for consumption, once the transfer request on the ECUAPASS system is accepted, based primarily on the risk profile of the importer and details of the charge, a determination is made if there is any need for prior checking or if a physical inspection is needed. Even if the system does not call for physical inspection, the officer may request changes to be carried out in the inspection. These changes make the point of security, due to the fact that the load is not opened in another district, somewhat useless.

In Guayaquil, which is the port or airport where imports usually arrive, most items are dealt with directly when they arrive. However, there are goods which should not be stored in the humid, climactic conditions of the coast; such as, alcoholic drinks and energy drinks. It is for this reason that the greatest amount of imports of these products will move to Cuenca. Considering that this company has exclusive rights over most alcoholic brands sold in the country, its imports

are constant and numerous. Imports are intended for both regimes: consumption and storage, but the fact that they are in storage may be more significant due to the fact that releases are only made periodically in the District, even if there are no new imports. Many times, due to the high taxes associated with alcoholic beverages, large quantities are imported; nevertheless, they are nationalized in several partials. Any person can physically identify alcoholic beverages in the primary visual area of Cuenca. Therefore, this will be our first product type to consider for analysis.

The other major importer also has divisions for different types of items; but unlike the first, this company has its business spread over several companies all belonging to the same family. The entire chain management of all its enterprises is concentrated in one place in the city of Cuenca. Firms in this group also engage in mass marketing of imported goods, and are dedicated to the local production of various products. Its imports therefore are split between finished products and raw materials used for production. The imported products it sells are: all kinds of clothing and footwear, housewares, office supplies, building materials, commodity chemicals, textiles, raw foods, etc.

Of all the different types of products imported, those nationalized most often in the city of Cuenca are clothing, textiles, and various types of unprocessed foods, meat and other supplies for sausages. This is due to the sensitivity of the goods, being perishable food, as stated above. Textiles are sensitive materials due to their physical requirements; textiles require a review by the company therefore it is preferred that this takes place in Cuenca. Another reason for the transfer is the currently applicable standard for garments in which the process for obtaining a certificate of the INEN should be performed at the merchandise's final destination; hence, control over the process is gained by the transfer to Cuenca where all the staff is in charge. These goods are mostly imported into the customs warehouse.

Of the second group of companies we will consider clothing. Based on the experience of working in customs, clothing is the good most commonly found in the district of Cuenca, this can be checked by visiting both temporary storage and the customs warehouse in the Industrial Park, which is the largest in the city at the time.

Alcoholic beverages products are in greater quantity in the warehouse close to the office; Cuenca has only two customs depots. Both selections are a group of products as we are detailing a specific category of goods and not individual products; so an analysis will then be performed for all products classified within these categories.

2.4 Requirements, conditions, and procedures to nationalize authorized imported goods.

In this part, I will detail the requirements for two different product categories categorized as unauthorized imports, as well as the processes that must be performed prior to nationalization; the types of goods are: alcoholic beverages and clothing. Easily it can be affirmed that these are completely different products with respect to the nature and function; therefore they have different regulations and forms. First I will identify the requirements for alcoholic beverages in order to describe the whole process of obtaining the appropriate permit or document, then we will review the requirements for clothing.

Alcoholic beverages are classified in Chapter 22 of the Import Tariff Law; this may arrive as a finished product or as a raw material for the manufacture or bottling of the final product. In this analysis, I will focus on alcoholic drinks that are imported for consumption, as drinks imported as raw material have different treatments to incentivize domestic production. Drinks are classified into various types according to their features such as: beers, wines, sparkling wines, rum, *Pisco*, vodka, whiskey, among others.

Classification criteria are determined in different INEN rules that are specific to each type of beverage. Being able to correctly identify the applicable standard is of vital importance since the requirements for these products are environmental and must meet certain conditions established in the rules. Mandatory requirements for the importation of these products are sanitary, registration, compliance, and labeling.

The Health Record is the document that supports product safety for human consumption, and is supported by its ability to be imported and marketed in the country. There are several requirements in the sanitary registration process for these products, as defined in the technical standard INEN 1334 *Labeling of Food Products for Human Consumption*. “. . . The term *processed food* applies by extension to alcoholic and non-alcoholic beverages, condiments, spices. . .” (2). Moreover, in the latest publication of the rules of health records by the Ministry of Health in February 2013, it was established as a category within the types of foods. This legislation is the *Regulation for Registration and Control of Food Post-registration*, in which the requirements and procedures for the relevant processing documents is detailed. Accordingly, the procedures and requirements necessary to obtain medical records for domestic food and imported food is differentiated. In turn, the processing of health records of foreign products has two options: the regular registration process by product and the approval process for foreign products.

A request for health registration commonly involves the submission of more documents. Instead, the process of health registration approval is ratified by the country in the registry; therefore there are fewer documents to file. To access a health record for approval, the importer must first verify that the country of origin of the product is in the list of countries approved by the National Health Authority to request approval. In addition, one must verify that the country of origin has an existing health product registration certificate or its equivalent. For many countries where there is no medical record, a free sale certificate issued by the corresponding public entity control is valid. In the case of using a different

document as a record, the respective public authority must send a letter, stamped and legalized, explaining the situation and certifying the health and safety of the product.

Specifically, Article 20 of the aforementioned regulations outlines the six required documents for the approval process, including proof of payment. For normal processing there are ten documents, detailed in Article 14 of the same regulation, including proof of payment. The difference between the documents is the difficulty in obtaining them, such as the record of stability and product certification of Good Manufacturing Practices (GMP) submitted by the producer for normal processing but not for approval.

Once identified and requested, the importer should ensure that all documents be sent in the original signed and sealed format. In some cases, as for the power granted by the supplier in which the importer is an authorized representative, the document should come with an apostille. The importer should also review the application and verify that they have all the correct and necessary information for shipping. It is important to check the data of the application and the documents attached, and make sure they are in agreement in order to reduce processing time. Currently, a sanitary registration procedure can take three months or more to complete, depending on the observations; however, the time table may also depend on the different standards of the officials involved in the different stages of the process.

When everything is ready for processing, the documents should be placed in the *Ventanilla Única Ecuatoriana* (VUE) through ECUAPASS. On the main page after logging in, the VUE option can be chosen in the middle right part of the screen. Once inside the VUE, you can choose the tab that says “Application Development,” then “Accompanying Documents,” and then “List of Accompanying Documents.” On the page after choosing these options, the institution that should be selected is the National Regulatory Agency of Health, Surveillance, and Control (ARCSA), which is in charge of everything related to

health records and operating permits. When you have selected the institution, you can choose the application you need to create, in this case “Registration Application Licensing of Foreign Food Products.” At the bottom of the page the option for the desired application is displayed; click on apply. Within the generated application, one can choose if the registration process is “in general” or “for approval.”

The application is fairly simple to fill out. The application number is automatically generated when you press check at the beginning of the application. To request a health registration the importer must have a valid operating permit because it is one of the required fields in the application. Finally, the importer must scan and send all documents to the responsible technical or legal representative to directly register the application; the registration of the application requires the electronic signature of the legal representative or the filing attorney. Once the registration has passed the preliminary review, payment is requested for the registration process, then the technical and legal review. If everything is in order, an electronic certificate will be issued, as no printed paper is delivered to foreign products. When the registration has been granted, the status appears as “*AUCP enviado a la aduana*,” which means that the accepted procedure is sent directly to the customs system; in addition, the new record is shared through the system with other public institutions and is valid for five years.

The other requirement to comply with is correct labeling. As indicated before, alcohol is considered a type of food which is regulated by the technical regulation 022 of the INEN: *Labeling of, Processed, Canned, and Packaged Food Products*. This regulation states that processed foods must comply with the rules of labeling 334-1 and 1334-2; as well as with the provisions of the *Consumer Protection Act*. For alcoholic beverages, however, standard 1 334-2 does not apply because it regulates the provision of nutritional information, which for obvious reasons, alcoholic beverages is exempt. In addition to the standards mentioned in the rules, the importer should consider *Resolution No.*

SENAE-DGN-2013-300-RE establishing labeling requirements for alcoholic beverages.

Unifying the requirements set forth in Rule 1 334-1 and the Consumer Protection Act, we have the following requirements:

1. The front label must indicate the name, brand, and type of beverage. The label must also visibly declare net contents and alcoholic strength, both expressed in milliliters, as well as volumetric percentage, respectively.
2. Regardless of location, the label must include, in a visible and clear manner, the following: the full details of the importer (name, address and city), sanitary registration number, lot number (or specify its location if not included on the label), warning (according to what is indicated in section 5.5 of Standard 1 334-1), expiration date (for cases of clause 5.1.7 of the standard 1 334-1), PVP, storage conditions, full details of the manufacturer, INEN number, and ingredients (according to the formula described in the medical record).
3. All information, including the record label such as data or information as part of the promotion thereof, should come in Spanish or be translated into Spanish.

Determining which types of drinks is required by the SENAE; rum, vodka, whiskey, and tequila must meet specific requirements, this is in addition to the information required by other standards for the front label which must include the details of the importer. As a general requirement, these products must be in full compliance with the labeling laws before importation.

An important consideration to keep in mind is that the label filed for the registration process should be the same as the product is marketed. If the medical record was submitted long ago then all current provisions should be reviewed again and respective changes should be made. When obtaining the medical record and reviewing that the product is labeled correctly, this fulfills the prerequisites for importation.

Garments have completely different requirements than those of alcoholic beverages. To begin, garments are classified in Chapters 61 and 62, according to the characteristics of the garment. Items within these chapters must comply with the registration requirements of the Ministry of Industry and Productivity (MIPRO) and obtain a Certificate of Conformity from the INEN.

Registration of the importer in the MIPRO was determined as a prerequisite by the COMEXI in Resolution No. 401, it is easy to obtain and can be completed in a single application. Registration must be done in the relevant MIPRO regional offices by physically submitting all required documents, the registration is valid for one year and should only be performed once, unlike the import certificate obtained from the INEN. An importer can complete the requirements for registration on the MIPRO website. To obtain this information, one must access the MIPRO website at, www.industrias.gob.ec, and select the link on middle left side of the page labeled, “Importers-Exporters Register.” On the next page the importer should look for the heading “Registration of Importers,” then the subheading “Importers of Textiles and Footwear” which is a hyperlink to the page with the requirements; the option to download the COMEXI 401 resolution is also available on this page.

The requirements for both natural persons and legal persons, includes submission of the registration in the Business Information System that is performed on the website, specifically through the “Register” option in website of the Ministry previously indicated. Response time for an approved application is about 48 hours after admission.

The certificate of conformity by the INEN is a bit more complicated. For this we must first review the applicable technical regulations in force by which the INEN will decide whether to award a license to the product; this being the RTE INEN 013 Tagged Apparel, Home Linen, and Clothing Accessories. As a first observation, based on the technical regulations for obtaining the

Certificate of Conformity from the INEN, the process will focus only on compliance with labeling regulations.

The main condition for labeling clothing, and other products considered in INEN 013 regulation, is that it must be made on a permanent adhesion product label. Other conditions that must be met are that the label material cannot be damaged through use of the garment, or impair its use. It must also comply with providing information in Spanish. Abbreviations should be in Spanish; for example, the size should be “*Pequeño*” or the abbreviation “P.” In addition, the label must provide the minimum information set out in INEN Standard 1875.

Specifically Article 5.1.3 of the standard references contains details concerning the minimum information that must be declared on the label which is summarized as: size, which can be indicated through numbers, words or abbreviations; materials of the garment with their respective percentages in descending order according to the specifications in section 5.1.3.3 of the Standard; information of the importer, Tax ID number and company name, country of origin, care instructions for washing through symbols, text, or both. This information does not need to be included on a single label, but each piece must be recorder individually, even for items that are submitted as a whole. Exceptions are only applicable to sets of clothes for newborns and identical pairs, such as socks. Labels may be submitted on the packaging in cases where labels would damage the garment or impede its use, for disposable garments, and also for those whose commercial presentation is on sealed packaging; but the latter must include permanent labeling on the garment.

Finally, recalling that SENAE has decided not to issue permits for container labeling, labeling should be in accordance with the requirements previously detailed before importation. It is important that, before importation, the labels comply in form and content with the law, as the process for obtaining a certificate from the INEN begins with inspection of the lot imported by a

private certification body known as the Ecuadorian Accreditation Organization (OAE) or by the INEN, depending on the preferences of the importer. The inspection generates a report which declares the compliance or non-compliance of the goods. According to the new procedure, a single inspection certificate is necessary for importation, though they may be different products. Thus, based on the total import, and through an established method, the number of samples analyzed and the maximum margin of tolerance for errors in labeling are determined. The number of errors that are set is a total value, not generated by product type. Therefore, if the number of errors exceeds the allowed limit, then the inspection may result in the reloading of the merchandise.

The inspection may be performed before shipment to avoid problems with the declaration; however, this report would not be valid for processing the final permit of the INEN. The change made to Regulation 013 in February of 2014 determined that the inspection of the labeling of a product should be performed upon arrival to the country. If the inspection generates a positive certificate of inspection, the importer may proceed to sign the final certificate request to the INEN through the VUE. An example of an examination certificate is included in Annex V, data and images that compromise the confidentiality of the importer have been redacted.

Entry to the VUE application is simple. First, the importer enters the system and chooses “Application Development,” in this menu “Support Documents,” then “List of Present Support Document.” On this page, the importer must indicate the institution to which the application will be sent; in this case, the INEN. The document that should be chosen is the “Application for Certificate of Recognition – INEN,” which is the only option included in the VUE. After selecting the type of document, the importer should select “Request,” found on the bottom right of the page. As in the application for a health record, selecting “Browse” on the form will automatically generate the application number. The first part of the form data refers to the importer and the second part is the product data; for the product name, the importer should

choose “Tagging and Labeling of Textiles, Apparel, Footwear, Home Linen, and Related Accessories.” If these options are selected correctly, as a technical regulation, the application should be submitted directly to the number 13 and no further.

The third part of the form states what type of certificate is needed; for clothing, the importer should select option number two which is applicable to the certificates of conformity issued upon arrival. When choosing this type of certification, the mandatory field for preliminary recognition of the OAE certificate must be performed, specifically in the case of products for which inspection should be performed before importation. Finally, the importer should include the certificate of inspection for imports and the relevant invoice. After reviewing the information entered, as well as the attachments, the application can be sent with an electronic signature. If the process is successfully conducted, the certificate should be awarded electronically.

After successful completion of the process for obtaining a certificate of recognition of the INEN, and obtaining registration from the MIPRO as an importer, the nationalization of the merchandise is practically guaranteed.

Having completed the different parts of the analysis established for unauthorized imported goods, it can be said that the list of goods with import restrictions tends to increase in number of items and number of requested requirements. The reasons for establishing restrictions are founded and supported by international standards, the main goal being the welfare and safety of people and their environment. The flexibility of nationalizing these types of goods has decreased due to the increase in obstacles, based upon the customs authority. Therefore, it is very important to check all the prerequisites for each import and thoroughly investigate the required processes; bearing in mind that, in many cases, a prerequisite for many permits is to obtain other permits and/or certifications.

CHAPTER THREE

3. Prohibited Imported Goods

The third chapter of this study will be devoted exclusively to the investigation of prohibited import goods. Such goods have certain peculiarities and are important to know to prevent their importation, as they cannot enter the country. The list of prohibited goods for import to date will be reviewed. Then we will analyze the characteristics of the goods that have been included in the mentioned list. Finally, we will analyze some exceptions given to prohibited goods by law; these exceptions are given depending on the procedure or the customs destination. Some examples of exceptions are: household goods, goods imported for disabled persons, and certain procedures for processing under customs control.

3.1 Overview of importing prohibited goods: List and Features.

The list of prohibited goods for import is considerably shorter compared to the list of unauthorized goods; nevertheless, the list of prohibited goods is important to the safety and wellbeing of the public. These goods do not have any kind of prerequisite for import simply because they cannot be nationalized under any circumstances. Even when correcting an item being declared determines that it is prohibited for importation, the goods shall not be released. Although there are certain exceptions, these will be discussed later. The items included in the list of prohibited import goods that have been published have been determined by the COMEXI, which is why to begin to identify this type of goods it must start making reference to some of the mentioned resolutions.

In early 2003, the COMEXI published Resolution No. 182, which has served as the primary basis for the development of lists of prohibited imports. Annex 1 of the Resolution is the list of prohibited products at that time. There were 50 tariff items in the list, including everything from plants to furniture. Prohibited goods, on a legal basis, should only be those that threaten the lives of people, plants, and/or animals; or damage the environment. This is probably why the list of

prohibited imports has been subject to fewer changes compared to the list of unauthorized importation goods.

The following relevant resolution for revision is No. 450, which in the previous chapter was used as the basis of the list of unauthorized import goods of Annex 1, but as this resolution also governs prohibited goods published in Annex 2 in 2008. For five years, 2003 to 2008, 58 products were added to the list of prohibited goods. Resolution No. 450 is still in effect to this day; only a few products have been added to this category since its ratification.

Following this resolution, the most comprehensive source is the list of prohibited imports products available in the SICE system; like the list of unauthorized importation of goods from the previous chapter, it was updated to October 2012. This list was issued under a tariff nomenclature that is no longer in force.

The COMEX in 2011 did not issue any resolution to amend the list of prohibited imports. In fact, from 2011 to March 2014, they only issued three resolutions on the importation of prohibited goods. In 2012, Resolution No. 51, which contains the conditions that must be met by vehicles and other articles of heading 87 of the tariff in order to be admitted to the country, was issued. The Resolution clearly states that common vehicles will have to be imported in a new condition and may not be of more than 2 years from the importation year, so used vehicles or from past years cannot get into the country. Parts and accessories for vehicles receive the same treatment; although, certain exceptions apply to vehicles of special functions and to diplomats function, among others. The next resolution, No. 58, with 27 subheadings, comprising Chapter 29 and 38, outlines the prohibition of various organic chemicals and products of the chemical industry. The other resolution is No. 72, which outlines the exclusion of certain vessels. Finally, through Resolution No. 76, imports of certain cooling equipment are prohibited.

Besides the resolutions of the COMEX, there are other resolutions that have been issued by various public institutions, which are mostly related to the regulation of health of both people and animals.

An example of an institution that has added to the list of prohibited imports is AGROCALIDAD, replacing the SESA which once issued orders related to this issue. The prohibitions set forth by AGROCALIDAD are not necessarily applied to the product itself, more to certain countries themselves. There must be a legal basis for banning products from a specific country; otherwise, they could be regarded as discriminatory measures, which could lead to consequences for the discriminating party.

This is the case of the importation of live animals and genetic material from cattle, sheep, goats, and bison; which corresponds to the first chapters of the import tariff. The import ban for such property are set forth in Resolution No. 58 of AGROCALIDAD held in April 2012 and only applies to Germany, Luxembourg, UK, France, Netherlands, Spain, Italy, and Belgium. The arguments supporting this ban are based on studies by the World Organization for Animal Health. These countries have reported an outbreak of a new virus called the *Schmallenberg virus*. Ecuadorian officials have determined that this virus “poses a risk to the health status of Ecuador, since it is still regarded as foreign to the country and the region” (2). Since this specific ban, there have been several cases, including a ban on the import of all kinds of live animals, genetic material, and other derivatives from China; this ban still remains in force due to the risk of the transmission of FMD.

It is clear then, that such measures are taken to protect the welfare of people and their environment that otherwise would be threatened. Also, it is important to note that the prohibitions under these circumstances will be under review to be reversed once the threat is gone.

Finally, after reviewing the various decisions related to trade prohibition, attempts to bring together the main list of prohibited import items have been

difficult. The problem of performing a full update of these lists is that there are interventions from too many different institutions besides the COMEX. In fact, the COMEX has hardly issued resolutions, nor has it managed many foreign trade agreements, decisions, resolutions, etc. Most resolutions have been issued by organizations that do not relate to the regulation of foreign trade in Ecuador; this shows that these measures are purely preventative.

Investigating one by one the resolutions issued by government institutions, even those known to have greater involvement in this issue, such as AGROCALIDAD, is unfeasible because of an incomplete database and the field of research is too broad. Although, not all resolutions have been about prohibition; hence, the modification of this list is not very common.

According to this list, prohibited products generally have characteristics that represent a danger to the environment and to the lives of people. The various ministries responsible for monitoring wildlife are the ones who have participated in the determination of prohibiting certain goods. Logically, the import of a living animal, its derivatives, or animal based products affect the animal kingdom and can seriously affect the welfare of the population, as they are a food source for humans. On the other hand, there are goods that endanger the security of the population such as weapons and explosives. Environmental protection is also a factor when establishing certain prohibitions, such as used vehicles and parts that contaminate the air. Then there are products from places with infectious outbreaks that could lead to the spread of viruses, leading to serious health consequences.

It is important to familiarize oneself with the list, including the characteristics of the products, as well as those products that have the potential to become prohibited. As a recommendation, it is important to consult information on the ECUAPASS website before importing any products. It is equally important to know the laws applicable to prohibited import items, especially the exceptions.

That is why the next part of this chapter will focus on the exceptions to prohibited import goods.

3.2 Customs procedures which include exceptions to prohibited goods.

Each of the customs procedures, by law, has different requirements, as well as a different function and purpose. In this section we will focus on three specific exceptions that transform certain prohibited goods into permitted import goods. The goods that qualify for this exception depend on the purpose of each procedure. As mentioned previously, these three exceptions include: household goods, items for disabled persons, and processing under customs control.

3.2.1 Household Goods (focusing on importing prohibited goods that become permissible): Conditions

The Household Goods regime is a customs exception for those Ecuadorian citizens who have migrated abroad who wish to return home permanently. A variation of household goods is presented for foreign nationals wishing to settle in the country, but with fewer benefits than those afforded to Ecuadorians. The purpose of this exception is to encourage the return of those who have left the country without them losing what they have acquired while working abroad. Obviously, not absolutely every single item can be brought into the country because many items are prohibited in the country without exception. For example, in the case of clothing, two 50-pound suitcases certainly is not going to be enough to move all belongings, therefore it has to be brought into the country by other means, which is when the problem occurs. In a normal import, used clothing is expressly prohibited. Also, an INEN certificate is needed for all appliances, and they must meet specific physical characteristics.

On the other hand, the Ecuadorian State seeks to encourage the return of migrants through tax exemptions on imported goods; that is, all household goods

are exempt from all trade taxes. However, the import of each household good is subject to strict compliance to importation rules. In this type of import, it is important that everything is justified according to the number of people who appear in the family. It is important to indicate that there are pre- and post-conditions that must be met to classify the import as household goods; household goods are defined as:

Art. 1 Household Goods.- Household goods will be considered as all elements, new or used, for everyday use of a family, such as appliances, clothing, bathroom supplies, kitchen, dining room furniture, living room and bedrooms, household items, computers, ornaments, pictures, china, books, household tools and other items appropriate to the place where an individual or family unit lives permanently, acquired before the return trip to Ecuador, shipped in the country from where he lived permanently prior to changing residency to Ecuador. Part of the household goods is also considered a motor vehicle or motorcycle for family use, provided that one complies with the requirements detailed in this Decree. (Executive Decree N° 888, pg. 2)

In this concept, the type of goods that are allowed in a household are included, while also establishing conditions for items, such as a vehicle. Definitions of work equipment and vehicle conditions were included initially in Resolution No. 976 of the Ecuador Customs Code in 2009. Nevertheless, the concepts and conditions set forth in this resolution were supplemented and amended two years later through executive Order No. 888 which establishes the General Rules for the importation of household goods and work related items by migrants returning home to establish permanent residency in Ecuador; this last executive order remains in effect.

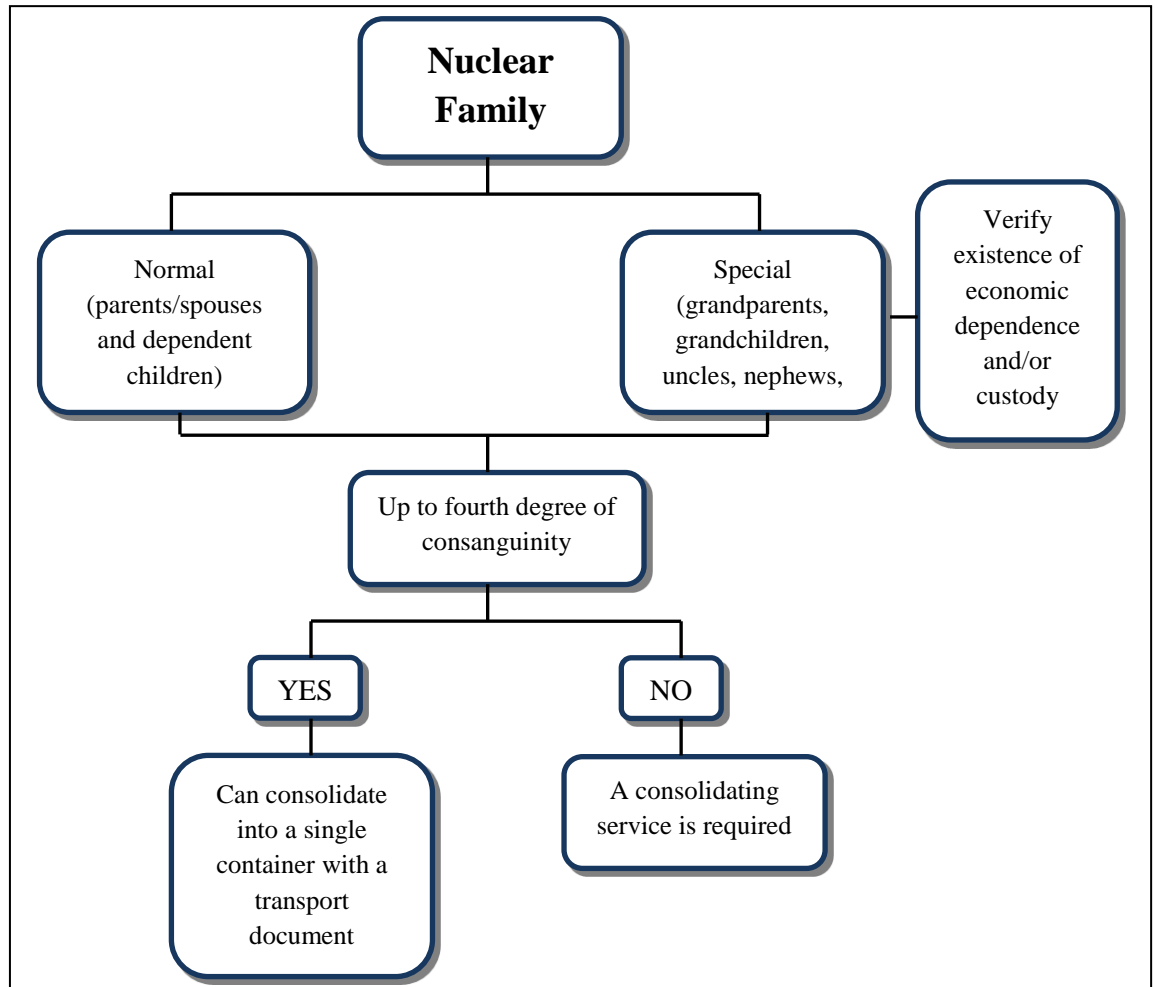
The second article of the decree mentions the permissible quantity of the elements of the household goods. The only specific quantity limit is for clothing, including shoes and accessories, which shall not exceed 200 kg per person. If the customs inspection authority determines that there is no correlation between family formation and import elements, these items may not be part of the

derogation and will be considered as a normal import of goods classified as restricted and prohibited. If instead there is only an excess amount of clothing, that is consistent with the normal use by the family members, then the importer will be allowed to pay an excess weight tax.

To continue, it is essential to know the definition of “household” under this decree. According to article five, the nuclear family will consist of parents or spouses and dependent children, to include if the spouses have separate property or have legally terminated their marital relationship. This initial description would be for a normal family unit. This decree also recognizes variations in what is considered the “nuclear family,” i.e. the inclusion of grandparents, aunts, uncles, etc.; however, legal custody or economic dependence must be proven concerning said variations in the nuclear family.

Children who are older, and are economically independent of the household, may apply for exceptions for their own household goods. Nevertheless, all household goods may be transported together in the same container, with a single transport document, without the need for intermediaries, as long as the relatives do not exceed four degrees of separation, otherwise they would have to seek the services of a consolidating company. This consolidation, however, does not relieve the burden of compliance with the conditions for each household item. For better understanding, a graphical explanation of the conditions for cargo consolidation can be seen below:

Illustration 7.- Nuclear Family and Consolidation



Created by: Isabel Maldonado. Based on Decree No. 888. Art. 6, p. 6.

Within the household goods, another important benefit is the ability to import a vehicle or motorcycle that has been used for the exclusive benefit of the family. As previously mentioned, the importation of used vehicles is banned in Ecuador. Vehicles included in household goods must comply with the conditions referred to in the Decree 888; otherwise the vehicle will be reshipped. The conditions are that the year of the vehicle be not more than four years old and that the value of

the vehicle, when it first became available on the market, was no higher than \$20,000, not including depreciation or additional charges for transportation, i.e. the value in terms of *ExWorks*. In addition, the vehicle must not exceed 3,000 cc in cylinder capacity and must be shipped together with the other elements of household goods; this benefit is exclusive to Ecuadorians who have remained for at least three years abroad.

Motorcycles basically have the same conditions; the only difference is in the value limit, \$8,000 maximum, and it cannot exceed 650 cc. If requirements are not met, the decree determines that the items be regarded as a normal import, therefore being classified as a prohibited import, which may lead to reloading. Sea and air vehicles are ineligible, as well as those that have suffered serious damage. The importer will have to prove ownership of any used vehicles included as household items; usually some form of registration issued by the country of origin will suffice.

Only one used vehicle per household is allowed. A second vehicle may be exempt from corresponding taxes only if it is new, otherwise it will be classified as prohibited. All vehicles that are part of household goods are regulated in Article Three of the decree. This article reformed the conditions for the vehicle in the household goods; the previous resolution determined that the vehicle should have a value limit of \$20,000 at the time of import, allowing for a depreciation of 20% annually. In the past, returning migrants had the ability to import vehicles of high values, even luxury vehicles; this was an opportunity that many migrants took advantage of. However, this caused many problems as it coincided with an increase in tariffs and a quota reduction for vehicles. Simply, importing luxury vehicles, duty free, gave the owner a disproportionate advantage in the market place.

In the past, customs agents found numerous cases of fraud, as these vehicles cannot be sold for five years from the date of nationalization. If the car is sold before the time limit expires, then the seller is required to pay certain fees.

Furthermore, the vehicle is only for exclusive household use; not even close relatives, such as uncles or cousins, can use the vehicle because it would be considered customs receiving. If any type of customs receiving is in fact determined, then the owner shall pay a fine corresponding to 20% of the taxes of the vehicle. As the vehicle owner, a fee of up to 10 times the tax amount may also be applied.

An exemption for household items also aims to promote the development of productive activities in the country, possibly creating new places of employment. The executive order also covers tools or work equipment. To justify the items as work equipment the activity to be realized should be included on the pre-import form that is given to the SENA E previous to the household importation, having in mind that it must be one for the complete nuclear family. The list should include all materials, tools, and equipment necessary to perform work, whether new or used; and they do not necessarily have to relate to the profession of the person. The value limit for these tools is \$30,000 without being required to have a defined investment project; in order to exceed this amount the importer will need to present justification. The possibilities for work equipment to be considered household goods are quite flexible; nevertheless, there are certain restrictions such as vehicles or textile materials. In the last paragraph of Article 4 of the Decree, eleven subheadings detail the items that will not be accepted as work equipment. Foreign persons may also import household goods with work equipment, duty free; only if they plan to reside in the country for more than one year.

The SENA E in January of 2014 issued *Additional rules for importing household goods and work equipment by migrants returning to take up permanent residence in Ecuador*, through resolution SENA E-DGN-2013-0030-RE. As its title states, these are supplementary regulations for Decree 888 which detail various conditions. The owners of the goods must arrive in the country no earlier than two months before the arrival of the shipment, and no later than six months. If the cargo arrives 6 months after the arrival of its owner, then the applicable taxes

must be paid; however, some exemptions in fulfilling prerequisites do still apply. Timelines for the arrival of household goods may seem complicated to comprehend with the textual explanation of the norm, which is why up next a table is presented that is included in the corresponding SENAE resolution.

Illustration 8.- Rules for access of imported, household goods

TIEMPO EN EL EXTERIOR	DÍAS DE PERMANENCIA EN EL ECUADOR	TIPO DE MENAJE DE CASA
1 a 5 años	Hasta 60 días calendario	Exento de tributos
Más de 5 y hasta 6 años	Hasta 90 días calendario	Exento de tributos
Más de 6 y hasta 7 años.	Hasta 120 días calendario	Exento de tributos
Más de 7 y hasta 8 años.	Hasta 150 días calendario	Exento de tributos
Más de 8 años	Hasta 180 días calendario	Exento de tributos
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1 a 5 años	Hasta 90 días calendario	No exento de tributos
Más de 5 y hasta 6 años	Hasta 135 días calendario	No exento de tributos
Más de 6 y hasta 7 años.	Hasta 180 días calendario	No exento de tributos
Más de 7 y hasta 8 años.	Hasta 225 días calendario	No exento de tributos
Más de 8 años	Hasta 270 días calendario	No exento de tributos
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1 a 5 años	Más de 90 días calendario	No aplica al régimen
Más de 5 y hasta 6 años	Más de 135 días calendario	No aplica al régimen
Más de 6 y hasta 7 años.	Más de 180 días calendario	No aplica al régimen
Más de 7 y hasta 8 años.	Más de 225 días calendario	No aplica al régimen
Más de 8 años	Más de 270 días calendario	No aplica al régimen

Source: Resolution No. SENAE-DGN-2013-0030-RE, art. 2, pg. 3.

These time periods apply to the owner of the household goods; the members of the household must have remained at least a year abroad without entering the country for more than 180 days during the prior year in order to receive the household goods exemption. If for any reason, a person decides to again reside outside the country and then returns to apply for another household goods exemption, then that person will only be eligible if they resided at least three continuous years abroad, with maximum absences of 180 days. If the person lived abroad for 5 years, then a normal household exemption applies under Section four of the SENAE resolution.

The procedure for nationalizing the household items is simple, but the importer must follow certain steps, as well as obtain certain documents. The main document is a sworn statement made by the consulate of the country of residence, or a notary public, stating the intention of leaving the country. This statement must include a detailed list of the household goods intended for export to Ecuador. The list of goods must include the exact amount, clear description, condition, and value of all items. All items must have a value, albeit symbolic, simply because nothing entering customs can have a value of zero, even the item was a gift or it has depreciated in value. Vehicles and work equipment should also be included in this list.

The next important document is the Certificate of Migratory Movement, which is obtained from the immigration police, attesting a stay abroad for the time needed to receive the household goods exemption. If there is no official record due to illegal entry into the country, then the importer should request a certificate of mobilization from the National Secretariat for Migrants (SENAMI). New items must be accompanied with their respective receipts, with the name of the owner of the household or its members. All members of the family unit seeking to take advantage of household items exemptions must include all information and documents, as has been previously detailed.

Before the importer can make any statement of assets, it is mandatory that there be an inspection. A preliminary inspection has a dual role; first, in order to have the beneficiary check their property and determine if everything is in order. It is recommended that the inspection made by the declarant, together with the customs agent, in order to help detect any errors. Furthermore, the customs official records evidence of the inspection and generates a report of any findings. The official inspects the load together with the respondent, keeping a clear record of what is included in the household. This is so that once the statement is made, no further physical inspection is required. If during the inspection there is merchandise that does not meet the requirements for household goods, having filed a customs declaration, there will be no legal repercussions. The beneficiary

may apply for a charge separation so as not to affect the processing of the household goods; but if a charge separation is performed, a physical will be conducted. The previous inspection is required based on Article 13 of the SENAE resolution.

Household items exemptions is a system that provides significant savings, recommended for all those who qualify. Besides saving time and money, a person may import goods that would normally be restricted. Goods that are normally prohibited, that are permissible in the household goods exemption, are used clothes and shoes, used tires, used dishes, used vehicles, etc. It is important that those who qualify take full advantage of these exemptions by properly and adequately identifying those goods that can be imported as household items.

3.2.2 Exemptions for disabled people

In the legal framework of the country, there are tools to facilitate the daily living and social integration of people with disabilities. To this end, Ecuador has created various standards, primarily the Disabilities Act and its Regulations. In this chapter, we will focus on detailing the benefits that the law provides to persons with disabilities, specifically the importation of goods with exemptions. We will first explain the most important elements in the regulations that must be met prior to importation, and then we will outline the procedures to access the benefits provided by law for people with disabilities with respect to imports.

First, it is important to note that the distinction made for people with disabilities is not to discriminate them in any way, either in the law or in this paper; rather, the purpose is the exact opposite. The identification of persons with disabilities is important to be able to understand their needs, so that they can be accommodated adequately. That is why we will start with the proper definition, according to the Organic Law on Disabilities (LOD) and its Regulations. Article 1 of the Regulation concerning disabilities states:

For purposes of this Regulation, and in accordance with the provisions of the Act, disabled person shall mean that which, as a result of one or more physical, mental, intellectual or sensory impairments, regardless of the cause, has permanent restricted biological, psychological and associative capacity to perform one or more essential activities of daily living, in a proportion equivalent to a forty percent disability, duly qualified by the national health authority. (6)

In this article, we can conclude that a disability is not just physical, but a deficiency in daily living. Less than 40% incapacity to perform essential activities of daily living does not cause a person to be considered disabled. A key aspect of this specification is that the deficiency must be permanent. Under these criteria, a person must undergo a review by medical professionals to determine whether the condition is permanent or not, as well as to what degree. This process is known as recognition and qualification. This is the most important part of the process because, with this document, the person will be identified as a person with disabilities; who will then have the right to access the benefits granted to them by law.

For the recognition process, review and care from a physician that clearly states the specific condition of the person is needed; ideally the patient should have been treated by a specialist. This will be the first step, since the valid medical certificate is awarded by the Ministry of Health; hence, the person must make all relevant examinations in a public health center. The processes for recognition and classification have no cost.

Qualification is done after recognition to evaluate the degree of disability or impairment, as determined in the first phase. All relevant aspects of the person are considered, such as: gender, age, environment, psychology, etc. Therefore, for this qualification, in addition to a medical opinion, professional psychologists and social workers perform their respective evaluations. If as a result of the assessment and qualification it is determined that the person has any specified conditions, then they are recorded in the “National Registry of Persons with

Disabilities, Disabling Conditions, or Deficiencies.” The Civil Registry will also be notified so that the person’s ID card can be labeled accordingly, with the corresponding disability and respective percentage. In the case of a disabled person, he or she will not need their official disability booklet in order to access the benefits provided to them by law; rather, their ID card will suffice.

The law also covers those individuals involved in the care and protection of persons with disabilities and/or impairments. For this they must go through a process of evaluation and qualification in order to determine benefits for their type of activity. In the LOD, Article 16 applies to family with a maximum of four degrees of consanguinity and two degrees by marriage. In the case in which none of the above applies, the legal representative who has custody and / or cares for the person with the disability or impairment is noted. This makes sense when you consider the type and level of involvement a person with a disability may need from others; and in many cases, constantly rely on someone else that could be family or a legal guardian.

For people with disabilities, rights and benefits are determined in various areas ranging from the right to receive appropriate and necessary medical care, to the right of accessibility and removal of social barriers. However, the analysis of them is beyond the scope of this paper; therefore we will simply make reference to Article 74 of the LOD in which it specifically mentions the rights of persons with disabilities in the process of imports. It is essential to emphasize that access to such benefits is determined by Article 6 of the Regulation of the LOD that clearly specifies that the rights described in Section 8 of the LOD, ranging from Article 71 to 81, will be unique to individuals who meet a minimum degree of disability of 40%. Tax exemptions will be applied proportionally to the level of disability according to the following table.

Illustration 9.- Percentage of tax liberation regarding the degree of disability

Degree of Disability	Percentage for application of the benefit
From 40% to 49%	60%
From 50% to 74%	70%
From 75% to 84%	80%
From 85% to 100%	100%

Source: Regulations of the Organic Law on Disabilities. Art.6, pg. 3.

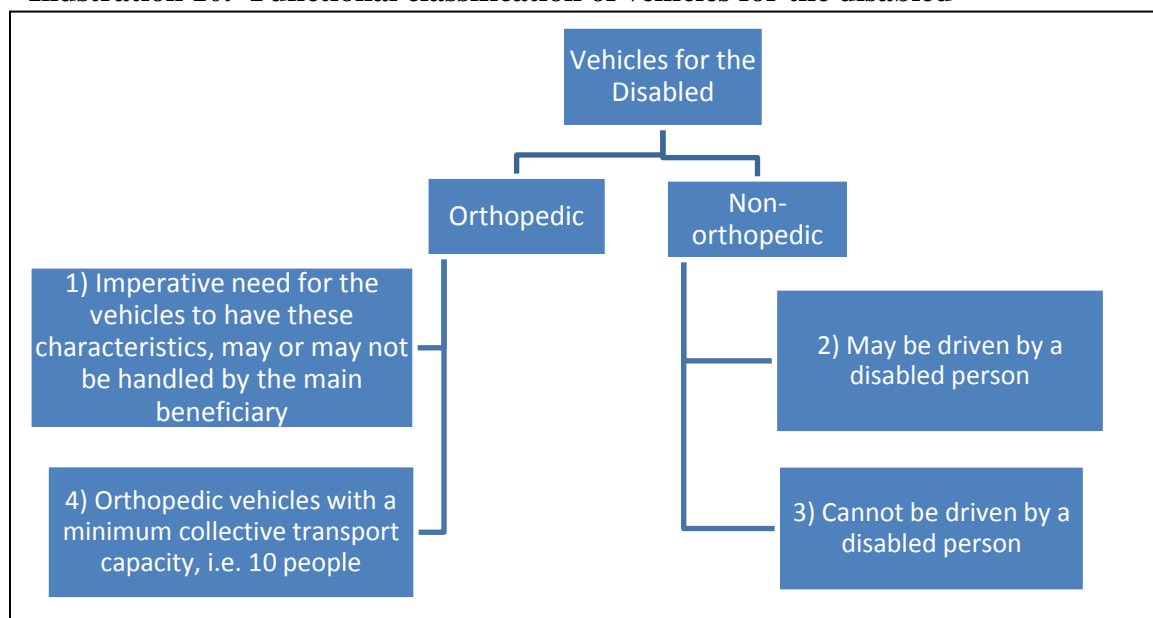
Article 74 of the LOD is limited to detailing a general list of exemptions for imports. However, Article 80 is a specific standard for vehicles. The benefit of vehicle importation is determined by certain values, patterns, and functions of the vehicle. In the sixth paragraph of that article it states that the vehicle must fulfill certain value, year, and age conditions (the vehicle can be no more than 3 years old). Usually, the importation of older model vehicles is prohibited; however, this becomes possible for those with state recognized disabilities. The importation of a vehicle must be previously authorized by the office, which in turn will review that the import fully complies with all requirements.

In the case of vehicles, it must also satisfy value conditions that are determined according to its function. For personal vehicles, the value should not exceed the equivalent of 120 minimum wages. For vehicles destined for public use, the maximum amount is equivalent to 206 basic salaries. Taking into account the updated 2014 basic salary, which is \$340.00; the maximum allowed value would be a total of \$40,800.00 and \$70,040.00. One must also consider the functional requirements to be met by the vehicle, according to the needs of the person and depending on the type and level of disability determined in the initial review. The vehicles are broadly classified into 2 categories: orthopedic and non-orthopedic.

Orthopedic vehicles, according to the National Transit Agency, are those who have special adaptations according to the person's disability; for example, the

functions of pedals adapted to be hand levers, special seats, special access, etc. Non-orthopedic vehicles have no special modifications, but should serve to improve the quality of life and facilitate the obstacles presented by their disability. In addition, vehicles need not be exclusively driven by the disabled person; depending on the type and level of disability, a third party may drive the vehicle instead. Considering the parameters in Article 80, as mentioned above, the following illustration shows the four categories of vehicle use:

Illustration 10.- Functional classification of vehicles for the disabled



Created by: Isabel Maldonado, based on the LOD art. 80 pg. 18

Compliance with the detailed functional requirements is mandatory so that the SENA E can authorize the importation of the vehicle; however, compliance with the value amount is only required for the calculation of tax exemption. If the limit exceeds the allowed limit, then the importer should pay the difference between the total tax amount and the exempted amount. This is outlined in detail in the Customs Circular number SENA E-DGN-2014-0003-C, in the penultimate paragraph. Furthermore, the LOD and the LOD Regulation are in the COPCI and the RCOPCI, the before mentioned Customs Circular, and Resolution SENA E-DGN-2014-0111-RE, which regulate the same issues. In the COPCI and

RCOPCI, there are no new requirements that refer to the LOD. As for the circular from the SENA, this plays an informative role so new regulations are not set. The before mentioned Resolution revises the rules for importation of goods with exemptions for the disabled, always referring to the LOD and current regulations. Therefore, it has covered the legal basis with the fundamentals for the import of goods for disabled persons.

Within the tax exemptions of goods in Article 74, there are restricted or prohibited imported goods; but because this is such a broad field, specific items are not easily identified. The categories are:

1. Prosthetic for people with hearing, visual and physical disabilities.
2. Orthotics
3. Equipment, medicines, and items necessary for their rehabilitation.
4. Equipment, machinery, and working equipment, specially designed and adapted for use by disabled people.
5. Help Items for accessibility, mobility, care, hygiene, safety, and autonomy.
6. Special equipment and teaching materials for education, training, sports and recreation.
7. Items and equipment for information technology, communications, and signaling.
8. Equipment, machinery and raw materials all serve to develop products exclusively for disabled people.
9. Others established by the regulations of this Law. (17)

Within these categories, one can locate a classified good, as restricted or prohibited, and have a customs authority or their delegates, grant permission for such property to satisfy a specific need for a disabled person .

Waivers for disabled people have defined processes that are generally simple, and that have low or no cost at all, provided public services are used for the entire process. The legislation gives very flexible options for goods that are subject to the exemption benefits as long as they meet the needs presented by the specific disability of the person. The good that has been of primary interest has been the vehicle and is the only well-regulated. Although, under this regime, the vehicle, which is a prohibited import that becomes a restricted import, requires a

document for prior approval by the customs. The fact that a disabled person is allowed to exceed the limit value is one more reason to conclude that it should be considered as a good option for importing a vehicle in the country; as long as it meets the requirements previously discussed.

3.2.3 Processing under customs control: Conditions.

The last process in Chapter 3 for analysis is processing under customs control. This scheme has certain peculiarities that fit ideally with importing prohibited goods. It will be a brief discussion as it is a system of easily readable and concise rules. I will begin by explaining certain definitions of importance, and then cover conditions and processes established in the regulations.

To begin, we must examine the import arrangements designated in the COPCI. Apart from non-exceptional regimes, the entry of prohibited imported goods is not allowed; the only explicit case is the system of processing under customs control. Undoubtedly, the term most widely used in this theme will be “transformation,” according to the RCOPCI, this means:

Art. 2...ggg) Transformation.- The process by which goods change their form or nature. To be considered as a transformation process, the result shall be classified in a different subheading than initially stated. (4)

It is clear that a process of transformation is a process of change that should result in a final product with a completely different nature and function; so, by changing the nature and function of the item, the tariff classification changes as well.

According to this concept, this default regime involves changing the imported goods kept under the supervision and control of the customs authority. The legal basis for this system is the COPCI and the RCOPCI. The COPCI, specifically Article 151, establishes the fundamental definition of the scheme and makes it

effective for imports in Ecuador. The definition of this article is a complete summary of the purposes and functions of this system:

Art. 151. - Transformation under customs control.- the customs procedure that allows goods to enter the customs territory to be used in operations which alter their nature or state, without having to pay duties and import taxes and surcharges for subsequent imports for consumption of the resulting products obtained from these operations, with the application of duties and import taxes and surcharges allocated to them under the tariff nature of the finished product. (29)

Therefore, processing under customs control is a scheme for imports that provides a similar benefit to the Customs Warehouse, because the taxes are not paid until the processing operations are completed and a change is made in the regime. Another important benefit is that it allows the importer to work on the property to change the nature of the product. A condition that must be considered is that in order to finalize this regime, the importer must request the change of regime, but with the only option of changing the consumption rate.

That is why, if an imported good originally is prohibited, it is important to check that the transformation process has the characteristics to become a permitted import; and vice versa. All of these specifics are in the sub-section VII of Chapter VIII of the RCOCP, covering items 150 to 169.

The RCOCP clearly states eligible goods, which in this case specifically includes prohibited import goods. For this regime it does not matter which type of merchandise is as long as it is susceptible of transformation. The deadline for the fulfillment of the purposes of this scheme, as stated in Article 154 of the RCOCP, is six months; however, extensions may be granted. As for the facilities in which the activities for processing are carried out, they shall have been duly approved by the SENA; approval must be requested before the entry of the goods into the process. The accreditation by these facilities will be valid for 5 years, with the option to renew if required. In addition to meeting the approval of the facilities, the scheme should have a comprehensive warranty that covers products that enter the scheme, protecting the entire activity carried out.

The application of this scheme should be well planned before goods are even shipped to the country, since the acceptance for admission to the scheme is not compulsory, like other customs regimes admission is under the consideration of the customs authority. This is not really one of the most applied regimes; the transformation of the product must be fully justified, from how it will be carried out to obtaining the final product. It would be wise to talk directly with customs officials to avoid disagreements. Once the importer is sure how it will proceed, he or she must plan the entire transformation process so as to ensure maximum compliance, and to ensure that all necessary processes are allowed to take place.

The scheme ends when the transformation is complete and the consumption rate change request has been given. Based on Article 155 of the RCOPCI, import processing under customs control in order to switch to a different regime of import consumption is not supported. That is why, if the process fails, it will become a prohibited import and entail certain legal implications. The importer may request a change in destination for re-exportation by justifying it to the SENAE, but the goods will remain under review by customs officials. In the event of nationalization under the regime of consumption, the duties payable will be determined by the tariff heading of the final product, using the total declared value for the original product. If waste is generated, it still can enter the country, as long as the classification is determined as a permitted import; otherwise they could be destroyed or re-exported.

In analyzing the import regimes of the RCOPCI and the COPCI, foreign trade operators usually have doubts about the difference between the system of temporary admission for inward processing and processing under customs control; and often come to regard them as the same thing; but this is wrong. In general, these schemes are very similar, but not identical. For one, both allow the placement of goods without payment of taxes until a regime change occurs and both allow the processing of the goods. However, the differences are very relevant because, for the regime, Inward Processing is not a mandatory

requirement; considering the transformation of the product can only be maintained or improved in some way without changing the tariff heading. On the other hand, the transformation process does not require prior approval of the facilities; and the maximum time period reaches one year, which is double the time granted by law for processing under customs control.

The most important difference, especially for this study is that, in the inward processing procedure, no prohibited goods, or restricted imports of goods that do not meet the prerequisites, are allowed. This part is not specified in Ecuadorian legislation; however, the rules of the Andean Community of Nations are well regulated. As described earlier, the rules of the CAN are applicable to our territory. Specific regulations are based on these international standards, as was explained in the first chapter of this study.

Specifically, we refer to Decision 671 of the CAN, which is entitled Harmonization of Customs Procedures, i.e. synchronized customs procedures, so that there are no major differences between the member countries. In subsection 4, the inward processing procedure is standard, which is also specified in the COPCI and the RCOPCI. However, item 6 includes a specification that the RCOCPI omitted, that is:

Prohibited goods may not be subject to temporary admission for inward processing. If the goods are found under permits, restrictions, licenses, or any administrative authorization for entry, they must obtain the appropriate permissions. (69)

Thus, the difference between the two processes is large and extremely important; since the inward processed only supports permitted goods and import restricted goods that meet all prerequisites.

An example is the importation of printed advertising material on paper, which is in the list of prohibited imports; however it can be transformed into new paper

products through a recycling process. Publicity materials like flyers, catalogs, and other printed paper, or cardboard items, are prohibited to boost domestic production; however, there is no prohibition on recycled paper; through this, one can make a variety of paper products that would be listed as not prohibited for import. This is a brief example, of course the importer would need a detailed analysis of how to carry out the transformation process and proceed with the authorization of the facilities in which they would carry out all activities.

The rate of transformation under customs control is quite feasible if you have a clear, well-planned project, which demonstrates that the purpose is to transform the goods; especially those that have bans to promote national products. Although this is not a commonly used scheme, familiarization with its procedures and benefits may represent a different option for domestic products.

Ultimately, prohibited import products represent a very low percentage of the total tariff lines of goods in the world. Generally, prohibited goods threaten the health and safety of living things; thus, if you want to import any goods which could be considered dangerous, it is advisable that you check to see if they are not in a list of prohibited imports. Also, you should not only consider the type of product but also the source. There are no general exceptions for all prohibited goods as this may violate national security and health. However, exceptions granted in the law may be applied if you have knowledge of current legislation. Schemes can be used, not just for personal benefit, but also for the benefit of the community. It can also be used to increase domestic production; either through the importation of equipment or supplies for transformation in the country. Detailed processes are a way to take advantage of exceptions to the rules of imports; which are often not properly applied or ultimately not applied at all due to ignorance.

CHAPTER FOUR

4. Economic Analysis: Implications for the Importer and the State

After analysis, both types of goods, and their enforcement regimes, are prone to ignorance or misapplication of the rules, which can result in serious problems and consequences. The consequences for malpractice of foreign trade can generate very high costs, especially for the importer, but also to the state. In the following case study, we can see whether there are any damages done to both parties or if they are strictly unilateral. Also in the case studies, we will analyze two cases of merchandise, one allowed import and one prohibited import.

For privacy reasons, the case studies do not need include specific import data, nor the companies or individuals involved; only relevant data that is directly related to the item of interest for research is used.

4.1 Case studies on unauthorized importation of goods

For this first part, we will focus on the practical part of the importation of unauthorized goods, since the theoretical aspect was revised in chapter two. Two cases, both dealing with importing restricted goods, will be analyzed. The analysis starts with the identification of the type of product and their respective requirements. Then we will analyze the import process, indicating any inconvenience that has been filed. Finally, a cost analysis of the revised process will be done, as well as any consequences for the importer and/or state.

I have chosen to analyze two cases of restricted items so you can see the difference between imports where tools and import rules are handled properly and the legal framework is clear; and the other with legal instability and/or lack of trade tools. In both cases, I had the opportunity to work directly in the process; therefore, in addition to providing first-hand information, I can detail the process

that took place and the costs involved. At the end we can review the economic consequences, as well as the affected parties involved.

The import in the first case took place in August of 2013, from Argentina to Ecuador. Various products were included in the import but all were alcoholic beverages, namely wine and sparkling wine. The variations were specifically pertained to the different flavors. For the 18 items imported, two tariff headings were used: 2204.10.00.00 with the description “sparkling wine,” and 2204.21.00.00, with the description, “in containers less than or equal to 2 liters,” used for wines. In reviewing the list of unauthorized import goods, you can see that the items in question have restrictions, outlined by the Ministry of Public Health (MSP). A health record needs to be processed prior to importation, currently being handled by the National Regulatory Agency, Health Surveillance, and Control (ARCSA) as a subdivision of the MSP. The process for obtaining a health record should be carried out as described in the second chapter. In this specific case, all products had an up-to-date health record, so the process was not necessary.

First, an invoice and product data sheet was requested, to compare what was being sent with the health record, on each item requested. The most important elements for review on this product are: alcoholic beverage labeling, net content, and type of closure. In this case, some of the products did not come with the information it required for complete labeling; but at that time there was no problem because the SENA granted permission for proper labeling in the customs warehousing procedure. All other product information was correct. Once fulfillment of the basic features was confirmed, physical characteristics that could not be changed once housed, instructions for shipment were given. It was requested that the destination of the goods would be regime 70, customs warehouse; to carry out the process of product labeling. A customs warehouse was chosen within the city of Cuenca in order to have greater security and to monitor the labeling process.

Transit time from Argentina, through Chile, is approximately 15 days. Once the cargo arrived, the customs declaration for scheme 70 was introduced and the load was sent for intrusive physical inspection in the district of Guayaquil. In the process, we found that certain items declared did not meet the labeling requirements; however, the customs officer did not note the discrepancy due to the type of regime and the output charge from the port was granted. Mobilization of the cargo to the private warehouse in Cuenca was coordinated; at the same time, simple stickers with the information for each product that did not have a complete label was requested. Not much attention was paid to the type of material, design, or location of the sticker on the bottle as the SENAE Resolution 300 was not yet in effect at the time. When the warehouse finished the handling of the cargo and sent it through the ECUAPASS system, the labeling application was sent into the Cuenca District Directorate, which approved the application after one week.

The labeling process began; but due to the need for the release of certain items for marketing, we proceeded with the partial nationalization of the items that met all the necessary conditions. A partial billing statement for the import consumption rate was given and, safely after the taxes were paid and the physical inspection process was complete, the goods were ordered for release. Meanwhile, the labeling process was completed; I conducted a physical inspection to check that everything was in order; afterwards, a customs declaration of the consumption rate of the balance of the load was issued for the remaining portion. Physical inspection was performed again and the load was released without incidence. In this case, the tools, provided by law to comply with the conditions imposed at the destination for the importation of goods, were used. The initial identification of the restrictions imposed on import items was essential to understand the requirements entailed, and to review the items to verify they were in compliance with regulations, before the cargo was released. The fact that the importer knew that an exception in the case of labeling could be made prevented delays in shipping.

Once the operating process is detailed, we will refer to the economic aspect of this process. This being a standard procedure, with little problems, there were no fines or other sanctions. The total value of the invoices, billed separately as wines and sparkling wines by the supplier preference, was \$53,653.23 and the amount paid in taxes for the first quarter was \$49,066.39 and \$12,983.89 for the second set, which was a total of \$62,050.28 in taxes. If we make a list of the percentages between the total bill and the total tax paid, the latter represents a 115.65% of the amount paid for the products. This is due to tariff restrictions established by the government on liqueurs. The interesting thing here is that, even though the tax rate is high, it is still relatively lower than the taxes paid for whiskey. In addition, since the product was from Argentina, the certificate of origin has tax exemptions; these exemptions reduce the cost significantly.

The value of storage, in both Guayaquil and Cuenca, remained within normal ranges. The storage service was provided in Guayaquil by INARPI, totaling \$168.91; while in Cuenca the total value was \$ 817.6 for five months of storage. The container was returned on time and there were no late fees. These are normal costs for storage when there is a problem in the release of the goods. The above values, when inflated, greatly affect the final cost of the import, often leading to price increases. The first time, the first 7 items on the list of sparkling wines, which have an average dollar factor of 2.07, were nationalized; the cost of imports by product, on average, was more than 207%, representing the invoiced value. In the second nationalization, in which other sparkling wines were released in conjunction with the wines, which are equal in alcoholic strength, the dollar factor is 2.38; a difference of 31 points from the first nationalization.

In this import, the State was not affected because trade taxes, in accordance with the provisions, were paid and no future claims were filed. The importer maintained its budget range for shipping costs, at least for spirits. When importation flows properly, it is a win-win relationship between the importer and state.

The second case was an import of a 20 'container of bottled mineral water. The product was of French origin, and it was the first time this product was imported to Ecuador. The introduction of the product was planned since August in which negotiations were concluded with the supplier; negotiations took several months due to the unfamiliarity of the Ecuadorian market. The negotiation ended in October, the month in which the advance payment was made to the provider. After the first payment was made, production began and the product was ready in November. In the first week of October, shipping instructions were given and the merchandise was scheduled to arrive at the supplier hold three weeks later.

COMEX anticipated the shipment and issued resolution No. 116 on November 19, in which a long list of products needed to meet certain requirements before a certificate of recognition by the INEN could be issued. The resolution was not mentioned on shipments that had already sailed, nor was a specific time given for when the new resolution would take effect. In fact, many importers, decided to continue with their short-term projects because the government generally tends to give at least a 3 month grace period before completely enforcing new resolutions. However, the decision was made by the SENAE on December 2nd, so that shipments on December 3rd would have to comply with the new law.

I personally went to Quito to meet with one of the personal that works for the INEN; he explained that the MIPRO should have exonerated this shipment from this requirement. The request to the director of MIPRO was sent, enclosing all the trading support prior to the publication of the rule, awaiting for a positive response to be sent. The shipment of bottled water had left port on December 6th; there was a month of transit time in order to solve this problem. The importer had insisted on an answer, but the MIPRO had accumulated many applications of this type. Other trips were made to Quito, trying to get more information; in the middle of December, the company received news that Customs would no longer give permits for labels of any product. In Guayaquil, these notifications were confirmed, but not in writing as rules are usually left to the discretion of the

customs authority, as indicated in the study of the customs warehousing procedure.

After having confirmed that the product label would be invalid, it was clear that, even though we would be granted exemption from a certificate of recognition for shipment, we could not nationalize it because it did not meet the new labeling standards. Based on this reasoning, we had to make the decision to stop tracking the process with the MIPRO and start talking to the provider to decide if the product would be reshipped back to its origin or if we could route the container to another port. We needed to act fast as the container was arriving in 12 days. The provider advised us to send the container to El Salvador to another client.

The container arrived at the port of Guayaquil the first of February. The documents were delivered on Monday, February 4th, to start the application process of reloading, for which we should have hired a customs broker. The application for transshipment is simpler with ECUAPASS; the Simplified Customs Declaration (DAS) was generated and the original reloading regime documents and confirmation of booking with the shipping agency were attached. One of the technicians had to personally go to the port in Guayaquil to release the goods for reshipment to avoid paying a storage fee. The procedure was accepted by customs, a capacity and narcotics inspection was conducted simultaneously; after this, a new seal was placed. The process of reloading was completed on February 13th, just in time for the container to be shipped on February 25th and not have to pay any storage fees.

Honestly, the transshipment procedures were performed quickly so we could avoid additional expenses. However, the expenses incurred from the effective date of resolution No. 116 of the COMEX were extremely high, especially considering that nothing was recuperated at the end of all the expenses. The vendor invoice in euros was totaled €9,067.23, this was refunded. The freight from France to Ecuador cost \$3,770.43, including local costs. The cost of the customs agent process the reloading was \$228.48; in addition to an expense of

\$183.56 for storage. Shipping to El Salvador was provisionally covered by the provider, considering they had a discount with the company. In the end, the reshipping cost was \$2,700; plus a new padlock was placed on the container that cost \$10.71. The total loss to the company was \$6,893.18.

Additional cost included two trips to Quito for two people and two trips to Guayaquil. In addition, it is important to note that the time spent on negotiations for a failed import is lost time, which could have otherwise been used on other activities that generate profit for the company. Unfortunately, it is not possible to reflect what this would mean in concrete numbers. The costs included in sales schedules and plans for entering the Ecuadorian market was also a great loss to the company; which so far has not been able to resume imports with the provider.

In comparison, the loss to the state is much smaller, which primarily involves the amount of taxes that they were no longer entitled to, exactly \$5,950. It could be argued that the state has been negatively affected due to its unstable legal framework. What could have been considered revenue for the state is now replaced with obstacles and difficulties for importers, which in turn may lead to reduced exports as well.

The second scenario was certainly very different from the first. It is important to consider that the economic impact can be significant, especially for small and medium-sized importers. Although the state is affected, for the moment, it seems the curbing of the level of imports into Ecuador is of major importance. However, the state should consider that economic losses hinder growth for small- and medium- sized businesses. Measures of this type should have a reasonable grace period before it is fully enforced.

4.2 Case study of prohibited import goods

The cases of prohibited goods being imported are a little less frequent, because there are fewer of these goods and the consequences are more serious. Moreover, products are usually not prohibited in general; more often when they come from certain countries or when they contain certain components, however identification may become more complicated.

I was fortunate to participate with more than one of the subjects involved in this case study, so I was able to receive first-hand information. First we will review the details of the process of the import, and finally review the costs entailed.

The import process, in this case, began with the purchase order and classification of articles. The imports consisted of a 40' container filled with various items for household use from China. The items consisted of: plastic plates, ceramic decorative items, vases, bottles, etc. According to the initial classification, there was no problem with the import. However, one of the items, which were baby bottles, had a different TNAN code, which if found containing BPA, would be banned for import. Of the bottles, several models and sizes with different descriptions were found, and on the bill it indicated that BPA was contained in them. Due to the ignorance on the part of the importer of such a component the import was continued anyway.

When the cargo arrived, the container was moved to the temporary holding area in Cuenca to begin the Consumer Declaration Regime. Before transfer, a check is performed; but having been a varied import, the problem wasn't identified because the container was not completely downloaded. After admittance to the temporary holding area in Cuenca, the customs declaration is filed, the taxes are paid, and the act of capacity is performed. The inspection by the customs official was performed diligently, revising most of tariff subheadings. First, some bottles were checked, which were correctly labeled with the phrase "BPA free" on the packaging, but another variety was reviewed and the packaging stating "contains

BPA.” This caused the customs official to request that the container be fully unloaded and all items to be reviewed.

At the end of the inspection, 4 types of bottles were reclassified and identified as prohibited imports. Unfortunately, a proper inspection and identification of the products was not performed and the consumption rate was approved; the importer at that point was subject to comply with the directive of the customs authority and assume the legal consequences entailed. The report was sent to the District Manager who ordered a charge separation and reloading of the merchandise. All these processes involve costs that are covered by the importer.

The delivery process between when the report was issued until the reshipping took place was about two weeks, during which time the entire load was retained. When the order was issued, the importer had to reopen the container to segregate the load that did not meet the import rules for later reloading. After the removal of the load, the importer had to explain how he would reload the merchandise and present the booking confirmation for transport out of the country. Once approved, the reloading process could be initiated at the same time as the release of the rest of the load. This process that has been briefly explained in reality took over a month to solve and release the remainder of the merchandise that had no problems.

The economic repercussions of this case were significant. The costs of freight, insurance, taxes, storage, etc. for import did not generate any revenue as planned. The total import cost was \$ 7,592, its CIF value was approximately \$ 9,800. Apart from these costs, the process of reloading amounted to \$14,700; which did not include the CIF value. Within this amount, the costs of storage, fines, freight transshipment, legal fees, customs agent fees, internal transport, etc. are included.

In contrast, the State did not incur in any losses considering they were able to charge fines. However, it did involve a large investment of the customs official's time.

In practical cases of problems in imports of goods, either unauthorized or prohibited, there will always be a higher cost for the importer. The State assumes certain losses, but these generally are recovered through taxes and penalties, while the loss of the importer is generally unrecoverable. The reliability on foreign investment into the State can be affected, but this depends on the individual circumstances of each case. In this case, the error was clearly on the part of the importer's ignorance to the import laws. If by contrast, the problems in imports were due to legal instability, or some fault on behalf of the state, then the country's reputation may be tainted.

CONCLUSIONS AND RECOMMENDATIONS

The categorization of goods as unauthorized and prohibited has support from the international community. The sovereignty of countries is based on their specific needs. The creation of these lists should not be based on any discriminatory measure and justifications should be given for each item listed. It is important to learn about these trade measures; let it be clear that unauthorized goods and prohibited goods are not synonymous, but two different categories that have their own rules and regulations. Unauthorized import goods may be imported and nationalized when certain prerequisites are fulfilled, while prohibited goods may not enter the country, unless under special circumstances.

To identify what type of merchandise is being dealt with, it is essential that the correct tariff classification be used; otherwise, the customs inspection could be slowed which may impair the process. It is recommended that importers, who are new, seek advice from a professional foreign trader, either an agent or a

consultant, to be aware of any new regulations. Regulators of trade, such as the National Customs Service and the Foreign Trade Committee, are direct and reliable sources; however, they do not always provide timely updates available to the general public.

Regulatory and compliance monitoring for imports have become increasingly severe and inflexible. Therefore, if the goods to be imported are unauthorized, it is advisable to check the compliance requirements before boarding. The pre- importation documents may be submitted within 30 days upon arrival in the country, but this is not recommended as a common legal procedure because it is very risky, especially considering the constant changes in processes and regulations. One of the major changes that have occurred recently is the cessation of authorizations for labeling in the country, which has hurt many importers who used the customs warehousing procedure to attach their products to the previous requirements.

Customs procedures offer different benefits, but to access them you need to have enough understanding to apply them correctly. In the case of the unauthorized importation of goods, it is always advisable to fulfill all the requirements and use the customs warehousing procedure for the suspension of taxes, as an example. However, prohibited goods should only be imported under the schemes that grant exceptions to allow entry. It should be emphasized that not all prohibited goods are admissible into the country under the guise of exceptions; furthermore, to access these exceptions, certain conditions must be met.

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