



University of Azuay

Faculty of Legal Sciences

School of International Studies

Comparative analysis in the operational and legal field between the traditional import model and the B2B import model through electronic commerce.

Graduation work prior to obtaining a Bachelor's Degree on International Studies, Bilingual Mention in Foreign Trade

**Authors: Daysi Estefanía Granda Crespo
Andrea Cristina Mera Andrade**

**Director: Dr. Claudia Inés Campoverde Cárdenas
Advisor: Ing. María Inés Acosta Urigüen**

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ABSTRACT

This thesis focuses on a comparative analysis of traditional imports and Business to Business (B2B) model import through electronic commerce, focusing on global, Latin American and local situation. To achieve this analysis an approach has been made in the legal and operational scope of both import models in order to determine the advantages and disadvantages that importing through electronic commerce could provide to the importer. This work has been the result of a bibliographical research and a field study in which real data of companies and institutions was obtained. This is how we reach the main conclusion that the B2B import model is advantageous in comparison to the traditional one, in the measure of the type of product to be imported, the quantity and its purpose. It is for this reason that it is recommended that uncomplicated merchandise, without greater technical specifications or requirement of guarantees, should be imported through this model (B2B) taking into account the limits established by law.

INTRODUCTION

Imports of goods made by individuals for commercial purposes or for personal effects, whether the importers were natural or legal, involve a series of steps to ensure that the goods arrive in the country of destination according to the law. One of the first steps involves the search and contact of suppliers that, depending on the product to be imported, varies from destination which immediately presents a physical barrier. However, as a result of Internet emergence and electronic commerce, the information is more easily found in addition to the existence of web pages that bring together suppliers (exporters) who operate electronic tools from the receipt of an order to payment.

E-commerce involves new ways of doing business where buyer and seller keep in contact online, crossing physical barriers. A very important kind of this type of commerce is Business to Business or B2B, which is where goods and services online negotiations between different companies take place, in this way, this model has become a practical option for importers.

However, there are obstacles to electronic commerce such as trust between the parties, legal aspects such as taxes, uncertainty in quality, payment methods, etc. that are not yet clear according to Ecuadorian law. It is for the same reason that it has been considered convenient in this thesis to make a comparative analysis of the import of goods made through B2B electronic commerce to a common import featured by the physical barrier between buyer and seller focusing on those operational and legal aspects.

This thesis has been the result of a descriptive investigation since it seeks to properly describe the process of a traditional import and one through electronic commerce in order to compare the two *modus operandi* and in this way determine advantages and disadvantages for the importer. To perform this work, a complement between qualitative and quantitative methods was used, since it was considered essential to analyze the figures of imports in Ecuador, in Latin American region and worldwide, as well as the incidence of electronic commerce in them. Bibliographic research was the main source of information collection; however we also consider it important to perform a field study to get real data from companies and institutions, both public and private that made traditional or electronic imports or are related to regulations and operations.

CHAPTER 1: THEORETICAL FRAMEWORK OF IMPORT

Introduction to Chapter 1

The first chapter refers to the current situation of imports in Ecuador, which is the core of this work, and how they have been affected by different factors from 2013 to the present. In this way, this section aims to describe in detail, both traditional import process, and an electronic commerce import process. For this it has been considered essential to analyze the current situation of this type of trade worldwide, in Latin America and within the national environment, and in this way it seeks to tie the state of development of this type of trade with the country's potential to carry it out. Within e-commerce or electronic commerce there are different modalities. This thesis will focus on the Business to Business or B2B modality. So, this chapter identifies the import process steps in electronic commerce through the most popular pages: Alibaba and Amazon, of which their operation mode will be shown. Finally, it has been considered vitally important to define imports through electronic commerce under emergency regimes, due to the fact that it is one of the most used forms in Ecuador today.

1.1. Introduction to imports and process definition (General State of imports on our country)

As an antecedent to the existing reality of imports in our country, it is worth mentioning objective number 10 of the National Plan for Good Living 2013-2017 (document that sets out different objectives and goals to be met during the previous government period of Economist Rafael Correa). This objective under the designation of the productive matrix promoting transformation, intended "(...) the transformation in the productive structures that promote the substitution of imports and the productive diversification, that allow to revert the concentrating and excluding processes of the current accumulation regime" (National Secretariat for Planning and Development SENPLADES). Starting from this goal, national production was attempted to foment, to the detriment of the imports made to the country. However, despite the efforts of the former Government, performing this plan, issues that Ecuador has been historically logging since the fact that it is a primary-exporting country came to light, raw materials are still constituted as the main product that Ecuador sells to the rest of the world; in the same way, the promotion of exports and innovation and technological policies have been limited.

In the new National Plan for Good Living 2017-2021, within Objective 5: Promote Productivity and Competitiveness for Sustainable Economic Growth in a Redistributive and Solidarity Way, it is stated that in order to change the productive matrix, it is essential to promote transformation and productive diversification, that can create competitive advantages for the country. The intention is to strengthen existing industries and create new ones, incorporating most of the population into the productive sector, with the objective of making the benefits collective. "The most significant challenge in this regard is to change the productive matrix of the country, accompanied by a cultural change that encourages self-confidence." (National Secretariat for Planning and Development SENPLADES). To achieve this, it is intended to promote to the people: thinking and action oriented to production and import substitution, prioritizing exports. It should be noted that in the previous National Plan for Good Living that governed from 2013 to 2017 there was an objective specifically related to productive matrix change. In the current National Plan, it is sometimes mentioned within economic issues and related to them, however, it is no longer an established objective with parameters and goals to follow. There is a possibility that the new National Plan has been coupled a little more to the

Ecuadorian reality, considering that imports cannot be substituted when domestic production does not cover domestic demands.

According to data from "The Observatory of Economic Complexity" (OEC) website, in 2016 Ecuador imported 16 billion dollars of goods. It should be noted that during the last five years imports from Ecuador have decreased at an annual rate of -24.326%, from importing \$ 24.2 billion in 2011 to \$ 16 billion in 2016. Products that have led the imports are oil refined products, which represent 8.36% of Ecuador's total imports, followed by oil tar, which represents 6.08%. As well there are packaged medicines, automobiles and soy flour. It should be noted these data are confirmed by "Trademap" website, which also highlights the commercial balance in 2016 was positive: \$ 608,972, resulting in a positive trade balance. It is important to mention that the positive trade balance is not due to an increase in exports, but to a considerable decrease in imports, the first ones have fallen at an annualized rate of -8.35% during the last five years.

In 2017, according to Central Bank of Ecuador statistical data, from January to August, 12,740 billion dollars of goods were imported, with the United States as the main trading partner. An interesting fact regarding the imported goods origin countries is that in 2016 a total of \$1,8574 billion dollars was imported from the European Union countries, and until August 2017 there is a total of imports of 1,648.5 billion dollars, which represents 88.5% of the amount of the previous year. One of the main causes of this phenomenon is possibly the entry of the Trade Agreement between Ecuador and the European Union, which became effective on January 1st, 2017.

On the other hand, according to a report on "*El Telégrafo*" newspaper published on Tuesday, June 20th, 2017, with the total elimination of safeguards¹ on June 1st, products imports that were subject to this measure grew by \$ 120 million , equivalent to 72% more than in the same period of 2016 (from 1 to 14 of the same month). The goods that were imported most during those days were telephones, clothing, food preparations and household appliances such as refrigerators and televisions. In 2016, imports of the aforementioned goods, in the first half of June, totaled \$ 28.86 million, for 2017 the figure

¹ According to the COPCI, they are appropriate trade measures to restrict or regulate imports that increase significantly, and that cause or threaten to cause serious damage to domestic production. These will be valid for up to four years and may be extended for up to four more years, provided that the need for their maintenance is justified, taking into consideration compliance with the national production adjustment program.

amounted to \$ 54.89 million. In this context, safeguards elimination impact is remarkable, the economy has been truly energized with this reactivation of imports, despite the fact safeguards implementation took place in 2015, by Economist Rafael Correa, with the objective of regulating imports and balancing the trade balance.

1.1.1 Legal definitions

Import:

According to the information published on the National Customs Service of Ecuador website, hereinafter SENA, to import is the action of entering foreign goods into the country complying with customs formalities and obligations, depending on the import regime to which it has been declared.

Commodity:

According to the Regulation to the Title to the Customs Facilitation for Trade, of Book V of the Organic Code of Production, Trade and Investments, hereinafter (Regulation to Title V of the COPCI), commodity is any movable property that can be transferred and which is likely to be classified in the National Import Tariff.

Foreign Trade Operator:

"Any natural or juridical person, national or foreign that intervenes in the traffic of merchandise, means of transport and persons subject to customs control" (Regulation to the title of the Customs Facilitation for Trade, Book V of COPCI)

Customs control:

In accordance with definition: Art. 1, Resolution No SENA-SENAE-2017-0001-RE (M), in accordance with the provisions of Article 3 of Decision No. 778 of the Andean Community, relative to the Andean Regime on Customs Control, it is:

"The set of measures adopted by the customs administration in order to ensure compliance with supranational norms and current national customs regulations, in the exercise of all the powers assigned to the Customs Administration. Merchandise customs control, modes of transport that cross the border and those who perform activities, directly

or indirectly, related to international merchandise traffic, includes analysis, supervision, inspection, verification, investigation and evaluation of the compliance and enforcement of the supranational norms, current national customs regulations and other related norms ".
(ANDEAN COMMUNITY (CAN))

Under the definition of the Regulation to Book V of the COPCI, from the Title of the Customs Facilitation, in accordance with Article 104 of the COPCI, in all foreign trade operations all measures adopted by the Customs Authority will be applied, ensuring respect for the legal order and taxation interest, in order to ensure compliance with legislation and whose application is the responsibility of foreign trade operators.

According to article 144 of the COPCI, customs control must be applied at the time of entry, stay, transfer, circulation, storage and exit of goods, cargo units and modes of transport to and from the national territory. In the same way, this applies to the people who intervene in foreign trade operations and those who enter and leave the customs territory. In accordance with Decision number 778 of the Andean Community, CAN, in accordance with current Ecuadorian regulations, customs control may be carried out in the following phases:

- Previous or prior control: it is made by the Customs Administration before the merchandise customs declaration admission.
- Control during dispatch: it is made from customs declaration admission and until the time of release² or shipment of the goods.
- Subsequent control: it is made from the release or shipment of the merchandise dispatched for a specific customs regime³.

² According to the RG COPCI, it is the act by which the Customs Authority authorizes the declarant or the person concerned to dispose of the goods, according to the purposes provided for in the authorized customs regime, once the goods have left the primary zone and prior to compliance with the requirements and customs formalities required.

³ According to the RG COPCI, it is the customs treatment applicable to the goods, requested by the declarant, in accordance with the customs legislation in force.

For these purposes, SENAE may request information from other public sector institutions and public companies regarding persons that operate on international merchandise traffic and there shall be no secrecy or reservation that is opposable to it.

Electronic Commerce:

Authors Kennet C. Laudon and Carol Guercio define it as the use of the internet and mobile software applications to do business. They are all digital business transactions that occur between companies, individuals and between companies and people. The distinction must be made between the previous definition of online businesses, which unlike electronic commerce, include the digital authorization of the different transactions and processes within a company, without these being externalized. "Online businesses do not include commercial transactions that involve an exchange of values across organizational boundaries." (Kenneth and Gercio, E-Commerce: Business, Technology and Society Ninth Edition)

Business to Business Model (B2B):

It is business-to-business e-commerce, in which businesses focus on selling to other businesses, according to Laudon and Guercio in the E-commerce book 2013: Business, Technology and Society. In this scenario, different actors are immersed, such as: electronic distributors, Internet acquisition companies and industrial networks.

1.1.2 Process of a traditional import

There are 7 different types of Import Regimes:

1. Import for Consumption
2. Temporary Admission for Re-export in the same state
3. Temporary Admission for Active Improvement
4. Replacement of Goods with Tariff Exemption
5. Transformation under Customs control
6. Customs Warehouse
7. Re-importation in the same state

For this work we will focus on Import for Consumption Regime, defined in Article 147 of the COPCI, in accordance with Article 120 of the Regulation to Book V of COPCI, as the customs regime by which goods imported from abroad or from a Special Economic Development Zone (ZEDE) can circulate freely in the customs territory, with the objective of remaining in it definitively, after the payment of all import duties and taxes, in addition to the surcharges and fines, when these have place and compliance with customs obligations.

The goods declared under this regime will be considered as nationalized goods, once the customs tax obligation is satisfied.

On the other hand, we will also analyze the Exception Regimes established in the COPCI, which will have importance within this work. Defining these as shipments or packages that comply with the established limits, they are ruled by simplified formalities, that is why they exception goods, since the general rule is that if these limits are exceeded, they are subject to the general customs norms and must comply with all the required formalities.

The first is referred to in article 164 of the aforementioned Organic Code and in article 209 of the RG to Book V, Title II of the COPCI, and refers to the Postal Traffic, defining it as "the import or export (for consumption) of shipments or postal packages whose customs value does not exceed the limit established in the regulation" (COPCI. Organic Code of Production, Commerce and Investments). They are sent by simplified formalities, respecting the international agreements signed in this regard, as well as the procedures established by the SENAE, which will control the flow of postal mail that enters, circulates or leaves the customs territory of Ecuador, respecting the competencies and attributions of the postal administration. It should be noted that shipments or packages that exceed the established limit will be subject to the consequences established by the general customs regulations. In Article 165 of the COPCI, in accordance with Article 210 of the Regulation to Book V, of the Title of the Customs Facilitation for Trade, the Exception Regime proposed is Accelerated Courier, defined in the Code and Regulations indicated as the correspondence, documents and merchandise that comply with the provisions of the Regulations to COPCI, that do not exceed the limits set forth in it, and that are transported through the public operator or by private operators duly authorized by Customs and registered with the National Postal Agency. The legal entity that carries out the accelerated courier activity and that intervenes in the customs clearance, will have

the same responsibilities and obligations as a Customs Agent, with respect to the Customs Declaration and in relation to the established shipping limits.

It must be known that all natural or juridical persons who are Ecuadorian or foreigners residing in the country and who have been registered as an importer on ECUAPASS system and approved by SENA E may import.

ECUAPASS is the customs system implemented in 2012, with which SENA E facilitates foreign trade processes, reinforces and ensures customs control in our country, saving time in import and export procedures. It is used by Public Institutions and Operators that intervene in Ecuador's foreign trade, by virtue of the norms contained in the COPCI and its Regulations. It serves to make customs processes easier and safer, since electronic signatures can be processed from any location through a device that allows safe operation, according to the Customs Ecuador website information.

As a first requirement you must get the importer registration, for this you must start by managing the Single Taxpayer Registry (RUC) issued by the Internal Revenue Service (SRI) and must be in active status with valid authorizations to issue receipts of sales and referral guides, according to the SRI website. Subsequently, you must get the Digital Certificate for the electronic signature, which can be granted in the Civil Registry, from a fee and to present a certain forms. This signature can also be validated by the Security Data page, accessing the page www.securitydata.net.ec. The next step is to register in the ECUAPASS website, in this way you can create a user, record in the database and register the electronic signature⁴.

It is necessary, then to know if the product to be imported is subject to certain restrictions or if it is considered as forbidden importation⁵. For this you must go to the page of the Ministry of Foreign Trade COMEX and consult its resolutions. In the event that you have the specific sub-item of the product that is going to be imported, you have to consult it in the National Tariff, for the same you have to go to the link: http://ecuapass.aduana.gob.ec/ipt_server/ipt_flex/ipt_arancel.jsp

⁴ According to Electronic Commerce Law, Electronic Signatures and Data Messages, data are electronically consigned in a data message, attached or logically associated to it, and it can be used to identify signature's owner in relation to the data message, and indicate the signature's owner approves and recognizes the information contained in the data message.

⁵ According to the RG COPCI, those will be determined as prohibited by the Council of Foreign Trade, COMEX. Re-boarding will be mandatory, except for clothing, perishables and educational material, which will be donated.

Once the merchandise arrives in the country, the customs clearance procedures must be done. For this, it is usually necessary to have the advice of a Customs Agent⁶.

Within the importing process, there are essential documents that must be delivered for the correct paper work. These documents that accompany the Customs Import Declaration (DAI) are the accompanying documents and support, which will be discussed later.

The Customs Declaration of Importation (DAI) is a form in which general information relative to the merchandise that is being imported is registered. For an import, the respective declaration and procedure is made through a Customs Agent in most cases, as well as certain information of the DAI such as: merchandise weight, port of destination and origin, freight, among others, that they will be taken from the transport document, which has been generated, registered and validated in the Customs computer system that is ECUAPASS, which allows the SENAЕ (prior to accepting a customs declaration) to made validation and verification processes of all the sent content. The Customs Declaration can be submitted physically or electronically in a period not exceeding fifteen calendar days prior to the arrival of the modes of transport, and up to thirty calendar days following the date of arrival, in accordance with the provisions of article 66 of the Regulation to Book V of the COPCI. If this term is not met, the merchandise will be immersed in one of the causes of the tacit abandonment⁷, according to numeral a) of article 142 of the COPCI.

According to Article 68 of the aforementioned Regulation, it is affirmed that if once the Customs Declaration has been presented and accepted, inconsistencies are detected within the declared documents, it is possible that corrections will be made to it. In order for this to be made, the customs computer system will record each one of the changes that are made, as well as the identification of the OCE or the official that intervenes in the process. The modification to the Customs Declaration, may be required by the active

⁶ According to Resolution 409 of the SENAЕ, which establishes the Specific Regulation of the accredited Agents, is the natural or legal person whose license empowers him to manage on a regular basis and for others, the clearance of the goods on behalf of the importer or exporter; for this reason, sign the customs declaration in the cases established by the regulations and being obliged to invoice for their services according to the parameters set by the SENAЕ.

⁷ According to Article 147 of the COPCI, there are three types of abandonment: tacit, express and final. The tacit abandonment will occur when any of the following causes are set: a) Failure to present or transmit the customs declaration within the term established in the RG COPCI; b) Failure to pay taxes on foreign trade within the term of twenty days from when they are due, except when payment facilities have been granted; and c) When the period of permanence of the merchandise in the customs warehouses expires.

subject of the tax customs obligation (the State acting through Customs) or at the request of the taxpayer (the OCE) and will be considered the customs duties and other applicable tax obligations to the date of acceptance of the Customs Declaration that you expect to modify. The Customs official, in charge of the review of the procedure, may make corrections until before the release of the goods. It should be emphasized that all the required corrections may be made, without prejudice to the imposition of fines that may exist. In order to modify it, in accordance with Article 69 of the Regulation to Book V of the COPCI, there is a substitute declaration, which is a correction tool for the declarant or his customs agent, to make adjustments to the Customs Declaration of goods whose “lift” has been made, in the cases in which incomplete or wrong information was registered at the time of the presentation of the Declaration.

On the other hand, there is also the Simplified Customs Declaration which is “a standardization of the customs declaration of import or export and is intended to automate the entry or exit of goods within special regimes.” (Todo Comercio Exterior - EC) According with Article 70 of the Regulation to Book V of the COPCI, the General Office of SENAE will establish the cases in which, for reasons of agility or simplification, the presentation of simplified customs declarations will be admitted. A concrete example could be in case an Ecuadorian citizen dies in another country, for the purpose of nationalizing the coffin or amphora with his corpse or remains, for reasons of expediting the process and, above all, simplifying it so that it enters the country without complying with most requirements and procedures that would normally be required.

The documents that accompany the Customs Declaration pursuant to Article 71 of the Regulations to Book V, Title II of the COPCI, are the accompanying documents and supporting documents.

Along with the DAI should be on the one hand, the accompanying documents. According to Article 72 of the Regulation to Book V, Title II of the COPCI, the aforementioned documents are those inherent to prior controls (before the import procedure was made), that is, they must be processed and approved before the import merchandise shipment. The accompanying documents must be submitted, physically or electronically, with the Customs Declaration, when these are required.

On the other hand, there are the Support Documents, according to article 73 of the Regulation to Book V, Title II of the COPCI, they will form the basis of the information of the Customs Declaration to any regime. These original documents, either physical or electronic, must be stored in the file of the declarant or his Customs Agent at the time of the presentation or transmission of the Customs Declaration, and will be under his responsibility, which may be requested when performing a later control⁸.

As established in the Regulation on the Title of the Customs Facilitation for Trade, of Book V of the COPCI, the supporting documents are:

- a) **Transport document.** - is the instrument that proves goods ownership. It can be endorsed even before the Customs Declaration presentation.
- b) **Commercial invoice or document that accredits the commercial transaction.-** It is the support that accredits the commercial transaction value for the goods import, which is why it must be an original document; it must also contain the information provided in the relevant regulations. For the purposes of importing goods that do not have a commercial invoice, the document certifying the customs value of the imported goods must be presented in its place, according to the nature of the import.
- c) **Certificate of Origin.-** It is the document that allows the release of taxes to foreign trade in the cases that correspond, under the protection of international conventions or treaties and supranational norms.
- d) **Documents requested by the General Office of SENAE or COMEX.-** Those considered necessary for the control of the operation and verification of compliance with the corresponding regulations, provided they are not accompanying documents.

Insurance Policy as part of the Import Customs Declaration.- In relation to that is established by Article 74 of the Regulation to Book V of the COPCI and in accordance with the provisions of Article 110 of the COPCI, the value paid for insurance policy Transportation is part of the tax base for taxes payment on foreign trade. In the same way,

⁸ Article 145 of the COPCI states that it is the control that can be made within a period of five years from the date taxes payment on foreign trade. The SENAE may submit to verification the customs declarations, as well as any information held by any natural or legal person related to imported merchandise.

the insurance cost will be part of the customs value, but the insurance policy will not be a mandatory support document required for the customs declaration.

Regarding merchandise shortages and leftovers, in article 95 of the aforementioned Regulation, it is stated that if at the time of unloading, it is considered necessary to make a physical inspection of the merchandise and as part of this act it is evident that there are missing of goods in relation to those shipped or declared, it will be presumed that the loss occurred before arrival in national territory.

On Customs Declaration of Importation a corresponding adjustment must be made, in the cases in which it was presented, paying the taxes that correspond in proportion to what actually had arrived. In the event that there is no evidence of particular circumstances at the time of unloading, and in the act of physical inspection, there is a shortage between what was declared and what was revised, the corresponding adjustment must also be made in the Import Customs Declaration, then the declarant must pay the taxes that correspond in proportion to what is actually inspected, without imposing a penalty. In these two cases, the SENA will request the administrator of the primary zone or corresponding deposit, the justifications that show that the loss did not occur in the national territory and in those cases the administrator of the primary zone or the corresponding deposits, must proceed with the payment of taxes on foreign trade for goods determined to be missing, without prejudice to any sanctions that may exist.

According to the provisions of Article 96 of the Regulation to Book V of the COPCI, as regards the surplus of goods, when at the time of physical inspection there is evidence of surplus merchandise, it is necessary to abide by the provisions of the Organic Penal Code, COIP. For this, it will be necessary to present the Customs Declaration with Missing and Leftover Goods, established in Article 97 of the same regulation, in this case, if after the capacity is determined shortages and surplus of merchandise in relation to what is contained in the Customs Declaration, must verify all the missing and remaining merchandise. Once this has been done, this Declaration and its respective liquidation must be corrected, then the difference in the value of the taxes to be paid must be determined, with respect to the original declaration and the sanction procedure initiated, leaving the Foreign Trade Operator subject to a fine for contravention or customs offense, as determined by the COPCI or the COIP, respectively.

As for the goods not authorized for importation, in accordance with the provisions of Article 98 of the aforementioned Regulation, in the case of detecting merchandise that must have had control documents or import authorizations, which are not received within a period of up to thirty calendar days after their arrival in the country, whether or not the Customs Declaration has been presented, or within thirty calendar days after the capacity assessment report that determines the change in the tariff classification of the merchandise, must be submitted to re-boarding regime and other applicable sanctions. It is necessary to differentiate non authorized merchandise for import, from prohibited import goods, since the first ones can be imported after following a process of certifications and authorizations and the second ones have a total import restriction. It is for the same reason that it must be taken into account that the lack of control documents or import authorizations will not give the quality of merchandise of prohibited importation to goods not authorized for importation, except in cases that are expressly determined by law.

In accordance with the provisions of Article 99 of the same Regulation, the re-shipment will be compulsory in the case of prohibited import goods, except in the case of clothing, perishables and educational materials that will be donated to the Secretary of State in charge of the social policy. The re-shipment will be arranged from the primary zone of the District through which the merchandise entered, taking into account the operational or administrative costs will be paid by the consignee⁹. In order to comply with the regime, the consignee must proceed with the presentation of the simplified declaration to the re-shipment regime¹⁰ and if there are changes in relation to the information included, it may make the modifications according to the procedures established by the General Office for this purpose. The District Director of SENA E will authorize the merchandise destruction, when re-shipment has not taken place within the established deadlines and, as a result,

⁹ According to the RG COPCI, it is the owner of the goods or the natural or legal person to whom the goods are sent or who proves their status as such by presenting the original transport document, consigned in their favor or by transfer of rights.

¹⁰ According to Article 162 of the COPCI, it is the customs regime by which manifested goods that are in temporary storage pending the assignment of a regime or customs destination may be re-shipped from the customs territory. Even if the goods have been declared under a customs regime, re-boarding, proceed when the customs control determines a change in the tariff classification that entails the requirement of prior control documents or others, which were not required according to the declaration by the importer when this hinders the legal importation of the merchandise. The re-shipment is not authorized when it has been configured with respect to the goods presumed founded crime. The re-shipment is obligatory in the case of goods of prohibited importation. This regime will be implemented through simplified procedures according to what the regulation indicates to this Code

there is administrative confiscation. It is important to know that merchandise customs declarations considered as prohibited import will conclude with the regime of re-shipment or the destiny of destruction.

Once the DAI has been transmitted, the SENAE computer system will proceed to grant a validation number and the corresponding capacity channel.

For this we must observe the concept of Dispatch, established in Article 139 of the COCPI, which is the administrative procedure in which the merchandise entering or leaving the country must be submitted. This process begins with the presentation of the Customs Declaration and ends with the release of the goods. With regard to Article 78 of the aforementioned Regulation to the Code, for the dispatch of goods, the following types of capacity must be used: automatic, electronic, documentary or physical, which may be intrusive or non-intrusive. The selection of the capacity has to be done according to the risk profile analysis, implemented by SENAE. According to Article 146 of the COPCI in accordance with Article 105 of the Regulations their selves, Risk Profiles consist of the predetermined combination of different risk indicators, based on information that has been collected, analyzed and ranked. Selectivity criteria will be based on these indicators, based on customs administration information has about foreign trade operators. The functionality and administration of the computer tool that helps to make this process will be regulated by the General Directorate of SENAE.

As a last point in this regard, Article 4 of Resolution No. 0581 of SENAE highlights the confidentiality that should exist with the information used to determine the risk profile, so that the servers that have access to that information, the Compulsory Compliance Regulations must be ruled for them, with absolute reserve. Failure to comply with this will be sanctioned according to the COPCI, the Public Service Law and other regulations that regulate the duties and prohibitions of public servers.

The term Aforo, Capacity according to article 140 of the COPCI, is the act of tax determination, in charge of the Customs Administration and is made through electronic, physical or documentary verification of the origin, nature, quantity, value, weight, measurement and merchandise tariff classification.

For this Act of Capacity, three rules must be taken into account, which according to article 79 of the Regulation to Book V of the COPCI, are:

- a) Nature of the goods: It is established by verifying the constituent material, its elaboration degree and the other features that allow product's full identification.
- b) Tariff classification: It is to perform with the application of the general interpretative rules of the harmonized system for merchandise designation and codification, explanatory notes of the Harmonized System of the World Customs Organization, complementary national notes, internal rules dictated by the SENAЕ for the effect and application of tariff classification consultations in effect, acquitted by virtue of the provisions of the aforementioned Regulation.
- c) Merchandise Customs Value: it will be determined according to the rules of the Agreement on valuation of the World Trade Organization and the national and supranational provisions that rule the customs valuation.

Finally, the value to be paid of taxes¹¹ on foreign trade must be determined. First, according to the provisions of the Tax Code, taxes are classified as follows:

- Taxes
- Fees
- Special or improvement contributions

Following the same line, the tributes to foreign trade are:

- a) Tariffs.
- b) Taxes established in organic and ordinary laws, which generating events are related to the entry or exit of goods.
- c) Fees for customs services.

The SENAЕ through the issuance of a resolution can create or suppress the rates for customs services, also set their rates and regulate their collection.

¹¹ According to the General Introduction to Taxation Brochure, are public charges, which are translated for the Treasury in resources obtained by a public entity, SRI, holder of a right of credit, against the taxpayer, as a result of the application of the law to an indicative fact of economic capacity. Its main objective is to finance the general budget of the State

For the determination of these taxes, the taxable base thereof must be considered, that is, in accordance with Article 110 of the COPCI, the customs value of the imported goods. The customs value of the merchandise will be the transaction value of the merchandise plus the transportation and insurance costs, determined as established by the provisions that rule the customs valuation.

When the taxable base of the customs duties cannot be determined in the aforementioned manner, it will be determined according to the secondary methods of valuation provided for in the regulations that regulate the customs value of merchandise. For the calculation of the taxable base, the values expressed in a foreign currency, must be converted to the currency of legal use, with the exchange rate on the date of presentation of the customs declaration.

The different taxes to foreign trade are:

- **Ad Valorem:** It is a percentage according to the type of merchandise and it is applied on the sum of the Cost, Insurance and Freight (taxable base of the importation).
- **Fodinfra:** (Development Fund for Children) 0.5% is applied on the taxable base of the import.
- **ICE:** (Tax on Special Consumption) Its percentage is variable according to the goods and services that are imported, it is supposed to be applied to luxury products.
- **VAT** (Value Added Tax) It is 12% on the sum of the Taxable Base, the Ad Valorem, the FODINFA and ICE.

1.2 Current status of electronic commerce in the world, Latin America and Ecuador

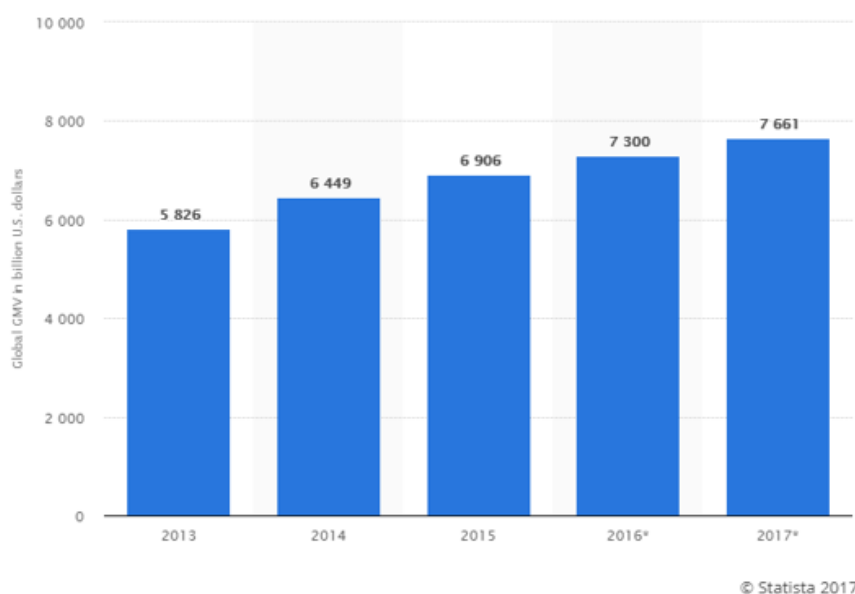
According to Statista statistics website, e-commerce is growing at an accelerated way in its B2C form, that is, business to consumer, which includes sales and online purchases. It is estimated that in 2016, 1.61 billion people worldwide bought products online and in the same year, global retail sales, made through electronic commerce, amounted to 1.9 trillion dollars and projections show a growth of up to 4.06 trillion US dollars by 2020, according to the same source. In Asia Pacific, electronic retail sales accounted for 12.1 percent of retail sales in 2016, but for the Middle East and Africa they accounted for only 1.8 of total retail sales.

Amazon.com is one of the most popular and well-known examples of an online shopping platform, around the world. Initially it started in 1995 as an online bookstore, but later it began to expand its range of products towards other retail products and consumer electronic products. Since 2015, Amazon is the leading electronic retailer, as well as the number one worldwide web retailer.

Regarding the B2B e-commerce market, this has been growing steadily until 2017 and according to Statista Asia is the dominant region within B2B e-commerce, but the participation of North America is growing, Amazon is the leading e-commerce platform in global revenue in 2016, in relation to B2B trade, however Alibaba has won market, especially in Asia.

The following graph shows the global merchandise volume by B2B electronic commerce (GMV according to its figures in English) from 2013 to 2017, in billions of US dollars. The GMV indicator (Gross Merchandise Value) is widely used in electronic markets since these are e-commerce that basically focus on buying a product, to have it in the warehouse and sell it later, therefore it is a metric that is used in those e-commerce that are not dedicated to manufacture, but to resell products. Therefore the GMV metric is the total volume in the specific electronic market, that is, the total of operations that have been made through it, but without applying the discounts, according to the business blog of Iván Ruiz Sevilla.

Graph No. 1 Gross Merchandise Value by B2B electronic commerce (GMV) from 2013 to 2017 (In billions of US dollars)

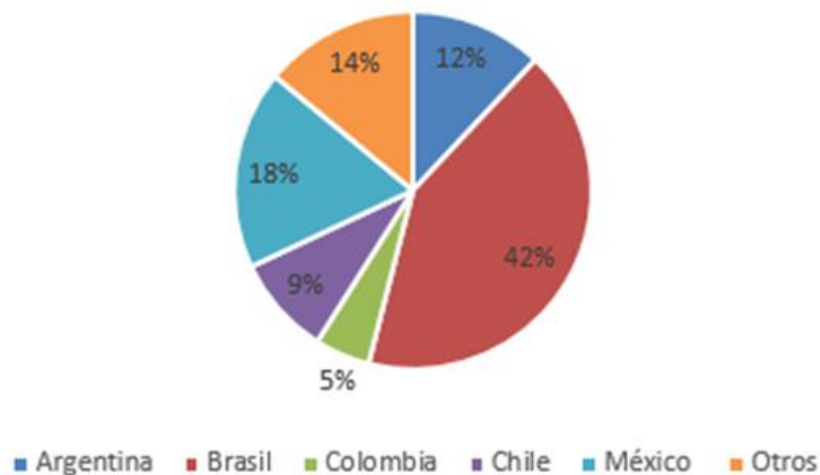


Source: Statista

Latin America continues, along with Asia, to be the two areas of the planet where there has been the greatest growth in electronic commerce. However, the weight of the sector in the global economy of the area is still low, despite the fact that the forecast is of strong growth in the coming years, according to the website of the Observatory of e-commerce & digital transformation. A decade ago, the expansion of e-commerce in Latin America began, but despite growing above 20% of the average in the last two years, the percentage of e-commerce in the total of the economy is not considered so representative. That proves that the possibilities of development of the sector are immense.

According to the Euromonitor International website, e-commerce in Latin America is expected to reach \$ 59.1 billion in 2017.

Graph No. 2 Percentage of e-commerce within total trade in Latin America



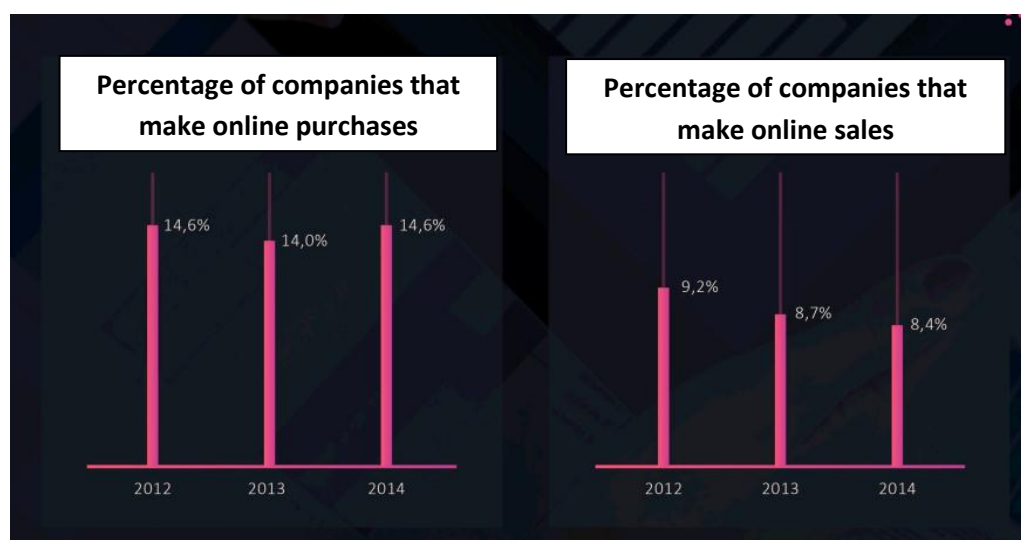
Source: Euromonitor International

Made by: Granda Estefanía; Mera Andrea

In Ecuador, according to the last Module of Information and Communication Technologies made by the National Institute of Statistics and Census, which aimed to present the main results on information and communication technologies (ICT), and which were obtained from manufacturing, mining, commerce and services companies, based on Industrial Surveys 2012, 2013 and 2014, the commercial transactions made electronically by Ecuadorian companies, increased from 2013 to 2014 by 0.3%, going from 16, 8% to 17.1%. This is a study done to 3,777 Ecuadorians in total. To all the

companies investigated, 8.4% of them sold their products online, while 14.6% made some purchase online. In 2013, these values were 8.7% and 14%, respectively, so although sales have had a percentage reduction of 0.4%, purchases through the network increased. In 2014, of the total purchases made by the companies investigated, 29.5% of purchases on average were made online.

Graph No. 3 Percentages of Ecuadorian companies that negotiate on the internet



Source: INEC

In 2015, Electronic Commerce in Ecuador represented approximately 800 million dollars in transactions, according to the Ecuadorian Chamber of Electronic Commerce, which promotes initiatives such as eCommerce Day in Ecuador. That is an initiative of the eCommerce Institute carried out in 2008 in different Latin American countries, and "aims to promote a favorable space where companies doing business online can exchange experiences and solutions." (Ecommerceday Ecuador)

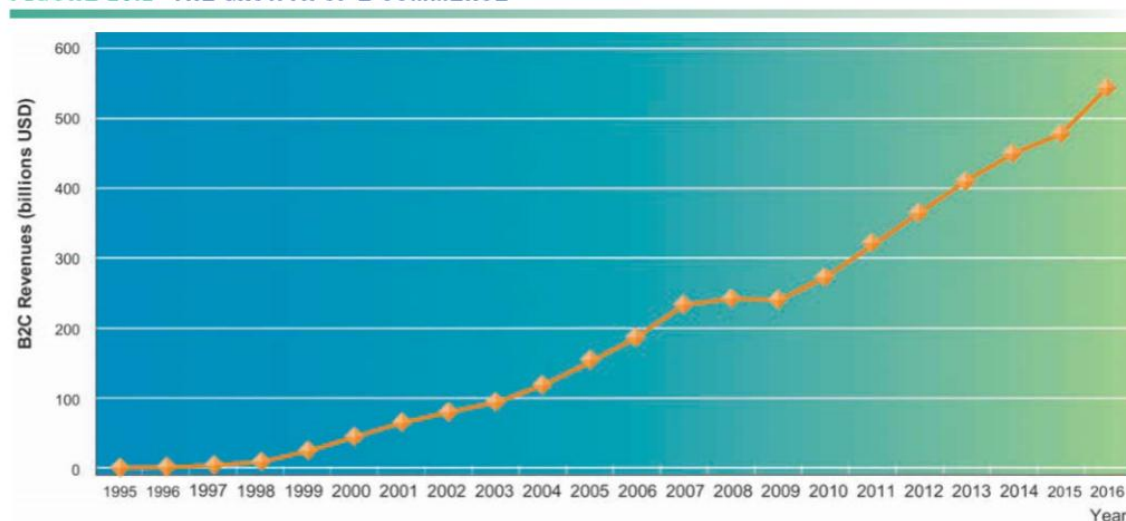
1.3 E-commerce and the Business to Business model or B2B

Thanks to the emergence of the Internet and information technologies, the way business operates in general has taken a turn, being the critical technological issue within an organization in terms of its strategies and survival on the markets. Thus, a new way of doing business has emerged based mainly on the commercialization of goods and services by electronic ways. Initially the term e-commerce or e-business was coined by IBM, a US multinational technology and consulting company, in 1997, referring to it as the

linking of transactional information systems of a company online. However, according to the authors Kenneth C. Laudon and Jane P. Laudon, who point out in their book Management Information Systems (Laudon and Laudon, Management Information Systems.) that electronic commerce began in 1995 when, Netscape.com, one of the first Internet portals popularized the idea that the Web could be used as a new medium for advertising and sales. Three years after its emergence of it, it has grown remarkably as can be seen in the following graphic.

Graph No. 4 The growth of E-commerce from 1995 to 2016

FIGURE 10.1 THE GROWTH OF E-COMMERCE



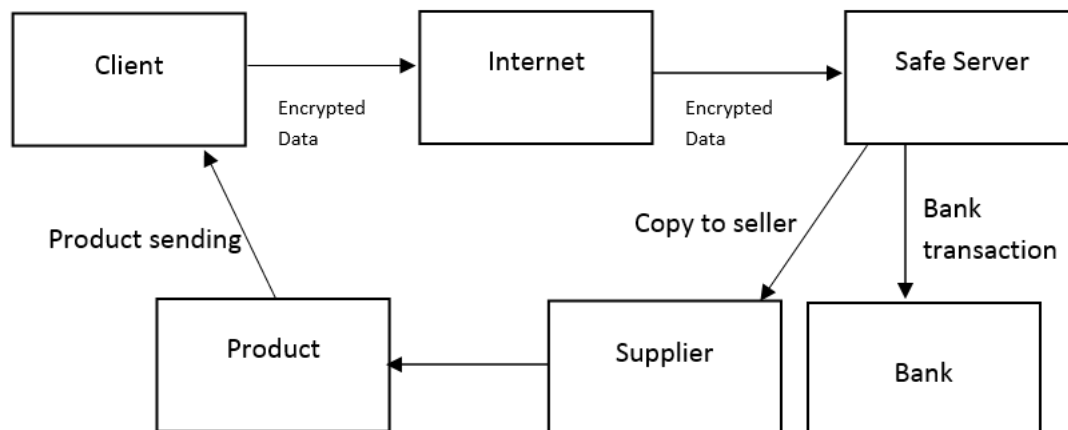
Source: Kenneth C. Laudon and Jane P. Laudon, Management Information Systems.

Regarding the national context, on April 17th, 2002, the Electronic Commerce Law, Electronic Signatures and Data Messages came into force, in which, as previously defined, reference is made to electronic commerce as any commercial transaction made in part or in its entirety, through electronic information networks.

It has been thought appropriate also to point out the definition according to the author Daniel Cohen, in his book Information Systems for Business (Cohen, Karen and Asin Lares) E-commerce can be defined as the technology application for the automation of business transactions and workflows (...). It emphasizes generating and exploiting new business opportunities, since it generates value and allows more to be done with less.

The following graph taken from the book of the above indicated author summarizes the typical model of electronic commerce.

Graph No. 5 Typical e-commerce model



Source: Daniel Cohen, Information systems for business.

Made by: Granda Estefanía; Mera Andrea

Therefore, in this case, technology becomes the means by which seller and buyer keep contact, creating a virtual space. It is important to note that e-commerce model currently is not only given through the use of a computer, but also through smartphones, tablets such as iPads, and other mobile devices that use wireless Wi-Fi networks. "The use of wireless handheld devices to buy goods and services from any location, is called mobile commerce or m-commerce" (Laudon and Laudon, Management Information Systems)

However, electronic commerce presents a classification based on the nature of the participants, such as: business to business (B2B, business to business), business to consumer (B2C, business to consumer), consumer to consumer (C2C, consumer to consumer) and consumer to business (C2B, consumer to business).

Since this research work focuses on the B2B model, we will proceed to study only that, except in the case of the Amazon website explanation.

According to Laudon and Guercio E-commerce book 2013: Business, Technology and Society (Kenneth and Gercio, E-Commerce: Business, Technology and Society Ninth Edition) This model appears when businesses focus on selling to other businesses. According to author Daniel Cohen, this modality has represented approximately 80% of electronic commerce in recent years. "The use of the Internet for business-to-business commerce and collaboration among business partners expanded to more than \$ 4.1 trillion" (Laudon and Laudon, Management Information Systems). This last data can be

evidenced in the emergence and growth of web pages dedicated to electronic commerce such as Alibaba and Amazon that are making a difference not only when purchasing a product or service, but also to the way of carrying out foreign trade, specifically imports.

1.4 Import process through electronic commerce B2B pages

At first instance, there is no official source of the process of import through electronic commerce, because they occur through web pages, which bring together suppliers both manufacturers and merchants of different products and services that are handled through e-commerce with its own methods and processes. That is why it has been considered convenient to analyze two of these, considering them as the most used or most renowned today: Amazon and Alibaba.

It is important to point out the previous steps to import, explained above, have been ignored, since they remain the same, unless it is an import that does not need to be licensed and registered in the Ecuapass, that is, imports under the Exception Regime, whose customs value does not exceed the established limit in the Regulation for the Exception Regimes: "International Postal Traffic" and "Accelerated Courier" to which reference will be made later.

Alibaba

Based in Hangzhou Alibaba, is a Chinese company dedicated to electronic commerce. According to the official website of the Alibaba Group, it was founded in 1999 by eighteen people, whose leader was Jack Ma, a Chinese businessman. The founders knew at that time the internet was the right tool for small businesses to take advantage and compete more effectively in domestic and global economies. Today Alibaba has become a world leader in mobile and online commerce. The company is defined as a B2B search engine that connects buyers and suppliers around the world.

How to operate

The first step to make an online purchase in Alibaba is to enter the website www.alibaba.com and create a username and password, for this it is necessary to have an email address. Clicking on the Help and Community tab displays a box with several information options for new users of the page. When you click on the buyer, a sequence

of the process to make a purchase appears and the details of each stage that will be explained below.

Graph No. 6 Process to make a purchase on Alibaba



Source: www.service.alibaba.com

At first: Getting Started, you will find information regarding the Alibaba company and an informative video.

Secondly, Finding Product or Finding Products, three ways to find the product that is required are indicated, these are:

1. Enter the product you are looking for in the search bar or browse through the categories.
2. Request for quote (RFQ) through publication of the same to allow suppliers to contact, or you can get personalized assistance through a professional purchasing agent.
3. Finally, you can search for the required product through the wholesaler option, where, unlike a normal search, you can find products with low order or purchase quantities (MOQ).

The third step is to contact the selected suppliers, Alibaba recommends that they have the badges that identify the verified suppliers so that quality and professionalism are guaranteed. There are three ways to contact the seller:

1. Send a request or query using the Contact Supplier option.
2. Chat in real time through the Trade Manager application offered by the website.
3. Contact the provider through a call, fax, etc.

The fourth point is to place an order on or off line and the payment. However, Alibaba recommends ordering online since this way; you can track the order and request a refund in case of a dispute. You can place an order online using Trade Assurance, a free service

offered by Alibaba, designed to build trust between buyers and suppliers. This system covers the order from payment to delivery, focusing on the quality and delivery on time. That is, the user will be covered if: their products are not shipped on time according to the contract with their supplier and if the quality of the products does not meet the standards according to the contract with their supplier.

There is also the Secure Payment Services system, which translates into secure payment and consists of retaining the buyers payments while processing the orders and once both the buyer and the supplier have verified that the transaction is complete, the money is delivery to the supplier.

The next step is basically a suggestion of the B2B website, in which you can verify the quality of the products ordered through the Inspection Service of Alibaba.com. This service consists of a visit by an inspection company to the manufacturing facilities or ports in China. With this service, the buyer receives reports with images in order to guarantee quality.

The last step is the order transport and logistics. Alibaba offers this service through partnerships with logistics providers that cover LCL (Less Than Container Load) and FCL (Full Container Load) maritime shipments around the world. It should be mentioned at this point that, depending on the negotiation term agreed with the supplier, the transport may be the responsibility of the seller or buyer. In case there is any inconvenience in the process, it will be announced on the website, then Alibaba will offer possible solutions.

Amazon

Amazon.com, was founded by Jeffrey P. Bezos, American businessman, in July 1994, based in Seattle, United States. This website focuses on online retail purchases in North America and internationally, so it is classified into a B2C e-commerce model. According to the profile of the company in Yahoo! Finance, Amazon sells merchandise and content purchased for resale by suppliers, as well as those offered by third-party vendors through retail websites. Unlike Alibaba, it provides services to four major groups of customers: consumers, vendors, businesses and content creators. In addition, it manufactures and sells reading electronic devices called *kindles* and allows external merchants to sell their products online. According to the same source, in 2016 they had an income of \$ 135,987,000 and a gross profit of \$ 47,722,000.

Operating Mode

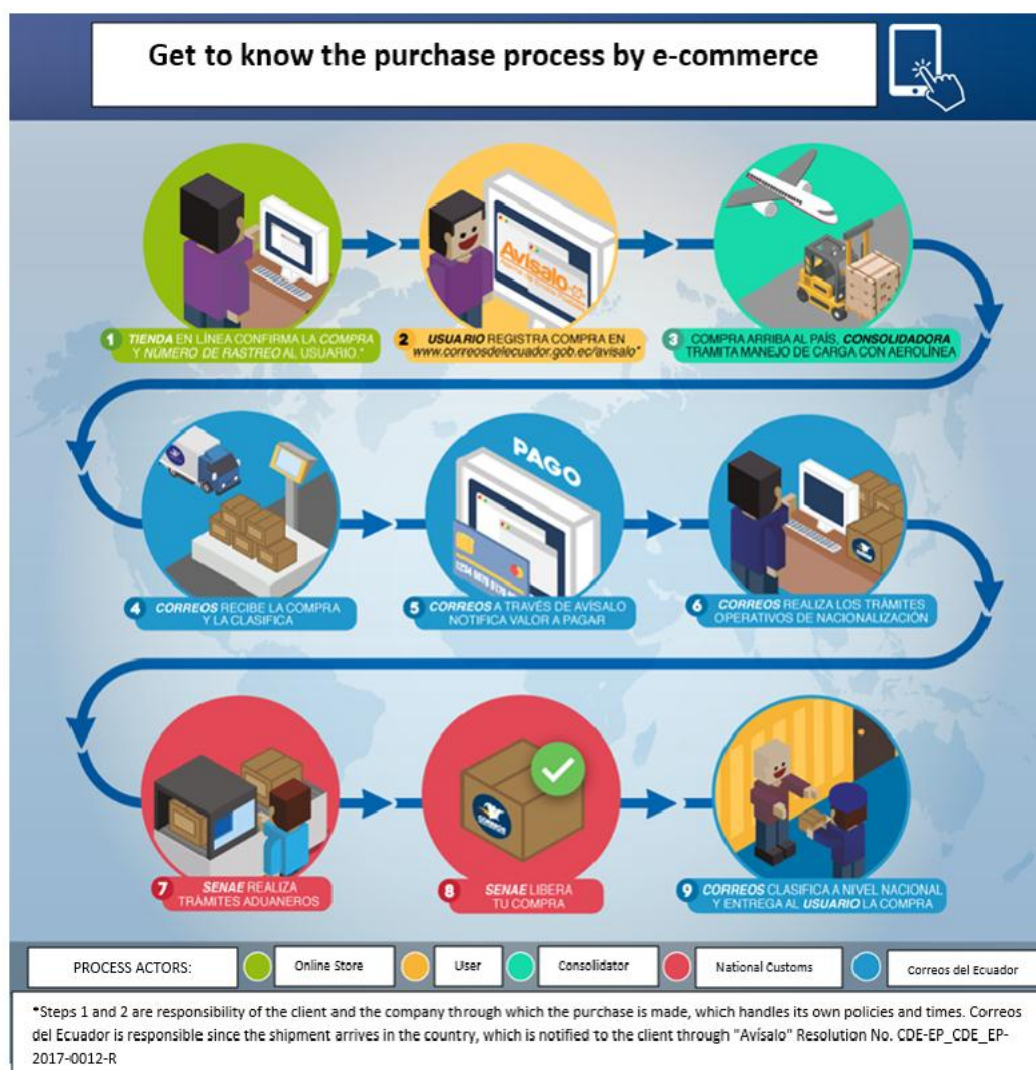
Enter the website www.amazon.com and after creating an account, ie a user and password with an email, the session starts and proceeds to search for the required product, either through the categories provided or through the search bar available. In order to make a purchase it is necessary to register personal data such as a credit card, delivery address of the products, email, etc. Once the product is selected and the quantity is added to the shopping cart. Finally, we proceed to make the payment with the registered credit card by clicking on Proceed to Checkout. Depending on the type of shipment selected, the package will arrive at the address provided in the United States or to an international address as long as the provider offers this service. In other words, unlike Alibaba, Amazon does not export all the products offered on its website. Given Amazon's business model, electronic commerce in this case focuses on non-commercial purchases. However, if it is necessary to import large quantities of a certain product in order to sell them, contact the supplier and check their sales capacity considering that most are resellers and not manufacturers. In addition, contact an international transport company and manage the shipment to the country of destination.

1.5 Imports through electronic commerce under emergency regimes.

Public company “*Correos del Ecuador*” in an official online statement has reported that of all the package that has entered Ecuador, 69% comes from China through electronic commerce. Thus, Resolution No CDE-EP-CDE-EP-2017-0012-R of Correos del Ecuador, published on September 15th, 2017, issues a new tariff "(...) as a result of the Nationalization Procedures of all the international package related to electronic commerce in postal matter in the declared weight range of up to 2,000 gr., for a value of USD \$ 3.13 (Three with 13/100 United States of America dollars) without Including VAT." (Correos del Ecuador)

In addition, the public company Correos del Ecuador has implemented a new system due to the increase in purchases through electronic commerce called *Avísalo* and explained in the following image:

Graph No. 7 Avisalo System from Correos del Ecuador



1. Online store confirms the purchase and tracking number to user
2. The user registers purchase in www.correosdelecuador.gob.ec/avisalo
3. The purchase arrives to the country and the consolidator manages cargo handling with the airline
4. Correos receives the purchase and classifies it
5. Correos notifies the value to be paid to the user through the system "Avisalo"
6. Correos carries out nationalization operations
7. SENAE carries out customs procedures
8. SENAE releases the purchase
9. Correos classifies nationwide and gives the purchase to the user

Source: Correos del Ecuador

In this sense, the above shows the growth of imports through electronic commerce using B2B platforms. Next, the legal aspects involved in this type of imports will be analyzed.

Within Book V of the COPCI called Systemic Competitiveness and Customs Facilitation, reference is made to the exception regimes, which include Postal Traffic and Accelerated Messaging or Courier, regimes through which purchases have increased international

online in the platforms explained above, so it has been considered convenient to analyze the situation.

Postal Traffic, according to the article 164 of the COPCI in agreement with the article 209 of the Regulation to the Title of the Customs Facilitation, is the import or export to shipments consumption or postal packages whose value in customs does not exceed the limit that is established in the regulations and will be dispatched through simplified formalities according to the procedures determined by the National Customs Service. According to the Regulation for the Exception Regimes: "International Postal Traffic" and "Courier", in this regime two Public Operators are involved.

According to the article 165 of the Organic Code in mention, in agreement with the article 210 of the Regulation to his Book V, Title II, "Accelerated Messaging or Courier" is the correspondence, documents and merchandise that fulfill with what is stated in the regulations dictated by the National Customs Service General Director and do not exceed the limits set forth therein, transported by so-called express mail, will be cleared in customs through simplified formalities. According to the Regulation for the Exception Regimes: "International Postal Traffic" and "Accelerated Messaging or Courier", in this regime two private operators or a public and private operator intervene.

That is to say, the object of the exception regimes is to dispatch imported products through simplified formalities, as long as they comply with the limits established in terms of value and weight. On the other hand, the main difference between the two regimes indicated is that the first, Postal Traffic, is developed by the public company *Correos del Ecuador* and the second, Accelerated Messaging or Courier, by all other private courier companies duly authorized by the SENA, dedicated to the consolidation and transfer of international air cargo.

It is convenient to point out that, in these two specific cases, according to the Regulation on the Title of the Customs Facilitation for Trade, of Book V of the COPCI, specifically Article 64, the declarant is not the importer but the public operator, or private operators duly authorized to operate under these regimes.

However, imports that exceed these limits referred to above, which vary depending on the product classification (later explained as categories), will be subject to general customs regulations, this is why when dealing with exception regimes, keep in mind that these are not designed for commercial purposes imported merchandise.

The Regulation for the Schemes of Exception: "International Postal Traffic" and "Accelerated Messaging or Courier" defines commercial purpose as the purpose for profit by its quantity, or use of any item or object that enters the country through the regimes of exception of "International Postal Traffic and" Accelerated Messaging or Courier ", destined to the same consignee or related.

Suspensions of commercial purpose are established, when there are factors such as: merchandise imports greater than those necessary to satisfy exclusively personal consumption, according to the merchandise type in question, considering for this purpose each procedure or a set of formalities; its presentation in an ideal form for commerce; the presence of identical merchandise in a procedure or in a set of procedures, in the case of merchandise that is not destroyed or rendered useless with its first use.

In that sense, it is clear according to the law that an Ecuadorian merchant must limit him/her self to import merchandise for lucrative purposes, under exceptional regimes.

So, it is required to show that due the need to strengthen the customs control service, to combat smuggling and fraud, SENA has implemented a new rate for the control service, which has a tariff of ten (10) cents, in accordance with Resolution No. SENA-SENAE-2017-0001-RE (M) published on November 1st, 2017, which began to be applied to all products that entered the country as of November 13th, 2017, except for the exception customs regimes of "Postal Traffic" and "Accelerated Messaging" and the Customs and Trans shipment transit regimes, whose entry into force will be January 15th, 2018; according to Resolution No. SENA-SENAE-2017-0004-RE (M), and with specific exceptions regarding the payment of ten (10) cents, as for example the case of the goods covered by the customs regime of importation to consumption, with exemption from taxes, such as: personal effects of the traveler, technical aids, donations, relief shipments, among other exemptions, as well as other regimes, which will have a zero rate (0) cents.

For purposes of application of the Customs Control Service Fee (TSCA), the calculation will be determined on the tax base constituted by the multiplication result of USD 0.10 with the division of the net weight declared by item (gr) for the control unit (gr).

1.6 Categories of goods for emergency regimes

Imports made through exception regimes "Postal Traffic" and "Accelerated Messaging or Courier" are classified into 6 different categories according to what is stated in Title VII of the Regulations for Exception Regime:

1. CATEGORY A - Documents

This is where letters, newspapers, photographs, titles, magazines, books, etc. are classified, that are not for commercial purposes and that are not forbidden importation. This category is free of taxes and does not require any control document prior to import, that is, they do not require any customs declaration.

2. CATEGORY B - 4X4

Under this category are all packages that weigh up to 4 kilograms and valued up to USD \$ 400, and can only be used by natural persons. The value and weight of the imported must be presented simultaneously. This category includes a specific tariff of USD \$ 42 per import, the consignee can enter packages of up to 5 imports (4×4) or USD \$ 1200, and whatever comes first in the fiscal year. It is important to mention that the payment of the tariff is only for the regime of Accelerated Messaging or Courier, Postal Traffic does not pay said tax.

3. CATEGORY C - 50 Kg \$ 2000 Apply TSCA

Within this category are classified packages that weigh up to 50 kilograms and up to USD \$ 2,000 that do not fit into any other category. The value and weight and features must be presented simultaneously with the exception of samples with no commercial value.

Regarding cell phones: only for individuals, they may import up to one (1) new unit per fiscal year. In the case of spare parts that are urgent, a weight not greater than 200 kilograms will be allowed in that category, provided that its value does not exceed USD \$ 2,000.00.

The law mentions that the limitations of value and weight of the goods indicated above are excepted when their number does not exceed 10 units, considering for these purposes, as a unit, including games (sets or kits) according to the rules of tariff classification. This category does pay taxes: Advalorem whose percentage will depend on the product, Value

Added Tax (VAT): 12% and FODINFA: 0.5%. The prior control document must be presented only for the products that require it.

4. CATEGORY D - Clothing, made up textiles and footwear. Apply TSCA

In this case, all packages with clothing, other made-up textile articles and footwear, which are not covered by Category B, will be classified in category D, must necessarily be declared in this category, in terms of weight, this cannot be exceed 20 kg, and the value cannot exceed US \$ 2,000.00.

This category pays these taxes: Advalorem: 10%. Specific: \$ 5.5 per kg of clothing, in the case of footwear \$ 6.00 per pair of shoes. VAT: 12% and FODINFA: 0.5%.

It is important to show that in the first importation of clothing and footwear of up to \$ 500 in the fiscal year, no prior control documents will be needed, as long as they are imported only by natural persons and without commercial purpose. From the second import into this category within the fiscal year, if prior control documents are required such as licenses INEN, MIPRO, labeled R13.

5. CATEGORY E – Medicines

In this category, non-commercial packages containing medicine, orthopedic equipment, organs, tissues and cells are classified; human fluids and other elements required for emergency medical and surgical procedures; equipment and devices for people with disabilities, free of the payment of taxes justifying their need, either through the presentation of a medical prescription.

Category E does not include limitations of weight and value; likewise, no prior control documents will be required and, as indicated in Art. 125 of the COPCI, the following products are exempt from payment of taxes on foreign trade: medical devices, special tools and prostheses that people with disabilities use for their use or the legal persons responsible for their protection. As well as: Fluids, tissues and human biological organs, for medical procedures to be carried out according to the applicable legislation for that purpose.

6. CATEGORY F - Books and Computer Equipment Apply TSCA

In this category are books or packages containing books or similar. Finally, a summary table of the categories applied to the merchandise imported under the exception regimes is presented below and it is specified in which the TSCA applies:

Graph No. 8 Categories of Postal Traffic and Accelerated Messaging

POSTAL TRAFFIC AND ACCELERATED MESSAGING OR COURIER			
Categories	Description		Taxes
A	Correspondence as documents, letters, newspapers photographs. etc.		Free of taxes
B	Packages up to 4Kg and US \$ 400	Up to 5 imports or \$ 1,200 per recipient (per year)	Tariff: \$ 42 per import
		Up to 12 imports or \$ 2400 per migrant sender. (per year)	Free of taxes
		Migrant Registration. www.consuladovirtual.gob.ec	
C	Packages: up to 50 kg and \$2000 Requires Previous Control Document according to the product, except INEN		Tariff Depends on the Product VAT 12% Fodinfra 0.5%
D	Clothing, ready-made textiles and footwear up to 20 Kg and \$ 2,000 (Require INEN, except the first time per year up to \$ 500)		Textiles: 10% ADV US \$ 5.5 x Kg Footwear: 10% ADV + US \$ 6 x par. VAT 12% Fodinfra 0.5%
E	Medicines (With prescription)		Fodinfra 0.5%
	Orthopedic equipment, organs and tissues, etc., without commercial purposes.		Free of taxes Art. 125 COPCI
F	Reading books		Fodinfra 0.5%

Applies
TSCA

Applies
TSCA

Applies
TSCA

Source: National Customs Service of Ecuador.

Made by: Granda Estefanía; Mera Andrea

Conclusion to Chapter 1

Recalling that the main objective of this research is to perform a comparative analysis with focus on the operational and legal scope between the traditional import model and the B2B import model through electronic commerce, with this first chapter we have managed to know what an import is, the definition, its process and the general state of imports in Ecuador, what electronic commerce is and the B2B model, what the imports are, through this type of trade and the current state of the same in the national context. It has also been considered convenient to analyze imports through electronic commerce under the Exception Schemes given the current growth of the same in the country and the decisions taken by the control entities involved such as the public company Correos del Ecuador and the National Service of Customs of Ecuador.

CHAPTER 2 COMPARATIVE ANALYSIS

Introduction to Chapter 2

In this chapter, we decided to conduct interviews with different companies and institutions, both public and private, as well as an academic perspective in order to determine different operative and legal factors. In one hand, representatives of three companies were interviewed: Colineal, Marcimex and Labahia.ec, in addition we conducted interviews at the Chamber of Commerce of Cuenca and the District Customs Office of this city, as well as Correos del Ecuador and DHL Courier company. Likewise, it was considered necessary to have the academic opinion of foreign trade professor, and commercial engineer Antonio Torres. The objective of these interviews was to collect information about the type of imports that are commonly carried out by local companies and the problems and advantages that this generates. On the other hand, a legal and operational analysis was made related to the two types of imports. In this chapter we also made reference to the opinion that the different actors and entities deserve the customs tax, mentioned previously in the first chapter.

2.1 Analysis of the interviews conducted (Interviews attached in annexes)

2.1.1 Analysis of the interview with Commercial Engineer Antonio Torres, current university professor and foreign trade operator.

Engineer Torres informed us that before the process of a traditional import or import through electronic commerce, the need to import a specific product or merchandise must arise.

After this need arises, in traditional imports, a purchase order is generated to the supplier, then a shipment order is generated, according to the features with which the importer wants the merchandise to be brought into the country. Depending on what type of products are going to be imported, prior permits¹² have to be requested and once with these in the country, it can proceed to process the internal permits such as phytosanitary products. From this, the merchandise can proceed to be shipped, for this it is necessary to obtain a date in which there is quota in a shipping company, the first semester of the year it will be easier to get a quota, while in the second it becomes more complicated for Christmas and New Year festivities. For the procedures to be carried out with the shipping company, there must be a person called forward or agent¹³, who is able to get quotas with the different shipping companies. “You have to notice that you should try to tie the production of the goods to import, with the quota that you have in the shipping company, the time when production ends is the ideal, with which the quota that you have must coincide in the shipping company” (Torres). However, in the interview, the engineer Torres also mentioned that Chinese suppliers are generally quite unfulfilled in terms of the delivery dates of the products, so this must be noticed because, according to data from Trademap, in 2016 around 20% of the products imported by Ecuador, came from China.

When looking for suppliers, Antonio Torres says that this process is usually carried out by doing a search of the product on the web, then you enter the different pages that offer

¹² On www.gob.mx, the official website of the Government of Mexico, is defined as the license or authorization that is not part of the tariff regulations of the merchandise, so that foreign trade operators can import or legally export merchandise that are subject to this requirement

¹³ This would be in Ecuador the equivalent of an Export Load Agent, which according to Article 2 of the Regulation to Book V, Title II of COPCI, is the legal entity authorized by SENAE, which can provide cargo handling services, grouping of goods and presentation of the Customs Declaration, in what refers to exports.

the products. Once on the page, you have to find the place where you say "Do business with us" or "Contact us", that way once you get in touch with the sales manager of the site in question, you can start the negotiation process. It should be noted that this is already considered as electronic commerce, even though it does not constitute the import operation in its entirety.

After having contacted the supplier, you have to ask them to send samples of the products that the importer needs. Initially these providers will send digital samples. However, if a second stage of negotiation is reached, it is possible that they send physical samples. With the samples you can discuss any product feature, any change that has to be made. Usually the samples are free, they are paid by the supplier. At this point there is also a big problem with Chinese suppliers, according to Engineer Antonio Torres, since it usually happens that after they have sent the samples and the importer has accepted the product with the sample features, at time of merchandise shipment, they can be totally different products to those of the sample. This is a problem that also happens very often in imports through electronic commerce, because the importer must rely on the features with which the product is described on the website that offers it and these, in many cases, are not compatible with reality. That is why you have to look at the comments that users make on the page about the product you want to import.

As for the form of payment that is commonly used in traditional imports, there is the issuance of a letter of credit¹⁴, which is issued after making the purchase order. Letter of credit must be advanced before the arrival of the merchandise to the country.

Regarding imports through e-commerce, Engineer Antonio Torres established certain advantages and disadvantages:

Disadvantages

- Product that is bought on the page, and subsequently received, is different from what is shown on the page, has different features.
- Certain providers do not offer guarantees. For example, Amazon is a page that does not take responsibility for the products it sells, it is simply a logistical facilitator.

¹⁴ According to the BBVA Bancomer financial group page, www.bancomer.com, it is the payment mode by which a bank is obliged to pay a supplier, on behalf of a client, a certain sum of money within a defined period of time, directly or through a Correspondent Bank and against the delivery of previously defined documents, which attest to the sale of a good or service rendered.

- It is not advisable to import too large or complex machines by this means.
- Specialized technicians are needed for the installation of complex machines. The supplier sends a technician specialized in the installation and assembly of the machine, thus ensuring that it works, besides that for it this is a basic requirement to be able to offer a guarantee. After the technician sent signs an authorization to operate the machine in the country of destination, the guarantee is valid; it should be noted that the payment made to the technician for his/her services, is paid by the importer.
- E-commerce still does not replace 100% of the range of products that can be found in physical stores. This type of trade is reliable for a range of products, which do not require much guarantee or are not required returns.

Advantages

- On websites such as Alibaba or Bestbuy, product suppliers usually offer a guarantee.
- E-commerce works quite well in supply chain management platforms with supply companies for spare parts for example. When the stock of these spare parts reaches a minimum point, the order of the spare parts to the headquarters is automatically made; that is why they are internal platforms of each company, unless international platforms are used.
- The e-commerce saves hundreds of thousands of dollars for the logistical advantages it provides, the facilities for sending, paying and searching for suppliers.

2.1.2 Analysis of the interview with Dr. Jaime Moreno, Chamber of Commerce of Cuenca Legal Director and Eng. Diego Farfán, in charge of the systems department of the aforementioned Chamber.

Electronic Commerce Law, Electronic Signatures and Data Messages indicate that any activity that uses any electronic support or in its entirety makes use of it already constitutes electronic commerce. Then, making a broad interpretation, the fact that email is used to establish contact or that a product is searched in Google already implies that this type of commerce is being used. However, the guidelines that exist in the country, from a perspective of the Chamber of Commerce of Cuenca, are very difficult, for example, the tax on the exit of foreign currency, since this ultimately makes the product

more expensive. In the same way, there are many technical regulations at the time of clearing any merchandise.

Specifically in Cuenca, electronic commerce is used, but according to Dr. Moreno, it is necessary to work on security in this type of commerce. In our city there are some companies that innovate and go to the forefront, such as Paypal type payment platforms or trading platforms such as Compras.ec. However, it is necessary to educate people about this issue, since there have been problems of: identity theft, fraud, among others, through electronic networks, so it is necessary to learn the correct way to make formal and secure electronic commerce.

Regarding the lack of regulation on electronic commerce in Ecuador, Chamber of Commerce Legal Department Director affirms that those who are in the private sector, has as its maxim the following premise: "Everything that is not prohibited, is permitted". This means that in the private sector you have the capacity to carry out many activities, without the need for many regulations. The rules that exist are basic, being necessary to remember that the Electronic Commerce Law, Electronic Signatures and Data Messages, took the model of the UNCITRAL (for its acronym in English) United Nations Commission for the Unification of International Trade mentioned in the first chapter, which is a pretty old guide.

Regarding Ecuadorian Electronic Chamber of Commerce, Dr. Moreno, said this is a good initiative, however it is quite incipient, it needs to reach a greater degree of maturity so that it can work well. This Chamber has a website: <http://www.cece.ec>, according to the same, its objectives are: to organize the eCommerce DAY in Ecuador and perform shopping behavior studies online, however he mentions as future projects, give trade training programs, grant certifications in electronic commerce, among others. eCommerce DAY is an eCommerce Institute¹⁵ initiative since 2008 in different countries of the Latin American region and aims to promote an environment where companies dedicated to Internet business can exchange experiences and solutions, also creating a collaboration channel for those interested in entering this market, according to the information published on the event website <http://www.ecommerceday.ec>. In this

¹⁵ ECommerce Institute is a regional non-profit organization that develops and supports Digital Economy in the different countries of Latin America with the aim of promoting initiatives that consolidate and promote the business world online.

initiative the Ecuadorian Electronic Chamber of Commerce has had participation in recent years; however this must continue to develop to achieve more optimal results.

It is highlighted in the interview that electronic commerce does not greatly affect traditional commerce, in physical stores. However, the problem of this type of commerce is that it can give rise to informal commerce¹⁶ and this reference is made mainly to contraband¹⁷. According to Dr. Moreno, the costs of imports and legal uncertainty are the cause of opting for this trade type, because the costs in Ecuador are not competitive and people prefer to save. It has been seen in recent years, for example, on the northern and southern border of our country, people are going to buy different items such as school supplies, computers, and tires, among others.

Regarding the platforms the Chamber of Commerce of Cuenca members use more frequently to make electronic commerce transactions, Eng. Diego Farfán mentioned that the social network Facebook is the most used to make purchases and sales online, due to its level of availability. Alibaba and Aliexpress were also mentioned, which are used by some partners, but most of them already have defined suppliers. Mr. Diego Farfán affirms there are few direct importers, generally partners buy their products from an importer to sell them later, since there is a lot of ignorance about the advantages that e-commerce can offer. There are quite a few limitations to electronic commerce in Ecuador, there are too many controls and few incentives, for example in the United States when sales are made online, taxes are not paid as VAT, that is why this type of trade is so widespread in that country. Apart from the incentives, which should come from the public sector, the private sector does not provide much support in the financial field, according to engineer Farfán. People when buying online have to have a payment mode and get a payment button installed on a website, which is too expensive, even for large businesses.

Regarding the operational part of electronic commerce, they believe that businesses are not prepared here in our country to serve electronic customers, they do not have the necessary logistics to deliver the product or to manage the product. We must improve the

¹⁶ It is all types of trade that an individual makes outside the formal structures of the State, evading the payment of taxes and other legal formalities.

¹⁷ According to article 301 of the COIP, it is when a person has the objective of evading customs control and surveillance, on merchandise whose amount is equal to or greater than ten unified basic salaries of the worker in general, carrying out different acts (8), which they can bring as a consequence, pecuniary penalties of up to three times the customs value of the merchandise, as well as deprivation of liberty, from three to five years.

issues of customer service, electronic invoicing, page development, logistics, and the Chamber of Commerce is beginning to be a support in this regard.

2.1.3 Analysis of the interview with of Marcimex national purchasing manager, Eng. Juan Francisco Vanegas

100% of Marcimex's imports are direct; they are purchased directly from the manufacturer, usually from China, Korea and Japan. As well all the import process including import permits, nationalization is handled with the supplier.

Regarding the way in which they seek their suppliers, he mentioned three alternatives:

- The first is visiting the different international fairs, in this case in China, in the city of Canton, which is one of the largest fairs, which usually occur in October or end of April, there are exhibitors worldwide and especially Chinese producers.
- The second alternative is through the import manifests of Ecuador which is is the document that contains the information regarding the means of transport, packages, weight and identification of the merchandise of the cargo. For example, if you need a musical box, you should look through the cargo customs manifests¹⁸ who have imported musical boxes therefore, you can identify who has been the provider of them. Then you have to contact the provider.
- The third alternative is paid platforms, such as the case of "Ariba", which are search platforms for suppliers, where you simply search for the product that is needed, according to its features, and there you can see all the suppliers at the same level, as long as they have paid to be included in this list. It is a paid platform with which one can always be sure that suppliers are trusted and that they deliver quality products.

As for the possibility that Marcimex could eventually opt to import directly through a virtual platform, he said that it is not something that can be known with certainty, since it depends which type of products they are looking for. In the case of Marcimex, they import products from certain brands, such as: LG, Samsung, Sony, Panasonic, and therefore they go directly to the producer, not to an intermediary, because they are brands

¹⁸ According to article 2 of the COPCI, it is a physical or electronic document that contains information regarding transport modes, number of packages and generic identification cargo comprises. This document must be presented by any international carrier or its transport operator when entering or leaving the country to Customs.

that are already developed. He thinks that if they were a smaller business, not of the magnitude of Marcimex, it could be an option for them; however, currently it is not, because the products that matter are complex.

Regarding the recurring problems that Marcimex has as a company while doing traditional imports, engineer Vanegas mentioned the main problem is the production times in China. This country has an over demand because the whole planet buys from it, so the production quotas are fairly disputed among the buyers. The Chinese supplier, by itself, is not involved in its production, and then the dates of products shipment and delivery generate a great inconvenience.

The second problem is the fact that Ecuador has a very complex import regulation, so in order to bring a product, it has to pass tests and the products must comply with certain specific regulations, which hinders the import process.

On the other hand, tariffs increase, which in the end does not affect the importer as such, but the final customer, who ends up paying.

2.1.4 Analysis of the interview with Miss Elisa Rizzo, sales manager of La bahía.ec

We interviewed La Bahía.ec Cuenca's manager, a website that sells products imported from China, through electronic commerce. She told us that although it is believed that electronic commerce in imports is somewhat easy, it is necessary to notice that in this business there is currently a lot of competition, since the main competitors are large companies such as Coral Hypermarkets or Importadora Vásquez. Another information point is that there are times that the merchandise arrives 25% wrong or not according to the purchase order generated online, therefore, they run that risk by not going in person to check it. She also told us that there is ease of communication with suppliers by electronic means such as: email or Skype.

2.1.5 Analysis of the interview with Eng. Cristina Córdova, National Decoration Imports on Colineal.

Colineal has been in the market a little more than 40 years, the company is dedicated to furniture manufacture and also furniture and decoration accessories imports. Among the imported products are mirrors, lamps, figures, paintings, watches, cushions, and kitchen

and bedroom items, all of which has a diversity of suppliers. These last ones already have a history with the company and they maintain commercial relations from the very beginning. The reason that it is not necessary to visit them is because electronic means are used such as: email, WhatsApp, Dropbox and social networks that makes it a lot easier in real time communication, which allows them to make decisions quickly and generate the purchase order. In case of needing new suppliers, the company does it through fairs abroad and also in the case of specific products they do it through Alibaba, given the Chinese market sizing. However, for reasons of confidentiality, the company has not made purchases on this platform, but only after having found the supplier they are contacted internally; noticing that Alibaba is a global public access page, Colineal must ensure who the supplier is, where it is from, its corporate name, its production and who its customers have been. In spite of this, they do not rule out one day doing the whole process within the platform, since they are willing to adapt to the technological evolution, that is, the change and the processes progress that this entails. As for the merchandise acquired using the platform information, the company has had no problems, it has arrived according to the order, in good condition and of good quality.

The advantages provided by using electronic tools for an import are mainly operational: fast and real-time communication with suppliers, ease of negotiation and B2B platforms using, a broad portfolio of suppliers is obtained. However, the process confidentiality is necessary when using e-commerce platforms, given local market competitiveness, so information must be handled with care, with the aim of ensuring their investment, and that it is not convenient for the competition to know what, where and how it is being bought.

2.1.6 Analysis of the interview with Engineer Carlos Brussil, SENAE District Department of Cuenca, capacity technical operator

Regarding import tax regulation on electronic commerce when making an international purchase through B2B platforms, Eng. Brussil made reference to those that are presented under Regime Exception or Regime 91. In these procedures the customs declarations are simplified and generated directly by the Courier. When making a purchase in an international store or platform, once the selected products have been added to the cart, the personal data is recorded and the payment is made, there the first tax to be paid is generated, which is 5% exit of currency taxes, which in electronic commerce, is charged

directly to the credit card entered into the website or platform used. Within the data entered, you must put a box address of the Courier of your choice, whether it is Correos del Ecuador, Transky, FedEx, DHL, and others authorized by Customs. Depending on the company, they will have agreements with different airlines and may or may not charge per box. Once the cargo is consolidated, it arrives at the airports, either from Quito or Guayaquil. If they are 4x4 purchases, these are 4 kilos and \$ 400 dollars, they do not pay taxes, but they pay a fee of forty-two dollars and they have certain limitations, at most five shipments per year and two thousand dollars. If the package does not pay taxes, the Courier in this case, generates the Simplified Customs Declaration and from that the capacity comes out, which can be automatic, physical or documentary and freight is released.

In the case of packages for which taxes are paid these are classified in the other categories (listed in the first chapter of this work), which taxes depend on the type of product, for example, if it is a laptop, it enters the Category F, the Courier official makes the customs declaration and Customs reviews the procedure and the respective taxes are generated based on the sub-tariff heading, as well as the restrictions and prohibitions. In the case of computers, they pay: advalorem, IVA, Fodinfra, so the respective calculation must be made. To obtain the tax base, the value of the invoice, plus freight and insurance, should be notice, if there is no freight value, for Courier it is \$ 1.5 per kilo, that rule is applied in an international arrival room, when there are no presumptive costs. As for the insurance, this is the result of the sum of the value of the transaction plus the freight, multiplied by 1%. Once the taxable base is obtained, the tax is calculated. The sum of: the taxable base, plus the advalorem, and the Fodinfra, for 12% of the VAT, corresponds to the taxes, and finally this value is generated in a Customs Clearance¹⁹.

The Customs determination that a person is importing through Exception Regimes for commercial purposes, is an issue that depends on the official that performs the capacity, therefore it is a subjective issue. If it is determined that the package is for commercial purposes, it is reclassified and the tariff heading of the product is checked, as are the restrictions or prohibitions, therefore the calculation of taxes is applied and taxes must be

¹⁹ It is the payment of the corresponding taxes to foreign trade (in this case to an import) through the institutions of the National Financial System or with credit and debit card VISA and MASTERCARD. This payment is made once the DAI (Import Customs Declaration) has been presented and its acceptance and authorization by SENAE has been notified, in order to proceed with the payment of said taxes, within the period established according to the case according to article 116. of the COPCI

paid. Customs also verify the merchandise value²⁰, which must be according to the declared value and based on it, the taxes are calculated and in case of not corresponding, the process of Reasonable Doubt²¹ begins and five days are given so that the user justify the value.

When a person without a RUC (in Spanish: Registro Único de Contribuyentes), or importer's license, makes an international purchase through e-commerce platforms and their merchandise requires those permits for proper nationalization, a common situation nowadays, the cargo arrives to shift deposits²² in Quito or Guayaquil, which work all year. The importer or buyer has thirty days to regularize, from the date that entered the deposit, but the merchandise falls into tacit abandonment. It must be remembered that in the case of Courier, it is allowed to import up to two thousand dollars and up to 50 kl and if it exceeds one of these limits it can no longer be nationalized by the Exception Regime, it becomes a normal load and must be declared under the Regime 10, to Consumption.

Finally, Eng. Brussil recommends verifying the shop used is legally constituted, that it is a real company that it operates in a known language, and that it is reliable, to avoid inconveniences such as re-shipment, since ignorance does not exempt responsibilities²³.

²⁰ According to Art 79 letter c of the Regulation on the Title of the Customs Facilitation for Trade, Book V of the COPCI, the customs value of the imported goods will be determined according to the rules of the Agreement on Valuation of the World Trade Organization (WTO).), and national and supranational provisions governing customs valuation

²¹ According to the Specific Manual for the Customs Valuation of Goods issued by the SENAE in 2013, there is a reasonable doubt as to the reasons explained and substantiated by the customs administration to doubt the documentation or information, either in relation to the veracity, accuracy or integrity of the value declared by the foreign trade operator or other circumstance, in relation to the importation of the goods and in application to the agreement of the value of the WTO and complementary rules.

²² According to Title Regulation of the Customs Facilitation for Trade, of Book V of the COPCI, it is the customs service provided directly by the Customs Authority or by authorized third parties of said service, destined for those goods that cannot be loaded or unloaded directly to or from the means of transport that will take them to their final destination, or whose withdrawal or lifting, in accordance with the mode of dispatch, require other customs operations. The importer or exporter may indicate to which temporary deposit his charges will be paid, in accordance with the regulations issued for this purpose by the National Customs Service of Ecuador. For example: Frioexport and Emsa in Quito

²³ It is a principle of law that states that ignorance or ignorance of the law does not serve as an excuse, since it governs the necessary presumption that, having been promulgated, all should know it.

2.1.7 Analysis of the interview with Eng. Nuria Maldonado, Correos del Ecuador Regional Director CDE E.P.

From the interview with Eng. Maldonado, information was obtained that purchases through e-commerce in 2017 have increased by 365% in relation to 2016 and that most of these come from China and Singapore.

Correos del Ecuador brings the shipments from any part of the world acquired through e-commerce that arrive in Ecuador and which has an agreement with the Universal Postal Union²⁴, most of them coming from platforms such as Wish or Alibaba, which are mandatory sent by Correos del Ecuador, since there is no option to choose the Courier. Postal mail must be used in theory, only for personal purposes. However, in practice, there are packages for commercial purposes, which have led to a large inflow of packages compared to 2016, since they have increased six fold. Customs is the institution which determines whether the packages have a commercial purpose or not and classifies them. Given the overflow of Correos de Ecuador, since October 1st, 2017, the collection of three dollars with fifty-one cents was established for each package received from electronic commerce, in order to help the operating process (clearance procedures)²⁵. Within the 4x4 system (no more than four kilos or four hundred dollars) there are packages that can weigh five hundred grams and cost only eight dollars, but contain five hundred computer chips, so, by common sense, it is presumed to have commercial purposes. Such cases cause inconveniences, first of all to Customs, so for the interviewee the creation of the new rate of three dollars with fifty-one cents is justified.

Finally, for Correos de Ecuador employee, there is law ignorance problem and the existing restrictions. In addition to that by trying to evade taxes or formalities, users do not become importers and by mail you can only send up to thirty kilos. As for the delays in the delivery of the packages, it is due to the lack of personnel, the short budget of the public company and the large amount of packages arriving in the country.

²⁴ United Nations International, intergovernmental organization, specializing in postal services, of which Ecuador is a member.

²⁵ It is the procedure that an importer must follow (in most cases with the help of a Customs Agent) in order for the goods to be nationalized in accordance with the regulations in force against SENA.

2.1.8 Analysis of the interview with DHL Corporate Clients shipments economist Carolina González

Regarding the existence of local companies that do their imports by DHL, through electronic commerce, the economist said that there are some companies that do their purchases electronically, for example Pathprofit, which sells environmental equipment, which in turn purchases by web pages such as Amazon, EBay, among others.

Corporate clients have a DHL account and with this company they are offered freight credit, that is, they ask their suppliers for whatever they want and they charge the freight cost to their account, which would be like a credit card payment.

The problem, according to the economist González, is that when you buy from Amazon or EBay, they deliver the products at a certain address and it is not possible to deliver them directly to the DHL office. So, what customers who buy electronically do is send to a relative or a friend in the United States, these people put everything in a single package and thus send it by DHL. On other occasions, customers have a warehouse in Miami, where their merchandise is consolidated²⁶ and brought to Ecuador that is the vast majority of cases. When you buy directly on a page it is difficult to bring the goods with DHL, because these pages do not have a physical address in which to pick up the product, since DHL offers a door-to-door service, so it is essential to remove the products of an address. If they buy directly from the supplier, it is possible that the merchandise is removed, because the supplier makes a call to DHL, grants the customer's account number and proceeds to withdraw from the customer's office.

Regarding the increase of online imports, according to the purchases that have been sent by DHL, economist González affirms that in 2017 there was indeed an increase in them. However, one of the main reasons was that 2015 was a pretty bad year. The customers who have most come to buy online are those who buy technological items, according to the interviewee, and DHL has many customers who import cell phone cases, screens and accessories in general. There are also companies that specialize in making imports with people who do not know the subject, from getting the supplier and the products that the

²⁶ According to paragraph f) of the Regulation to Book V, Title II of the COPCI, cargo consolidation is the act of grouping merchandise corresponding to one or several shippers to be transported to or from Ecuador, for one or more recipients, through a contract held with a consolidator or freight forwarder authorized by SENAE

client requires, until the end of the import. According to the data of this official, in 2017, imports in general grew by more or less 10%, in the city of Cuenca. In the number of imports, 32% grew, so it has not grown in weight but in quantity of these. For the economist González, Cuenca is a city much more importing than exporting, 70% of the clients (corporate with whom she works) are importers and 30% are exporters.

However, most customers do not buy online due the problem the pages do not have physical addresses.

Regarding the 4x4 postal system abusively, Carolina indicated that there are customers who bring products without indicating they have a commercial purpose and yet these are sold by the importer. For example, she has a customer who brings from China sports soccer shoes within the 4x4 regime. As he can bring 5 imports annually per person, he brings in behalf of his different relatives during the year to be able to stock up on enough products. The percentage of duty on shoes is 30%, so it is much cheaper for him to pay the cost of shipping, than the taxes he should pay here to nationalize the goods. However, this type of activity has decreased a lot.

2.1.9 Analysis of the interview with IMPORTEC CEO Engineer Fernando Vélez, and DHL user

Eng. Fernando Vélez, IMPORTEC CEO and DHL user was interviewed. The interviewee commented that he regularly (at least once every two months) imports through the Courier regime, however it is not always the 4x4. The imports that he made have a commercial purpose and he usually makes them in the electronic platform Alibaba. IMPORTEC is dedicated to the import and commercialization of machines and spare parts for mining extraction and according to the Engineer he told us, the clients, who own mines, usually need specific spare parts in a certain time, in order to continue with their activities, this is usually when the machines need parts changes due to usage. Due to the immediacy with which customers require these parts, they must request the shipment of these parts to Chinese suppliers, which in most cases have been found in Alibaba, and they immediately send them by DHL. The interviewee told us that in these cases they use the express DHL service, he added that he has never had any problems with this service and that he is satisfied with the results he has obtained from imports made in this way.

2.1.10 Analysis of the interview of Mrs. Dayana Vidal, Ali Express and Correos del Ecuador user

We interviewed Mrs. Dayana Vidal, a user of both AliExpress²⁷ and Correos del Ecuador. The interviewee told us that the purchase she made (for personal purposes) on the Chinese platform was a regular one and did not have any difficulties, she also highlighted her preference to make purchases abroad (e-commerce platforms and international store websites) and that prices are much cheaper than in the local market. However, the package in this case was received in the destination city (Cuenca) three months after arriving in Ecuador (October 8th, 2017 in Quito) according to the tracking made on the company's website. Mrs. Vidal tells us that it was the same time that she took the import of the package from China to Ecuador, so her annoyance and discontent with the Post Office service was inevitable. She added that the package was destined for her home, but in view of the fact that it did not arrive, she went to the offices of the public company in Cuenca who informed her that she must first receive two notifications at her home and then approach them at the offices. Despite this, Ms. Vidal never received those notifications so her only option was to track the package (through the guide number through the Correos del Ecuador website) which arrived in Cuenca on December 6th, 2017 and it was delivered to her at the offices on January 4th, 2018. Finally, she told us that it is not the first time she has problems with Correos del Ecuador, that her case is one of several, that there are people who never receive their packages. The interviewee, although she does not agree with new tariff collection (applied to all the international parcel related to electronic commerce and explained in the first chapter) since in other countries it is not handled in this way, she expects the service provided by Correos del Ecuador will improve as well the efficiency of its processes, including solving time problems, since at the moment it is not acceptable.

²⁷ It is an Alibaba Group Chinese website, dedicated to the sale of products at low cost that directly connects Chinese manufacturers with private buyers around the world.

2.2 Opinions and positions regarding the Customs Control Service Fee (TSCA) from the interviews conducted

Eng. Cristina Córdova, Colineal National Decoration Imports

Eng. Córdova, thinks that any measure government establishes is fine, as long as it is handled in an objective way. The new rate does not seem like a bad idea, it has already paid on an import in 2017 of high amount and the rate was \$ 500, a value that did not seem overstated, but according to the weight of the imported merchandise. She told us that for other importers that have brought heavier things, it has been more expensive, and that all importers are exposed to that. Eng. Cordova referred to the previously applied safeguards of 40% and 45% on the value of things, which doubled the cost at destination. Noticing the above, she finally told us that if the TSCA is \$ 50 - \$ 200 seems consistent, and does not disagree, rather it seems an initiative according to the needs of the import sector, and that is something that can be comply since it is not exorbitant.

Eng. Carlos Brussil, SENA E capacity operator Cuenca District Office.

Eng. Brussil informed us that the rate has a collection purpose. He told us that some time ago safeguards were applied and they lasted up to two years. Therefore, it is complicated that the country reapplies another safeguard or wants to increase tariffs on certain products; our legislation says that taxes on foreign trade are customs duties (advalorem, specific and mixed), taxes established in organic and ordinary laws (VAT, ICE, FODINFA) and rates for customs services, which will be regularized, created or eliminated by the SENA E, therefore do not need any endorsement of the WTO or CAN, but it is enough for the Director General to subscribe the respective resolution²⁸. In this sense the new rate was created that applies to the previous, concurrent and subsequent control and calculation. According to the resolution stated in the first chapter, it will be ten cents for the result of the division of the net weight in grams, divided for the control

²⁸ Order issued by the person in charge of a public service, whose scope is limited to the context of the service and its compliance is mandatory. It is important to mention that: one of the powers that cannot be delegated by the Director General of SENA E according to article 216 of the COPCI, is to issue by means of resolutions the instructions and circular offices necessary for the application of operative, administrative, procedural aspects, etc. for the proper functioning of the customs administration and aspects not contemplated in the respective legislation.

unit, which depends on the sub-item, for which entry into the Ecuapass is necessary. Finally, he told us that importers have been heard saying that the rate is high and that a forty-foot container pays around one thousand to three thousand dollars.

Dr. Jaime Moreno, Chamber of Commerce of Cuenca Legal Director.

Dr. Moreno showed his discomfort about the TSCA for several reasons. Firstly, they do not find a reason why Customs, which has been working for 150 years and that already has the resources it needs to function within the general budget of the State, is now going to charge ten cents for doing what has already been done.

Secondly, the rate is technically a contribution of a given service. The tax is something indeterminate since when a tax is paid it is not known if the money collected will go to security, education, roads, anyway; a rate is for something specific, and as Chamber of Commerce they do not find the specific objective.

On the other hand, weight's rate calculation, the way it is measured is not logic, Dr. Moreno gave the comparative example between a plastic fan and a metal one, the metal being much more expensive because it weighs more. However, the quality or technology of it is not measured.

He affirmed that main consequence of this rate is the lack of legal security in the country. This security is what gives confidence and allows relationships to exist of any kind, having clear and stable rules over time. Fundamentally, both domestic and foreign investment in Ecuador is affected by this type of measure.

Eng. Moreno says it has not had a strong impact on consumer prices; however, they hope this rate does allow smuggling to be controlled, which is supposed to be their goal. It should be noted there is a lot of contraband of household appliances in the country, which comes mainly from Colombia and Peru. They hope the money collected will not go solely to SRI for a fiscal deficit issue, because in this way it would not be fulfilling an effective control of contraband. So, in theory, he thinks that this rate would be fine, as long as these percentages are still low. Unfortunately there is no Resolution in which the control units of this rate are defined. But once one matters, such as in the Ecuapass it is known what the percentage is, today for example in the case of motorcycles it is of five thousand points, but it is unknown if tomorrow this can go up and down, there is great instability in that regard. There is no legal framework that is defined long in this regard.

Engineer Juan Francisco Vanegas, Marcimex National Purchasing Manager

For his part, engineer Vanegas, states that the way the SENAE handles the situation, creates instability in terms of customs duties, or tariffs and the generation of new orders for products is somewhat complicated. In Ecuador there is currently a lot of speculation regarding tariff items change²⁹ for 2018, but it is not known yet. Likewise, he considers that it is necessary to be supplied with all the products, because Ecuador does not produce any of them. They consider it a lottery, and they have to make their orders little by little, so that the demand can be covered. However, it has happened to them that they have had some inventory breakdowns³⁰, for example in the month of December 2017 they had a breakdown of inventories of large televisions because they imported a certain amount and the market demanded more, due to rumors that the next year its price will rise.

Economist Carolina González, DHL Corporate Customers imports

Regarding the customs control service rate, economist González thinks the problem with this rate is that it began to take effect from January 15th, 2018 and since it was an approach until it was desired to implement it, it had nothing established regarding it. ECUAPASS had no way of calculating it, according to it, importers until this time do not know for sure how much it will cost them. She has many clients who have told her that they will raise 5% to the cost of their products, she said.

However, the clerk interviewed affirms that DHL provides advice to clients on this issue. The basic information given in these consultancies regarding the postal categories that are exempt and the maximum value that importers can pay: this rate collection is exempt for Courier categories A, B and E. The A is for documents, the B is the 4x4 and the E that are medicines and medical equipment. For categories C, D and F the collection is made by means of a formula and the collection of this rate can have a maximum value of up to \$ 700. Another problem with this rate, according to Carolina González, is that Customs put a link for the importer to enter and can see which is the unit of calculation for the product that he/she wants to import according to its tariff. But in spite of that, for her customers that link has not been working and the control unit is quite difficult to calculate.

²⁹ According to the great Encyclopedia of Economics, www.economia48.com, each of the codes defined in the customs tariff is specific merchandise or under which a category of related goods is grouped together.

³⁰ According to www.emb.cl/negociosglobales website an inventory breakdown is when a product is not found in the sales room in the usual place, in the size, variety and the desired shape.

Due to this difficulty represented by the rate calculation, most importers do not have a plan as to what they will do with respect to it and the increase it may have in the cost of their imports, so most will opt for raise a percentage of the cost of the product and that ultimately ends up being assumed by the final consumer. What this creates in people is uncertainty and demotivation regarding the acquisition of imported products

2.3 Final opinion regarding the TSCA

TSCA is a type of foreign trade tax created by SENAE and applied on November 13th, 2017 for imports, except for the exception regimes of "Postal Traffic" and "Accelerated Messaging or Courier" whose entry into force was on January 15th, 2018. It is important to mention that there are certain goods that are exempt from the payment of the rate for example: personal effects of the traveler, technical aids, donations, relief shipments, among other exemptions.

According to the respective Resolution of SENAE, to which reference was made in the first chapter, the purpose of the fee is for the customs control service performed throughout the national territory in the three phases of customs control. Thus, according to statements made by the Minister of Foreign Trade: Pablo Campana, it aims to combat smuggling and supervise the products that enter Ecuador with underpriced prices. However, Eng. Carlos Brussil SENAE official told us that it has a collection purpose.

The private sector together with several unions such as the Chamber of Commerce of Cuenca and the Chamber of Commerce of Guayaquil have shown their dissatisfaction with the application of the TSCA, based on the incoherence of the fact that SENAE charges for a service that has already provided and that its calculation is not clear enough with respect to the control unit, thus generating legal uncertainty. In addition, the Andean Community (CAN), in January 2018, admitted a request from member countries to qualify the customs control service fee as a levy, if confirmed, it could be without effect.

Meanwhile, importers who have been affected in their business since the application of the safeguards, which were in force until June 2017, have opted to increase the cost of their merchandise in a range of 5% - 10%; value that will be reflected in the retail price. That is to say, it is the final consumers who at the end of the accounts suffer the consequences when paying imported products.

2.4 Legal analysis of traditional imports

It is already known at this investigation point that imports are regulated by the COPCI, the Regulation on Trade Customs Facilitation Title and Book V of the Code *ibid* and Resolutions, issued by the Director General of SENAE, as for the Foreign Trade Committee. However, being this chapter a comparative analysis, it is necessary to mention some specific points regarding the legal scope, remembering that as a traditional import model it is understood as the import carried out under the Consumption Regime (10).

- To import under the Consumption Regime, it is mandatory to obtain the importer registration for which the RUC issued by the SRI must be counted.
- Also, it is necessary to get the Digital Certificate for the electronic signature granted by the Civil Registry.
- In addition, registration in the ECUAPASS portal is necessary.
- It is important, once the merchandise arrives in the country, customs clearance procedures must be made along with a Customs Agent's advice.
- For import type, the Customs Import Declaration (DAI) must be presented together with the accompanying or support documents according to the merchandise.
- Finally, this type of import must pay taxes on foreign trade based on the calculated tax base: customs duties, taxes established in organic and ordinary laws, whose generating events are related to the entry or exit of goods and the fees for services Customs

Note: According to the Bulletin: No. 415-2017 of SENAE, for those subheadings that are restricted by the Ministry of Industries and Productivity (MIPRO), since January 4th, 2018, the records of importers (and exporters) granted through the Business Information System (SISEMP) of MIPRO, will be obtained in the Ecuadorian Single Window (VUE) of the National Customs Service of Ecuador through the form "[135-008] Application for Registration of Importer and Exporter".

2.5 Legal analysis of B2B imports through electronic commerce

According Inter-American Development Bank (IDB) monograph, entitled "Beyond the recovery: competing market share in the digital era", written by Paolo Giordano, Alejandro Ramos, Kathia Michalczewsky and Barbara Ramos (Giordano), International trade, whether through traditional channels or digital, is subject to multilateral rules established under WTO auspices.

General Agreement on Tariffs and Trade (GATT)³¹ regulates, for example, purchases of goods through electronic means with physical delivery, while the General Agreement on Trade and Services (GATS)³² does not distinguish between the means through which the service is provided. There are also agreements such as the ADPIC³³, Agreement on Aspects of Intellectual Property Rights Related to Trade and the Agreement on Technical Barriers to Trade (OTC)³⁴ have direct implications on electronic commerce. However, the degree to which these measures apply to electronic commerce is not always clearly defined, mainly due to the fact these agreements were created at a time when electronic commerce did not reach significant development levels.

This problem led WTO to establish in 1998 a Work Program on Electronic Commerce, with the aim of clarifying the rules application and making legal gaps shorter. This is something that continues to work at a fairly slow pace, which is why the lack of clarity and regulatory gaps have resulted in countries starting to include provisions for electronic commerce in trade agreements established between themselves, in order to establish a common framework for the partners. An example of this is the Trans-Pacific Economic Cooperation Agreement (TPP). This is the commercial agreement with the broadest range of provisions related to electronic commerce negotiated between 12 countries of the

³¹ It is an agreement of equal treatment and multilateral that regulates the behavior to be followed by the signatory States in the practice of international trade. It was negotiated in Geneva in 1947 and entered into force on January 1st, 1948, applied by nations that represent more than four fifths of world trade.

³² This Agreement enters into force in January 1995. It was basically inspired by the same objectives as its equivalent in merchandise trade, GATT: creating a credible and reliable system of international trade rules, guaranteeing fair and equitable treatment to all participants, boost economic activity through guaranteed consolidation and promotes trade and development through progressive liberalization.

³³ It was negotiated from 1986 to 1994. It is an agreement that incorporated for the first time norms on intellectual property in multilateral trading system.

³⁴ Agreement in force since January 1st, 1995, its main objective is that technical regulations, standards and conformity assessment procedures are neither discriminatory nor create unnecessary obstacles to trade.

Pacific Basin. However, only three of Latin America are included (Chile, Mexico and Peru).

According to Paolo Giordano, Alejandro Ramos, Kathia Michalczewsky and Bárbara Ramos monograph, e-commerce provisions analysis about trade agreements of Latin American countries includes both a quantitative and a qualitative dimension. "Quantitative analysis reveals that about 70% of the ACPs³⁵ reviewed contain, at least, one provision on electronic commerce and 52% contains a separate chapter on the subject." (Giordano). It should be noted that most of the agreements with countries outside the region, include either a whole chapter or provisions related to electronic commerce, but only 56% of intra-regional agreements address this issue, which represents the Latin American region a delay in terms of electronic commerce regulations, compared to others.

Provisions regarding cooperation in matters related to electronic commerce and electronic authentication and signature are found in 41% of the agreements signed with countries outside the region and in 38% of the intraregional agreements. The prohibition on tariffs imposition on electronic transactions is found in 48% of the agreements. On the other hand, the protection of users is excluded in most of the commitments agreed by the countries of Latin America and the Caribbean, this issue is reflected only in 19 of the 100 provisions identified in the monograph published by the IDB. 34% of the agreements include rules on the protection of online consumers. However, the commitment is often limited to maintaining dialogue and ensuring cooperation between national consumer protection agencies, ie there is no binding regulation. Currently, few negotiations have addressed specific issues directly related to digital commerce, most are generic provisions related to foreign trade.

According to that document, there is also a gap between the potential commitments initially proposed in the agreements, those that are to be reached and those that are truly fulfilled. The commitments actually assumed correspond to only 13% of the potentials.

Pacific Alliance countries (Chile, Colombia, Mexico and Peru) have signed the agreements containing the largest number of provisions on electronic commerce. In fact, three of the four countries are party to the TPP negotiations and have commitments in all categories related to digital commerce: access to markets, facilitation of electronic

³⁵ Preferred Commercial Arrangements

commerce and user protection. The Common Market of the South (MERCOSUR), of which Ecuador is not a direct party, however is an associated country, shows a lag in terms of electronic commerce. Even so, this block has advanced in some internal standards on authentication and electronic signature, consumer protection and trade without paper support, a working group has also been established to promote cooperation in electronic commerce. Ecuador has assumed some of these commitments in the context of negotiations with Colombia, Peru and the European Union to reach a trade agreement with it. Central America and the Caribbean countries have made progress in the regulation of electronic commerce thanks to the extra regional negotiations they have. There are quite a few provisions related to electronic commerce in the Free Trade Agreement between the United States, Central America and the Dominican Republic (DR-CAFTA for its acronym in English).

It is still noticeable that the countries of Latin America and the Caribbean have not yet overcome the obstacles to traditional international trade and despite this; new challenges are emerging with electronic commerce. In the analysis of the existing provisions in the preferential trade agreements of the document published by the IDB, it is shown that the region still does not have an effective and harmonized regulatory framework for electronic commerce. It is for this reason creation of relevant and applicable standards must be promoted, within region's context, and in this way promoting digital commerce development, both intra-regionally and inter-regionally.

From the previously analyzed along with the field study conducted, the following points regarding the legal scope of B2B imports through electronic commerce can be highlighted.

- General Agreement on Tariffs and Trade (GATT) regulates purchases of goods through electronic means with physical delivery.
- Trans-Pacific Economic Cooperation Agreement (TPP) has the broadest range of provisions related to electronic commerce, negotiated among 12 countries of the Pacific Basin, but only three from Latin America are included (Chile, Mexico and Peru).
- Only 56% of intraregional agreements deal with electronic commerce.

- 38% of intraregional agreements contain provisions regarding cooperation in matters related to electronic commerce, authentication and electronic signature. Tariffs Imposition prohibition on electronic transactions is found in 48% of the agreements.
- Common Market of the South (MERCOSUR), of which Ecuador is an associated country, shows a lag in terms of electronic commerce.
- Central America and the Caribbean countries have made progress in electronic commerce regulation due extra regional negotiations they had.
- There are a few provisions related to electronic commerce in the Free Trade Agreement between the United States, Central America and the Dominican Republic (DR-CAFTA for its acronym in English).
- At national level there is Electronic Commerce, Electronic Signatures and Data Messages Act and its respective Regulations, where there is a basic legal regulation of the subject, so the private sector is ruled by the premise of doing what is not is prohibited.
- In imports through electronic commerce, made through the exception regimes, only articles for personal use can be imported.
- In the case of Courier it is allowed to import up to two thousand dollars and up to 50kl and if it exceeds these limits it can no longer be nationalized by the Exception Regime, it becomes a normal load and must be declared under Regime 10, as Importation to Consumption.
- Courier categories "C", "D" and "F" apply for TSCA payment.
- International packaging related to electronic commerce in postal matters in the declared weight range of up to 2,000 gr., it must cancel a fee for a value of USD \$3.13 (Three with 13/100 dollars of the United States of America) without including VAT, for the concept of nationalization operational procedures.

2.6 Operational analysis of traditional imports

All the companies that were interviewed import in the traditional way. Importing this way gives the importer more confidence, because he/she has direct contact with the supplier and the products; however, in this case there are more steps to be taken compared to an import via e-commerce. However, for the importers interviewed, in Ecuador there is an

excess of regulations for imports type: permits, tariffs, fees to pay, this type of regulations usually slows down the process and makes the products more expensive.

- The two main alternatives for finding suppliers when import in the traditional way is through international fairs, where they can be contacted directly and through the import manifests of Ecuador.
- Ecuador has a complex import regulation, since the products to be imported have to pass certain tests and comply with specific regulations.
- The products to import must have prior permits before being shipped and once with these, in the country to which the merchandise is going to be imported, domestic permits such as phytosanitary are processed.
- It is recommended to tie the production of the goods to be imported, with the quota scheduled in the shipping company that takes the products from the country of origin to the country of destination.
- China has an over demand because the whole planet buys from this country, so the production quotas are quite disputed among the buyers, so the dates of shipment and the products delivery generate a great inconvenience.
- In general, Chinese suppliers are quite unfulfilled in terms of the products delivery dates.
- When products of certain brands are imported, they usually go directly to their producers, to avoid intermediation.
- Import products samples (to suppliers) must be previously requested, in order to analyze their features, as well as their quality.
- This imports payment is usually made through a letter of credit.

2.7 Operational analysis of B2B imports through electronic commerce

Electronic imports are currently growing in the country and worldwide, however, at national level most of these have a purpose of consumption and not sale. Making imports through this means generates many advantages, mainly related to purchase speed and supplier negotiation agility, as well as benefits such as real-time communication. On the

other hand, online imports could have several problems such as fraud by sellers or lack of guarantees.

- When making a purchase in an international store or platform, once the selected products have been added to the cart, the personal data must be registered and finally the payment is made.
- Buyers have to adapt to each of the different platforms operation.
- Credit card payment is usual in this type of imports.
- E-commerce purchases have had a large increase the last year; most of them come directly from China.
- Sometimes, online purchased products do not match their description or image.
- Suppliers searching through different electronic platforms such as Alibaba or through producers websites.
- Ease of communication with suppliers through electronic means where they have real-time contact with them, such as Skype.
- Suppliers searching through different online platforms represent in some cases a threat for supplier-client confidentiality, since being online suppliers worldwide, everyone has access to their products, mainly those who represent a competition for importers clients.
- There are certain online providers that do not offer guarantees, which is a problem for the importer when changes or refunds are needed.
- There is more negotiation agility when online suppliers are contacted.
- In Ecuador there are few incentives for electronic commerce, for example, when online purchases are made, 5% of foreign exchange must be paid; unlike, in countries like the United States, products purchased online are VAT exempt.
- There is a high rate of people who import merchandise online, for commercial purposes and bring them through Courier's exception regime, giving rise to informal commerce.
- When a person without RUC, or an importer's license, makes an international purchase through e-commerce platforms and their merchandise requires permits for proper nationalization, the cargo arrives at the shift warehouses in Quito or Guayaquil, which

operate all year. The importer or buyer has thirty days to regularize from the date he/she entered the deposit, otherwise, the merchandise falls into tacit abandonment.

- For tax evasion or avoid formalities, users do not become importers and only 30 kilos can be sent by mail.
- E-commerce still does not replace 100% of the range of products that can be found in physical stores.
- It is recommended the store or platform in which purchases are made be legally constituted and handle a known language, as this generates confidence to the importer.
- It is necessary to educate people about the subject of electronic commerce to avoid problems such as identity theft or scams, and in this way generate more confidence to electronic customers.

Conclusion to Chapter 2

In this chapter we have obtained relevant information for this work because a field study, specifically regarding to the state of electronic commerce in our country and traditional imports, both operational and legal. In this way, the second specific objective raised in this research has been met, that is, the comparative analysis between the two types of imports, both in operational and legal scopes. On the other hand, having different positions regarding to TSCA, it has been possible to have a general conception of it, both in the public sector and in the private sector, and even this rate has had international significance with the recent intervention of the CAN. (Pending final decision)

It is important to mention from the information obtained in the interviews conducted, it has been possible to identify several advantages and disadvantages of B2B goods importing through electronic commerce, information that will be very useful for us to make this thesis next chapter and thus later be able to generate the respective conclusions.

CHAPTER 3: B2B IMPORTS, ADVANTAGES AND DISADVANTAGES

Introduction to Chapter 3

In this chapter, we basically analyze the advantages and disadvantages of electronic commerce focused on imports through B2B model. It should be noted that it was considered necessary to first analyze the barriers and benefits of this type of trade in Latin America and worldwide, since these constitute a point of reference and comparison for our country. Electronic commerce is not an isolated case, but a global phenomenon and it is for this reason that it must be studied starting from a broader point. Although there are some limitations for imports through e-commerce, such as: insecurity in terms of data protection, insufficient means of payment or logistical means, among others, it is expected that over time they will overcome and the advance of digital commerce is developing. On the other hand, it offers more and more advantages such as agility in procedures, as well as being an expanding market that offers a wide variety of products and suppliers worldwide.

3.1 Barriers to electronic commerce in Latin America

As in traditional commerce, electronic commerce is affected by macroeconomic instability, lack of access to different financial services and, above all, by the complexity of customs procedures. In addition to the above-mentioned obstacles, for e-commerce there are specifically barriers that limit or prevent companies and their customers from accessing online market or making electronic payments and merchandise shipments purchased online.

According to a constant framework in the Inter-American Development Bank (IDB) monograph, entitled "Beyond the recovery: competing market share in the digital era", written by Paolo Giordano, Alejandro Ramos, Kathia Michalczewsky and Bárbara Ramos, they observe the basic requirements to complete each of the three stages (sale, payment and shipping) of electronic commerce.

Graph No. 9 Stages in Electronic Commerce transactions

STAGES IN ELECTRONIC COMMERCE TRANSACTIONS		
1. Make / Receive Orders	2. Deliver / Process Payments	3. Submit Orders
Access to reliable and affordable ICT and energy infrastructure and services	Access to electronic means of payment (for example debit and credit cards) and / or online banking	Logistics and transport systems adapted to the requirements of small and frequent shipments
Development of digital and ICT capabilities (for the workforce and consumers)	Access to secure electronic payment solutions (for example, external providers of electronic payment services)	Simplified, standardized and harmonized customs procedures, in particular for low value shipments

Source: IDB

Made by: Granda Estefanía; Mera Andrea

Within these 3 determined stages, in order to participate in electronic commerce, businesses and consumers first need to have access to the Internet. In Latin America, according to the monograph in question, the average number of mobile broadband subscriptions increased from 5.6 in 2011 to 59.1 per 100 inhabitants in 2016. However, there is still much to cover and as it is claimed service quality is still low and the costs are high in relation to countries in Europe or North America. It should be noted that without education related to ICT (Information and Communication Technologies), it is

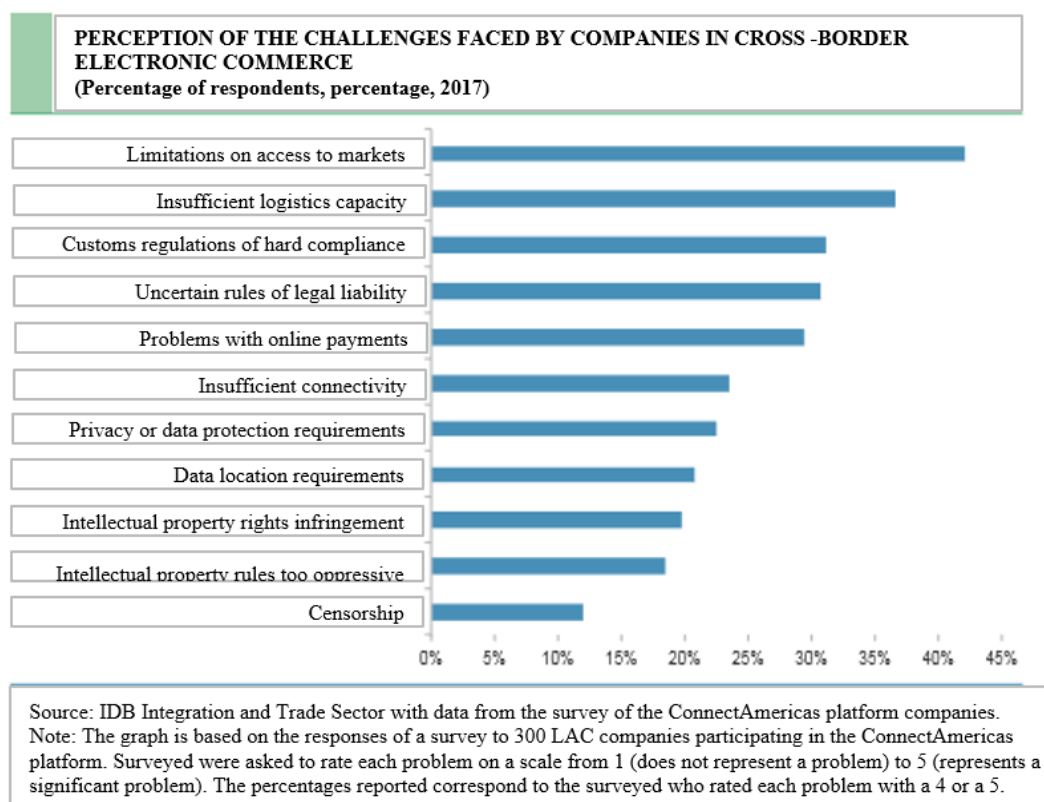
useless to have access to the Internet Regarding this, UNESCO reported in 2009 that 45% of secondary schools in Ecuador have access to the Internet for pedagogical purposes.

On the other hand, there are the means of payment necessary to make electronic transactions. In 2014, 51% of the Latin American population had an account in a financial institution, according to statistics from the Integration and Trade Sector with figures from the IDB's Global Financial Inclusion database. However, some analyzes from the same department suggest that banks in the region still charge high fees when receiving and sending money abroad and that debit and credit cards can only be used for transactions in local currency, which hinders cross-border trade. Such is the case in Ecuador of the Foreign Currency Exit Tax (ISD). According to SRI, generating event of this tax is the transfer, sending or transfer of foreign currency that is made abroad, either in cash or through checks transfers, transfers, withdrawals or payments of any kind. "This tax must be paid by all individuals, undivided estates, and private companies, national and foreign, as provided in the current legal system, making transfers, shipments or that are within the grounds of presumption of tax in accordance with current tax regulations." (Internal Revenue Service SRI). This Foreign Exchange Tax the value of all operations and monetary transactions made abroad, regardless of whether or not there is intervention by any institution of the financial system, so that its tax base is the amount of the transfer of currency, accreditation, deposit, check, transfer, money order and, in general, any other mechanism for extinguishing obligations when these operations are made abroad. In the event that the generating event occurs with the use of credit or debit cards for consumption or withdrawals made from abroad, as is the case of purchases through electronic means, for the calculation of the tax base, an annual exempt amount equivalent to \$ 5000 is subtracted. Those who issue these cards must verify that the consumptions or withdrawals of the clients, made abroad, do not exceed the established value on an annual basis. In the cases in which the natural or legal person exceeds this determined annual amount, he must make the declaration and payment of the tax, in the terms and conditions determined by SRI, being the rate established for this tax of 5% of the amount of money that goes abroad.

The last most representative barrier faced by digital merchants in the region are the monetary and time costs associated with international transport and the customs procedures of each country. These problems especially affect exporters of small and moderately priced or low priced shipments. The sales of small and medium enterprises (SMEs) that are involved in international trade do not have the scale necessary to generate

lower shipping costs, due to the small amount of products they sell, compared to wholesale companies. According to the aforementioned IDB monograph, small and medium-sized companies in the region claim that the effects of deficiencies in logistics and excessive customs regulations are very detrimental to their efficient work.

Graph No. 10 Perception of the challenges faced by companies in cross-border e-commerce



Source: IDB

As can be seen in the previous graphic, intellectual property rights infringements are threats to a company that market their products electronically to other countries. According to the World Intellectual Property Organization (WIPO), one of the main features of e-commerce is its global nature, which is intellectual property can be used and licensed³⁶ in many countries at the same time. The global nature of the companies that made electronic commerce, affects intellectual property in different ways. With this infringement, it is quite difficult to find the offender and to enforce the intellectual

³⁶ According to the Ingenios Code, this is an authorization granted by rights owner to the work's user or other protected production, to use it in the determined manner and in accordance with the conditions that have been agreed in the contract.

property rights that may have been infringed on the Internet. According to WIPO, one of the main problems in this regard is that it is not clear which courts will have jurisdiction over disputes relating to electronic commerce and intellectual property. In addition, laws and regulations on intellectual property vary from one country to another and the levels of protection to users may vary. It is possible e-commerce companies are sued or that they sue and seek reparations, but several procedural issues intervene in those cases, starting with the fact that the parties come from different countries, in which case it will be difficult to determine what court can or should intervene. This is why international arbitration is considered as an effective way to resolve international disputes related to online commerce. For this, WIPO recommends that contracts of a nature related to the international purchase and sale of merchandise through e-commerce, should establish arbitration clauses, in which case the parties should use arbitration if a controversy arises.

This can also be limited by the fact that online purchases can have online fraud.³⁷ as a problematic consequence.

Businesses continue to expand their borders and markets to meet their customers demand in the e-commerce environment and to this extent fraud also grows. Cyber Source Corporation, the Institute of Electronic Commerce of Latin America and Visa conducted a study on Latin American and Caribbean companies that promote online fraud management and business operations in the industry, and analyze the online and mobile fraud landscape.

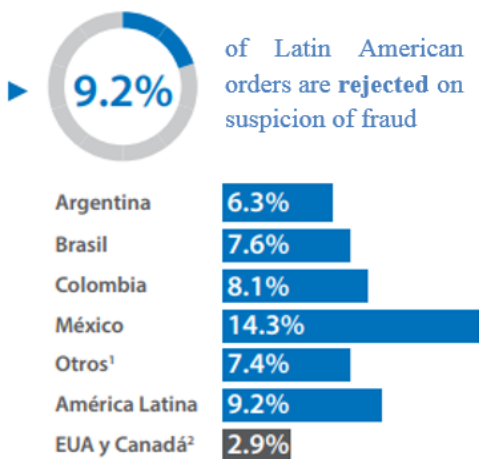
This study was based on surveys; the participants were actively involved in e-commerce operations and fraud prevention policies of their companies. The survey was conducted by Confirm-it, an independent market research firm and there were 266 surveyed.

As customers continue to buy online products using their mobile devices (computers, cell phones, tablets, among others) companies must offer shopping experiences without major setbacks in their e-commerce channels, to maintain competitiveness and loyalty thereof. In this way, businesses must look for ways to protect their customers and the business as such from the growing threat that online fraud involves.

³⁷ According to the Cornell Law School website, www.law.cornell.edu, it is fraud made online. Hacking is a common form of fraud: the offender uses technological tools to gain remote access to a computer with confidential information. Another form of fraud involves the interception of an electronic transmission, causing password theft, credit card account number or other confidential information about a person's identity.

According to this study, most companies currently have very limited resources and budgets to deal with fraud, but they should not abandon their efforts. "As they move forward to improve fraud detection processes and minimize fraud losses, they should focus on striking a balance between improving the customer experience, maximizing revenue, achieving the highest efficiency possible in their fraud operations and working on the reduction of your operating costs." (Visa Cybersource)

Graph No. 11 Percentage of rejected orders for fraud in Latin America



Source: Cybersource Corporation

According to this report many businesses have tools for fraud prevention, however there are still problems related to this. Businesses in Latin America and the Caribbean reported a chargeback rate³⁸ of 1.7%, a manual revision rate of 28%, understanding this as a process that involves people's intervention verifying data from electronic customers. It should be stressed this process involves a lot of work, time and is vulnerable to human error. Finally there is an order rejection rate of 9.2%. It should be noted that rejected orders are those that have not been considered valid according to the parameters established for their manual review. These figures mean that Latin American companies may be sacrificing a significant part of valid orders, alienating their clients and reducing potential income.

³⁸ According to the definition of the MasterCard BIZ website of Mexico, this is a claim from a client about a charge with which he does not agree, or that he does not recognize, it may end up in the return of his money. Through these, consumers can protect themselves from frauds from business or third parties.

Companies can keep their fraud rate low if they manage to obtain automated fraud detection systems. The problem is these could be expensive initially, even though in the long term they save expenses of a review manual of purchase orders to companies. The most common methods of manual evaluation, according to the study, are: by card verification number, studying the client's credit history, through the client's order history and verification of the buyer's e-mail.

3.2 Advantages and disadvantages of B2B import through electronic commerce

3.2.1 Advantages of B2B import through electronic commerce

Currently, information and communication technologies (ICTs) are part of everyday life, especially in the business world when revolutionizing the ways of doing business. It could be said that in every area or department within a company there is their presence, both for internal and external processes, having as main results costs reduction and efficiency increasing.

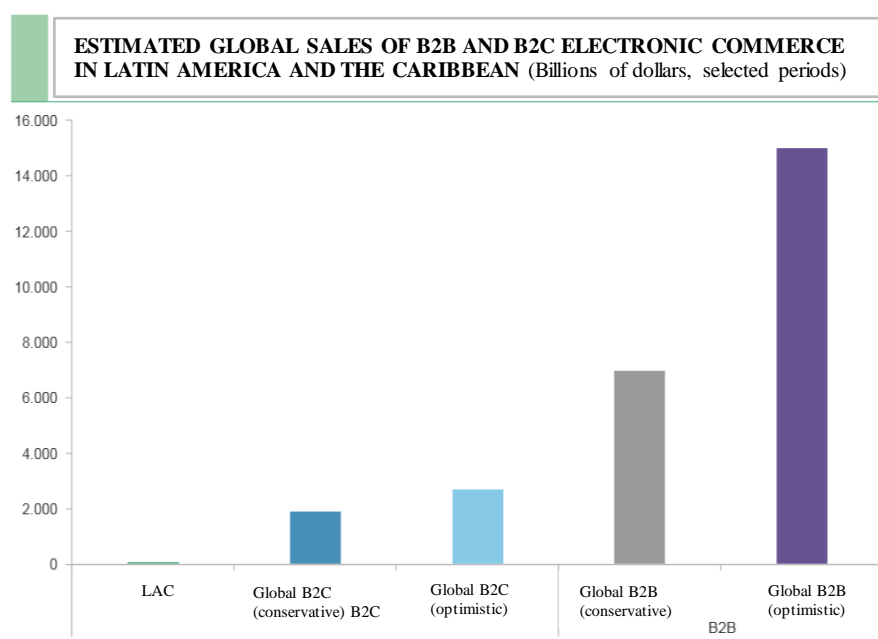
For example, the internet is used to access relevant information such as studies and research, news, economic, financial, legal data, contacts and addresses, among others and often without any cost, which is totally favorable for organizations.

Today most companies either national or international have presence on the web, either through an official website, accounts on social networks, such as: Facebook, Twitter, Instagram or through advertising. In addition, with the above brands, businesses or companies reach millions of users quickly and at affordable costs attracting new customers. Likewise, it allows them to know more about their positioning and target.

On the other hand, due to the internet, communication either inside or outside the company is immediate, so that processes and management can be achieved in less time, increasing the productivity and efficiency of the organization. Beside from e-mail, it is not strange to see that a provider communicates with her client through applications such as WhatsApp or Skype, as evidenced in the field study conducted in the previous chapter of this research. This results in great savings in communication costs, since there is a direct contact channel.

Another example of the Internet's immersion in business is to be able to sell and buy online, that is indirect or online electronic commerce. The possibility of making these types of transactions online, allows contact with customers and suppliers around the world 24 hours a day. Thus, there is a remarkable growth in the sales of this type of commerce and its modalities, as can be seen in the following graph.

Graph No. 12 Estimated sales of B2B and B2C Electronic Commerce globally and in Latin America and the Caribbean



Source: IDB Integration and Trade Sector with data from Statista, United Nations Conference on Trade and Development (UNCTAD) and E-commerce Foundation. Note: The chart summarizes the estimates available for e-commerce B2B and B2C for LAC and the world, and includes cross-border and domestic transactions. The reports from Statista and the E-commerce Foundation provide similar figures for B2C sales in LAC in 2015 (see note 29). The Statista estimates report the lowest levels for the global flows of B2C (2016) and 1326 (2013), while the E-commerce Foundation and UNCTAD report the most optimistic estimates, for B2C (2016) and 132B (2015) respectively. There is no data for B2B sales in ALC.

Source: IDB

On this subject, access to the global market has been greatly facilitated in the first place due to barriers' elimination involved in acquiring an international product, such as: geographic, lack of knowledge, difficulties in communications, very high operating costs, and lack of knowledge of supply and demand, among others. In this way, product's selection, whether for personal or commercial use, is no longer limited to local stores but to a global supplier's selection, where the main factor of the purchase decision is the price of the product.

Currently, for companies that have an international purchasing department or imports, it is no longer strictly necessary to hire intermediaries to find and obtain a product abroad, nor to maintain communication with international suppliers. As well as it is no longer necessary to make a trip to the country of origin or conduct a face-to-face search of supplier companies.

Thanks to the internet, B2B platforms and other electronic media, there is easier and faster access to information, for example, to search for international suppliers or raw material, just enter in the search bar of a browser or from a B2B platform the required product. Thus, transactions in the network are increasingly common in the business sector, specifically in business relationships between: supplier - factory; supplier - distributor; supplier - merchant.

In that sense, elimination of unnecessary steps and the shortening of processes for importing result in cost reduction for companies and in turn in a competitive advantage³⁹, that is, with the use of electronic commerce a company can acquire a favorable position against its competition within the market.

"By reducing the costs of commerce derived from physical distance, electronic commerce allows companies to access the global market reach a wider network of buyers and participate in international trade. A greater dissemination of these technologies has made it possible for developing countries companies to also access commercial opportunities generated by electronic commerce, and some have made significant progress in recent years" (Azevedo)

The main advantages that exist in the B2B import through electronic commerce are:

- In the first place, it is relevant to point out as an advantage the fact that electronic commerce in recent years has grown enormously. "It is said that in general the amount of electronic commerce conducted over the Internet doubles every 100 days." (Cohen, Karen and Asin Lares). In addition, the category with the highest growth and weight in electronic commerce is the B2B including both domestic and international transactions. "While conservative estimates value global B2B transactions for the year 2015 at about \$ 7

³⁹ According to author Daniel Cohen, it is a company's belonging of valuable resources that enable it or allow the development of activities in a better way and at a lower cost than the competitor.

trillion, alternative sources estimate that the figure was more than \$ 15 trillion in the period 2012-2013." (Giordano).

- Because electronic commerce works through the internet, there are no geographical barriers or time to access it. You can make an international purchase from home, work or anywhere using smartphones. Therefore, e-commerce approaches buyers and sellers, resulting in new exchange opportunities.
- As for a supplier, having a presence on the web, whether through a web page, social networks or through B2B platforms, allows it to reach millions of users and potential customers. For an importer, his/her portfolio of suppliers grows due to the great existing offer through electronic commerce.
- There is a searching costs reduction, since this is direct online therefore; no effort is required to find the right products. In other words, the databases of international suppliers are no longer strictly necessary or the cost of paying those information providers. Currently, if you enter the name of a product or keywords in web search engines for example: suppliers of "x" product, you get several results of which you have to discard until you reach the appropriate information, or if you enter directly to a B2B platform searching is completely improve.
- Asymmetries in information are reduced, which allows buyers to find better prices and terms.
- There is a disintermediation in the process purchase, which can significantly reduce the purchase transaction costs. By buying directly from manufacturers, companies can increase profits, while charging lower prices.
- There is a bidirectional communication between providers and buyers in real time, through live chat, social networks, WhatsApp, email, among others.
- Information density in electronic commerce markets makes prices and costs more transparent. That is, an importer can easily know variety of prices in a market and actual products costs.
- Communication between suppliers and buyers has no limits, since B2B platforms have their own online communication system, in addition to contact option via email.

- B2B platforms provide detailed and up-to-date information on each of the offered products, such as: pricing, specifications and description of products, photos, materials, factory location, products quality certifications, among others.
- B2B platforms technology allows maintaining a purchases history and highlights possible products that an importer may be interested.
- B2B platforms such as Alibaba allow you to enter a requirement for a certain product and quantity, to subsequently receive multiple quotes from several potential suppliers. That allows a filtered selection according to the requirements.
- B2B platforms handle guarantees regarding suppliers' quality certifications and its factory, as well as the payment process.
- There are no taxes on transactions by electronic commerce in Ecuador.
- Regarding payment method, these are the options: credit card, debit card, transfer or PayPal⁴⁰.
- Transactions are automatically transmitted from one information system to another through a network, which eliminates printing and paper handling at one end and the data entry at the other. This is favorable because the culture of zero roles in favor environment's preservation and care.
- Companies use Internet to locate the lowest cost supplier, search online catalogs of suppliers' products, negotiate with suppliers, place orders, make payments and coordinate transportation. All this can happen within a B2B platform.
- When making a sale or purchase online, there is a possibility of solving conflicts and inconveniences online. Many of the B2B platforms and those studied (Alibaba and Amazon) have established procedures for problems solutions that may arise between sellers and buyers at any stage of the purchase process. For example, Alibaba allows the entry of disputes if the products are not received before the delivery deadline agreed between seller and buyer and, if the products are not received in satisfactory conditions; however, the attempt to negotiate a solution with the supplier must first be exhausted.

3.2.2 Disadvantages of B2B import through electronic commerce

⁴⁰ According to PayPal website, it is a global service that allows you to send payments to the seller's account with a credit card, but without sharing financial information. (PayPal)

- An importer must trust the features by which the product is described on the website that offers it. However, it is a recurring problem, especially with Chinese suppliers; products features offered are not compatible with reality. For example, it is very common, and it is something that we have personally experienced that when buying clothes in a virtual platform like Amazon, they look very different from the ones that are actually sent. The sizes do not always coincide with the size that one requires, clothing colors are not the same as what one sees in the images of this type of merchandise.
- Some providers do not offer guarantees. For example, Amazon is a page that does not take responsibility for the products it sells; it is simply a logistical facilitator. The main problem of not having guarantees for the provider is that users refuse to buy high value products, because at the time it has any type of defects, the high value paid for it is not reimbursed or at least the product is not changed. It is also considered a barrier that in the event that guarantees are offered, buyers must cover a product's shipment logistical expenses so that it can be exchanged for one in good condition.
- Difficulties arise when importing machines or products that are too large or complex. Due to the nature of this type of merchandise, specialized technicians are needed for its installation, all this process takes time and it is also the importer who must cover all their expenses.
- In Ecuador, electronic commerce still does not replace 100% of the products that can be found in physical stores. This type of trade is aimed at a range of products, which do not require much guarantee or are not required returns. As Ecuador is a country in which e-commerce is developing, companies that offer products through this channel do not yet have logistical support and consolidated means of payment to offer complex or wholesale merchandise. Locally, there would be a type of electronic commerce focused on retail sales of specific products.

- E-commerce has disadvantages in terms of security in relation to normal commerce, since the former could give rise to problems such as fraud⁴¹ or identity theft⁴².
- When you buy items by digital or electronic means and these are brought to our country to be resold later and the proper nationalization procedure is not done (foreign trade tax payment and other formalities) informal business is given, mainly to smuggling. It should be noted on this subject the reason for the Customs Control Rate is based on the assumption there is a need to strengthen the customs control service to combat smuggling and fraud.
- When importing products of a specific brand, electronic commerce is no longer the most viable option, because it must resort directly to the products' suppliers and thus avoid the intermediation of more actors such as the sellers of online stores platforms like Amazon or Alibaba. As an example, Engineer Juan Francisco Vanegas, Purchasing Manager of Marcimex, told us during the interview we made that his customers constantly demand products from specific brands such as LG or Samsung, which are recognized worldwide. It is for the same reason that they, as a company, make the decision to go directly to the main suppliers or producers of such brands. However, due their quality and recognition, products will be more expensive, compared to others that are of lesser-known brands.
- This type of trade does not ensure a confidentiality relationship and exclusiveness between the supplier and the client, because they are suppliers that offer their products on open web pages to everyone. Unlike, with traditional trade, one can have an exclusive and secret contract with a supplier that assures the importer special treatment under the conditions that both put. For both importers and suppliers it is very important to keep certain data in reserve or secret due to all that implies having that type of information. The origin of the products, the name of the supplier, the total amount of the transactions and others, are data that is preferred to be kept private due mainly to the growing competition that companies face every day. Mutual trust between the parties contributes to guarantee transparency and sincerity in the procedure and its results.

⁴¹ According to article 186 of the COIP is when a person in search of obtaining a patrimonial benefit for himself or for a third person, by means of the simulation of false facts or the modification or concealment of true facts, leads another person to error, with the objective that you perform an act that damages your estate or that of a third. This person will be punished with imprisonment for five to seven years.

⁴² According to article 212 of the COIP, this occurs when a person who in any way impersonates the identity of another to obtain a benefit for himself or for a third party, on a person's detriment. The person who commits this crime will be punished with imprisonment of one to three years.

- Sales product online platforms do not have a physical address, which complicates product's withdrawal from the place where it is purchased. This problem is visible when you want to bring the purchased goods through a courier, the cost of importing the product through this regime covers a product's withdrawal from the company's facilities that sells. However, pages like Amazon or Alibaba do not have a physical place for product delivery.
- Both Ecuador and the Latin American region itself do not yet have an effective and harmonized regulatory framework for electronic commerce. It can be highlighted in this point that the Electronic Commerce, Electronic Signatures and Data Messages Act of Ecuador have continued being the same since the year of publication in 2002. There has been sixteen years when electronic commerce and everything related to it has advanced in a way, while the law that is supposed to regulate it, has remained the same since the date it was enacted. On the other hand, in Latin America, regulations that regulate this type of subject matter are mostly contemplated in Regional Agreements or Treaties, of which not all countries are parties and, above all, these are not really binding for those who are part of them.

Conclusion to Chapter 3

In this chapter we point out both the advantages and disadvantages of B2B import through electronic commerce, refereeing to the field study we made and from a perspective focused on Latin America. Undoubtedly, technology is and will continue to change the way we operate in the business and commercial sphere. Although it is true, electronic commerce presents a noticeable growth in the region, highlighting the B2B modality; there are also several advantages of internet use and technological tools in the internal and external procedures of an organization, making them more efficient. At the same time the processes are shortened and unnecessary steps are eliminated which results in reduced costs, increased productivity and profitability of the company. However, in a continental and national context, electronic commerce is not yet fully developed and regulated, which limits its use and confidence. In addition, in cross-border electronic commerce, specifically imports, there are still shortcomings and gaps that must be monitored if this model is chosen, such as: aspects related to security, confidentiality and exclusivity that undoubtedly affect the functioning and welfare of any company. Finally, the decision of the import model must also be based on the nature of the product, accenting the costs to be generated throughout the import process and current regulations.

CONCLUSIONS AND RECOMMENDATIONS

- First of all, we think it is necessary to define electronic commerce from a current perspective that adjusts to reality. Generally, in the past, e-commerce was defined as the use of internet and mobile software applications to do business. However, this would be a broad conception of it, in which the fact of sending an email, looking for a provider online or making an electronic credit card payment would already constitutes electronic commerce. Therefore, we think it is necessary that the definition of this commerce kind be updated, since as Information and Communication Technologies (ICTs) advance, pre-established standards and concepts must also progress. It is for the same reason we have concluded in defining electronic commerce as the commercialization of goods or services through computer networks by methods exclusively designed to receive or place orders. More specifically, cross-border or international e-commerce covers online transactions that involve the sending or receiving of goods or services to a country other than the country of origin.

- Taking into account the a low growth rate context of both Latin American region GDP and global trade in general, e-commerce is developing and growing rapidly. However, it is necessary to emphasize the fact Latin American countries have historically specialized in products' export that are not exclusively suitable for online sales and with this a special reference is made to raw materials. This is something that could limit the potential of electronic commerce in the region, although cross-border e-commerce is an expanding segment in Latin America. The region has the highest global percentage of electronic consumers who make online purchases exclusively abroad, this figure being 15%. Unlike, in Asia, where it is only 4%. Following the e-commerce line both in Latin America and in the world, a segment with the greatest weight is the B2B, which includes national and international transactions that are made in the negotiations framework between companies. However, in Ecuador and especially in Cuenca (based on the data collected in this thesis) the most widely used e-commerce model is B2C, that is, the purchase and sale between the company and the direct consumer, this is mainly due this type of commerce in our country focuses on retail products sales.

- As has been proven, there are quite a few people who import goods electronically, for commercial purposes and bring them through Courier's exception regime, giving rise to

the informal trade of goods and generating contraband. We think that this is a recurring event both nationally and globally, due to the legal vacuum that exists regarding the regulations and limits that the Courier regime should have. Bearing in mind that the main objective of the exception regimes is to dispatch the imported merchandise through simplified formalities, due to the nature and purpose of the merchandise, which would be goods for personal use or products that meet the specific needs of the different people, we believe that it would be adequate to limit the quantities, characteristics and conditions of the products to be imported under this regime. When a limited quantity or weight is exceeded, the merchandise must be subject to the general customs norms, due to the fact that they pass to the Consumption regime or any other type of regime in which the import requirements and processes are different and this is what people seek to avoid, by erroneously using the regime in question for commercial purposes. Here there is room for two recommendations: first, to try to simplify the importing products' processes through the import regime for consumption, which is commonly used when you want to import merchandise for later sale. And on the other hand, establish in the Law the reasons why it is declared that a product brought through a Courier or Correos del Ecuador, has commercial purpose, because currently there are only grounds for suspicion by which you can declare that the product was brought to be sold. For example, the import of merchandise in quantities greater than those necessary to satisfy exclusively personal consumption. However, these reasons for suspicion may be subject to the subjectivity of the Customs operator who makes the respective revision.

- Regarding the Customs Control Rate, it is known that SENAE has implemented it as a payment for the control service that this institution provides against the need to strengthen it and with the main objective of combating smuggling and fraud. In our thesis development we have collected several opinions about this rate, from companies and institutions, both public and private, and we have seen a contrast between them. We have embraced the private sector position and support the rejection of the existence of this rate, essentially for a reason. Customs as an institution in Ecuador has existed for more than one hundred years ago and it is assumed that since then it is your duty and obligation to perform the service of control and prevention of smuggling and more customs offenses. Why now do we have to pay an extra amount to carry out an activity that they should do? It is unprecedented that SENAE has found a new means of financing at the expense of the imports' increase our country makes. Regardless of the fact that this rate has an impact

on better control (or not) of the entry of merchandise into the country, it is not correct that imported products become more expensive, due to a rate that clearly has collection purposes.

- This thesis has focused on is B2B e-commerce model, with a specific emphasis on imports and after compiling both theoretical and practical information, we conclude this imports type should focus on a target of certain products. The large machinery, the very complex products, expensive and delicate artifacts require more care, precision and determination in the import process, which is why we consider that these should be imported in a traditional way, making the entire search process and visit of suppliers and customs procedures with a Bonded Customs Agent. In this way, the importer will be sure of the conditions in which the product (s) will be brought and also they will be able to count on the necessary support for an adequate operation, as well as negotiate directly with the supplier the terms of guarantees thereof. On the other hand, we believe imports of simple, not very expensive, or complex products such as clothing, footwear, handicrafts, toys and other related items, can be done effectively through e-commerce with B2B model. In this way there is a faster import process, some customs procedures and waiting times are avoided, there are more forms of payment and above all there is a large portfolio of potential suppliers and products globally. For these reasons, we consider it necessary to suggest that the import decision, and especially the type of importation, be made based on the type of product required.

- Regarding B2B platforms analyzed, it can be said that they are user-friendly, since their design and functions are easy to understand and operate. They resemble any search engine available online, since you can enter the search bar, whether it is the product, the material or the provider, and will immediately obtain several results options. Information is organized and distributed according to categories, such as: home, furniture, bags and suitcases, textiles, car accessories, among others, which prevent the user from being lost when requesting a certain product. In addition, in the case of Alibaba, you can receive a quote in minutes and in a few hours receive several offers from different suppliers around the world. You can verify products' quality requested through additional services provided by the page, as well as there is the option to request a sample and also to initiate a dispute or disagreement, either because the product does not match the features shown and offered (quality), or it is a defective product. It is worth mentioning the policy on the page says there is a period of thirty days after receiving the goods to make a claim and

request a refund. However, it must be borne in mind that when importing in large quantities the scenario changes, since the return is not a profitable option. Suppliers do not maintain exclusivity with the importer, that is, there is a risk that the competition has access to the same supplier and products, which is not favorable for a trader. There are no guarantees that protect buyers; you can be a victim of fraud, if you do not take the proper precautions, which generates distrust in users and importers. That is why it is recommended to make an analysis of the product's nature, the suppliers offering (seriousness, facilities, certifications, payment conditions, among others.), to go to the Frequently Asked Questions section and find out about the solutions to the possible problems, to decide to import through e-commerce and B2B pages.

- Based on Eng. Nuria Maldonado Regional Director of Correos del Ecuador CDE E.P, interview analysis, we were able to obtain information on the three main problems of this E.P: lack of personnel, short budget of the public company and the large amount of packaging arriving in the country, which triggers the delivery delay. Thus, since October, 2017, \$3,51collection for each package received from electronic commerce was established to deal with those problems. However, to be able to know and analyze that rate has indeed helped to cope with the overflow of Correos del Ecuador is a matter of time. At the moment users expect for the service to improve, as well as the sending and receipt of packages efficiency. It is pertinent to point out that, Courier like DHL has responded more quickly to the increase of imports through this regime. For example, they have specialized logistics in electronic commerce, both nationally and internationally.

- It must also be considered, internet, digital tools and new technologies are evolving in a very fast way, unlike, laws advances disproportionately with respect to these technologies, there are no immediate decisions regarding technology volatility, as is the case of electronic commerce. In addition, another aspect that makes this situation difficult is the fact of the insufficiency of international legislative harmonization.

- Regarding international regulations, there is a lack of binding agreements that deal with cross-border electronic commerce. In many cases, the commitment in this aspect is limited to recognizing growth and opportunity of electronic commerce, maintaining dialogue and ensuring cooperation related to consumer protection. Currently, few negotiations have addressed specific issues directly related to digital commerce, most are generic provisions related to foreign trade. In contrast, traditional foreign trade, if it has

several agreements and organizations dedicated to the issue and the resolution of conflicts.

- In Ecuador there are few incentives for electronic commerce, for example, when online purchases are made, if 5% of the Exit Tax (ISD) must be paid. A national Chamber of Electronic Commerce was created, but it has no functioning, country trade unions are aware of the growth of cross-border electronic commerce, but the issue has not been discussed to governmental authorities, electronic commerce law is developed in a very basic framework that does not cover all aspects of the issue, leaving legal gaps. Making a comparison with countries like the United States, products purchased online are exempt from paying VAT, there are specific laws that provide for online transactions and consumer protection, which makes online transactions a safe and secure of purchase method.

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ANNEXES

1) Interview with Miss Elisa Rizzo, La bahía.ec Sales

Bahía.ec is a website that sells products imported from China through e-commerce. We spoke with Elisa Rizzo at the offices located on Av. Remigio Crespo, and she told us that her cousin Mario Rizzo, Systems Engineer, started this business. She told us that it is not as easy as one thinks to import through the internet simply by clicking, she says that currently the competition is very big and as an example he mentioned Coral Hipermercados or Importadora Vásquez. She says that sometimes it is necessary to make a trip to China given that there have been occasions in which the sale to the supplier is generated through electronic platforms and at the time of dispatch 25% does not work, which represents a loss since it is more expensive to return merchandise. She tells us that he maintains meetings through Skype with the suppliers. Regarding, the electronic commerce related to sales told us there is distrust at the time of purchase as people do not trust to make the payment without having received the product or having seen it, it is for the same reason they have been forced to open physical offices in Guayaquil (Matriz), Quito and Cuenca.

2) Interview with Eng. Cristina Córdova, Colineal National Decoration Imports

From the import goods, do you make visits to suppliers in the countries of origin or how do you find them?

Within suppliers portfolio maintained by the company there are some who from the beginning work with the company so it is not necessary to visit them to make a purchase, but electronic means such as email, WhatsApp, Dropbox, social networks are used. It facilitates exchange of information with suppliers, in addition to knowing in real time the offers, promotions and prices of products which allows them to make decisions quickly and generate the purchase order. He says that for reasons of innovation, Colineal must sometimes look for new suppliers through visits to fairs or facilities and know products to bring, quality, conditions offered, prices to negotiate, that establish a working relationship with the provider abroad.

Have you ever searched and contacted suppliers through platforms such as Amazon or Alibaba?

Yes, we have searched that way. The Chinese market is extremely large where it can find everything from a nail to a machine. There are times when we have searched for a specific product on Alibaba.

And have you bought on Alibaba?

We have not made the product's purchase online on that platform, but we have contacted the supplier and internally start the negotiation, but we have found suppliers who have provided me no merchandise such as metal structures to exhibit carpets in the local and that we found there, I contacted the supplier and the purchase was established, the goods arrived well, in good condition and a good quality, I had no problem.

And why did not you choose to negotiate and buy inside the platform?

Company's confidentiality, it is also a platform to which everyone has access and I need to confirm who the provider is, where it is from, its corporate name, its production and who its customers have been. Even themselves have contacted us by internal seeing the company's requirement; it is not like a purchase in Amazon that you buy something punctual and they send you, but you need a logistic process, a production order, dispatch a shipping company a container, etc.

And would you be willing in the future to make this type of purchases without calling internal contact with the supplier?

Well, I could not say no because really all the information technology is evolving every day, maybe tomorrow will be the easiest thing even if the logistic process adapts to a platform. For example, I've been doing this for 15 years and at the beginning the purchase order was generated by fax, so if someone tells me you would make purchase orders online I would say, you have to always be open to change and the processes' evolution. I think that if a process is going to be more agile in that way, any company with a specific need could adapt.

And given your experience, what has been difficult for you to start using electronic tools for an import?

Nothing at all, it has gone from a rigid and formal process where it had to wait a long time for the provider to receive the fax, respond, and send photos or discs by DHL. So, it is much easier and more agile to do it now, I have not really had a barrier but it has been a constant process to streamline everything that is done, practically done in real time, with the cell phone a video call is made, the provider is on the floor shows you a video of what you want to see, products you want to buy for example through WhatsApp. That is, it becomes faster, the advantage is that people are on par with technology, maybe this can be a barrier for a person who has been doing this for 40 or 50 years, for someone who has difficulty managing the phone or WhatsApp, handle a supplier search platform such as Alibaba or Amazon since it is not of its era the computer management. For me it has been totally an advantage.

What operating, logistical advantages do you think one of these platforms can offer?

Platform using is always an advantage, I think that what must be respected a lot is the buyer's confidentiality; because although it is such a large market, it is hard to find a product that you want to offer here in the required conditions such as quality and price, so that makes you do it confidentially since the market is very competitive. Although our country is small, if I bring a \$1 eraser, today, tomorrow there are 5 people who bring it in \$0.50. So the use of platforms requires care, of knowing how to handle information that is, not disclosing, so that a person can be sure that their investment and the purchase they are making will be really profitable and will not be lost.

Being able to have a broad portfolio of suppliers with a wide variety of products is an advantage but the fact that you can know who is buying and where it becomes a market of competition and tremendous rivalry and really affects us in the business.

Finally, what is your opinion regarding the Customs Control Service Rate?

Well, actually I worked in the Customs, I think that any measure government makes is fine as long as it is managed in an objective way, we are all aware that a country does not survive from the air or goodwill but we must be aware that we must pay taxes for the things we do. New rate does not seem like a bad idea, I already paid for it in an import which was for a high amount and the rate was \$500, I did not think it was exaggerated, but according to the merchandise's weight. I heard comments from people who have brought perhaps heavier things and it has cost more, but we are all exposed to that. We recently had safeguards of 40% and 45% on the value of things and this doubled the cost

here, if a certain product cost me \$ 1000, I paid \$ 1000. So that I bring something and about that I have to pay \$ 50- \$ 200 seems consistent, I do not disagree is rather an initiative according to the needs of the import sector, I think it is something that can be met is not exorbitant.

3) Interview with Eng. Carlos Brussil, SENAEC Cuenca District Capacity Technical Operator.

How are taxes regulated to imports through electronic commerce, since when making an international purchase through e-commerce platforms, we pay taxes only from the origin country?

That is a specific question of electronic commerce applied to a regime of exception import, which are postal packages, express mail or Courier, that is, Regime 91 commonly known in Quito and Guayaquil since in these cities there are Courier, unlike in Cuenca does not; then it is a simplified office, the only official who has access to this is me since I am in the dispatch area. Well, being a simplified or exception regime the law says that the procedures must be simplified, expedited, fast, then unlike the normal customs declarations of import, these can directly generate the Courier. Exemplifying, in an international store or platform "x" after adding the selected products to the cart, your data is recorded, and the payment is made through an international credit card, at that time 5% of the foreign exchange tax that is already part of the electronic commerce, and is charged directly to the card. You must also enter a box address of the Courier of your choice, whether this is Correos del Ecuador, Transky, FedEx, DHL, and others authorized by Customs. Depending on the company they will have agreements with different airlines and may or may not charge per box. Once the cargo is consolidated, it comes to the country and arrives at the airports either from Quito or Guayaquil in bags or in pallets, depending on the shipment. If we talk about 4x4 purchases these are 4 kilos and \$ 400 dollars, they do not pay taxes but they pay a fee of forty-two dollars and have certain limitations such as a maximum of five shipments per year, maximum two thousand dollars. If the package does not pay taxes, the Courier in this case, generates the Simplified Customs Declaration and from that the capacity channel can be automatic, physical or documentary and the cargo is released.

But in the case of those who pay taxes we are talking about the other categories for example, if it is a laptop it falls into a category F, then the Courier official makes the

declaration and Customs reviews the procedure and taxes are generated respective on the basis of the tariff subheading, as well as restrictions and prohibitions. In the case of computers, they pay advalorem, VAT, and fodinfa, and the calculation is made; to obtain the tax base is the value of the invoice plus freight plus insurance, if I do not have freight value for Courier it is 1.5 per kilo, that rule is applied in an international arrival room when there are no presumptive costs. The sum of the transaction's value plus the freight for 1% gives me the insurance and the sum of the three is the taxable base to calculate the taxes, of that taxable base, multiplied by the advalorem, the fodinfa and the sum of: the tax base plus the advalorem, and the fodinfa by 12% for VAT that corresponds to taxes, that is generated in a Customs Clearance, which will have a number, name of the consignee and at the same time the Courier generates an electronic invoice of the services rendered (cut, guide management) which results in an average of seventy dollars of packages that pay taxes depending on the gross weight or weight volume, which is more important. As for the customs clearance, it is already up to the Courier to pay initially and then collect or first it must be paid to generate the capacity process. Also, depending on the courier delivery deliveries or arrive at their offices. This closes the process.

What happens in the case that a person imports through Exception Regimes for commercial purposes?

It depends, the issue of determining if it is for commercial purposes or not is subjective, since it depends on the official's criteria that perform the capacity. If you import less than four hundred dollars and less than 4 kilos, and there are twenty watches in theory it would be inside the 4x4 but for the amount the official could determine that there is a commercial purpose; but instead, what happens if the importer is a watch collector, and there it must be demonstrated. Being twenty watches and considered for commercial purposes, it leaves the category 4x4 and automatically we go to what the tariff heading of the product says and we see if there are restrictions or prohibitions, in addition it is changed to category C for commercial purposes and the calculation of taxes and taxes must be paid. As Customs you must also verify the value which must be according to the declared goods and based on that the taxes are calculated, in case of not corresponding, the process of Reasonable Doubt begins and five days are given for the user to justify the value.

Given the ease of making an international purchase through e-commerce platforms, what happens when a person makes a purchase and the merchandise arrives in Ecuador but the person does not have an RUC or an importer's license?

There are very common cases, electronic commerce nowadays, thanks to globalization, it is very easy to make a purchase online, what is recommended is to verify the store is legally constituted, that it is a serious company, that it manages a known language that is to say, that is reliable to avoid inconveniences such as re-boarding, it must be remembered that ignorance does not exempt responsibilities.

When the merchandise arrives at customs control, the users are presented with the news of the nationalization process; in this case they arrive at the warehouses in Quito or Guayaquil which work all year round. The importer or buyer has thirty days to regularize from the date that entered the deposit if the merchandise falls into tacit abandonment. It must be remembered that in the case of Courier it is allowed to import up to two thousand dollars and up to 50kl and if it exceeds these limits it can no longer be nationalized by the Exception Regime, it is already a normal load and it must be declared under Regime 10 A Consumption.

Can you tell us about the Customs Control Rate?

That rate has a collection purpose, although it is true that safeguards existed for a time and they lasted up to two years. Safeguards are temporary defense measures in accordance with the Andean Community, the World Customs Organization and the World Trade Organization. So, it is complicated that this time the country reapplies another safeguard or wants to increase tariffs on certain products; Our legislation says that taxes on foreign trade are customs duties (advalorem, specific and mixed), taxes established in organic and ordinary laws (VAT, ICE, FODINFA) and taxes for customs services, which will be regularized, created or eliminated by the SENA, therefore do not need any endorsement of the WTO or CAN but it is enough for the General Director to sign the respective resolution.

In that sense the new rate is created that is applied to the previous, concurrent and posterior control and the calculation, according to the resolution, will be ten cents for the result of the division of the net weight in grams divided for the control unit which depends on the subheading for which entry into the Ecuapass is necessary. This rate is independent for the calculation of taxes, it is not part of. Finally, importers have been told that the rate

is high and that for a container of forty feet you pay around one thousand to three thousand dollars.

**4) Engineer Nuria Maldonado, Regional Director of Correos del Ecuador CDE E.P.
Interview**

Has the delivery of international packages increased due to electronic commerce?

Yes, purchases made by people through electronic commerce have increased in this last year, the last statistic we have indicates an increase of 365% during the last year, majority of purchases made by people come from China and Singapore.

And these purchases are for personal or commercial purposes?

As Correos del Ecuador we do not have a statistic of that situation, but generally what is brought through electronic commerce to the country is for personal use. Customs is the responsible institution for identifying if a package has a commercial purpose in the act of capacity.

What are the advantages of bringing a package through Correos del Ecuador instead of a private Courier?

Correos del Ecuador brings shipments from any part of the world acquired through electronic commerce that arrives in Ecuador and has an agreement with the Universal Postal Union, for example, we have packages coming from platforms such as Wish or Alibaba that come by Correos del Ecuador since there is no option to choose the Courier. In the case of Amazon, if the suppliers send to Ecuador they send EBay via Correos del Ecuador.

What measures has Correos del Ecuador taken to face the increase on international packages shipments?

This increase is mainly due to purchases through electronic commerce and it has overwhelmed our service which is reflected in delivery delays. Actually the main company's service is postal is not so much packaging, then what has been done is to try to continue with the service and from the first of October the collection of three dollars with fifty-one cents per package was established received from electronic commerce in order to help operating process.

What are the main problems users have when using Correos del Ecuador for international shipments acquired through electronic commerce? Involved in Customer Service intervenes.

Postal mail must be used only for personal purposes, unfortunately people abuse this for “viveza criolla”, given Internet purchases boom, people make purchases on pages although it is true are very cheap but they are not used for personal purposes but most for commercial purposes this has caused a great income of packages compared to 2016 as they have increased six fold.

Inside 4x4 systems (no more than four kilos or four hundred dollars) there are packages can weigh five hundred grams and cost only eight dollars but contain five hundred computer chips then, common sense has commercial purposes. Such cases cause inconvenience in the Customs firstly so a new rate of three dollars with fifty-one has been created.

There are also problems when bringing things not allowed such as chocolate because we are a cocoa producing country you cannot bring that product, as well as shampoos, perfumes, food supplements and used clothing is forbidden to bring. The really problem is the ignorance of the law and the existing restrictions. In addition to that by trying to evade taxes or formalities do not become importers and by mail you can only send up to thirty kilos.

As for the delays on packages deliveries is due to the lack of personnel, company's short budget and large amount of packages arriving in our country.

5) Interview with the economist Carolina González, DHL Corporate Customers Shipments

Are there local companies that do their imports by DHL, through electronic commerce?

There are some companies that do their shopping electronically, for example Pat Profit, a company that sells environmental equipment, which in turn buys through websites such as Amazon, EBay, among others.

Corporate customers have an account with DHL and we, like DHL, offer them freight credit that is, they ask their suppliers for everything they want and charge the freight cost to their account, which would be like a credit card payment.

The problem is when a purchase from Amazon or Ebay is made, they deliver the products to a certain address and it is not possible to deliver them directly to the DHL office. So, what customers who buy electronically do is send to a relative in the United States, these people put everything in a single package and thus send it by DHL. On other occasions customers have a warehouse in Miami, where their merchandise is consolidated and brought to Ecuador that is the vast majority of cases.

When you buy directly on a page it is complicated with DHL, because these pages do not have a physical address in which to pick up the product, since DHL does a door-to-door service and it is essential to take products from one address. If they buy directly from the supplier, that is possible because the provider makes a call to DHL, grants the customer's account number and proceeds to withdraw from the customer's office.

Cuenca is a city much more importing than exporting, 70% of my clients (the corporate clients with whom the Economist González works) are importers and 30% are exporters.

Has there been an increase in online imports, based on purchases that have been shipped by DHL?

In 2017 there was indeed an increase; however one of the main reasons was that 2015 was a pretty bad year. Customers who have most buy online are customers who buy technological items, there are many customers who import cell phone cases, screens and accessories alike. There are also companies that specialize in making imports with people who do not know, from getting the supplier and the products that the client requires until the end of the import. In 2017 there was an increase in imports in general by more or less 10%, in the city of Cuenca. In the number of imports, 32% grew, so it has not grown in weight but in quantity of these. But most customers do not buy online due to the problem that pages do not have physical addresses.

Internet sites like Amazon, sell their products with the cost of freight already paid, then large companies have them send their packages to Miami, consolidate and bring to Ecuador, because it is cheaper.

Are there DHL customers who bring their products without indicating that they will have a commercial purpose, and yet sell them? (Referring to the use of the 4x4 exception regime)

Yes, there are some people who do that, for example we have a customer who brings sports soccer shoes to China, brings these within the 4x4 regime. As you can bring 5 imports per year per person, he brings on behalf of his different relatives during the year to be able to stock up on enough products. The percentage of duty on shoes is 30% so it is much cheaper for him to pay the \$ 42 that the shipment costs, than the taxes he should pay here. However, this type of activity has decreased a lot.

What is your opinion of the customs control service fee?

The problem with this rate is that it began to take effect from January 15th, 2018 and since it emerged as a proffer until it was desired to implement it, nothing was established about it. ECUAPASS had no way to calculate it; it is more importers until this moment do not know for sure how much it will cost. I have many clients who have told me that they will raise 5% to the cost of their products.

We, like DHL, advise clients on this issue. This fee collection is exempt for the categories of Courier A, B and E. A is for documents, B is 4x4 and E are medicines and medical equipment. For categories C, D and F the collection is made by means of a formula and the collection of this rate can have a maximum value of up to \$ 700. The problem of that rate is that Customs put a link for the importer to enter and can see what is the unit of calculation for the product that he/she wants to import, according to its tariff heading. However, as I have heard from customers, that link has not been working and as I understand the control unit is quite difficult to calculate. Due to this difficulty represented by the rate's calculation, most importers do not have a plan as to what they will do with respect to it and the increase it may have in the cost of their imports, and then most will opt for raise a percentage of product's cost and that ultimately ends up being assumed by the consumer. What this creates in people is uncertainty and demotivation in terms of imported products

6) Interview with Commercial Engineer Antonio Torres

After the need to import certain merchandise arises, how do you proceed?

An order is generated to the supplier, and then a shipment order is generated, according to the features which the importer wants the merchandise to be imported. For example in the case of food you have to ask for the previous permits, once with these in the country, one can proceed to process the internal permits such as phytosanitary. From this the merchandise can proceed to be shipped, for this it is necessary to obtain a date of booking in a shipping company, the first semester of the year will be easier to get a quota, while the second one is complicated more by the Christmas and New Year's holidays.

Who can carry out the procedures for the merchandise shipment?

There are forwards or agents that are able to get quotas with different shipping companies. The important thing is to be able to tie the merchandise to import production, with the quota that is had in the shipping company, the moment in which production ends is the ideal, which the quota that is in the shipping company must coincide.

How can you find your suppliers?

By doing a web's product searching, you will later enter the different pages that offer the products. Once on the page you have to look for the place where you say "Do business with us" or "Contact us" that way you can get in touch with the sales manager of the site in question and start the negotiation process. First you have to ask them to send products' samples you need, initially these suppliers will send digital samples, and however, if a second stage of negotiation is reached it is possible that they send physical samples. With the samples you can discuss any product's features, any change that has to be made. Generally, sample shipments are free; they are at the supplier's expense. There is a big problem with the Chinese suppliers, it usually happens that after they have sent the samples and the importer has accepted the product with the sample's features, at the time of goods' shipment, they are totally different products to those in the sample. With these suppliers the first 2 or 3 purchases are usually a problem, due to the lack of concordance of the products that are actually sent, to which they were sent as a sample.

How is the goods payment made?

After the purchase order is made, a letter of credit is issued, it is necessary to anticipate the letter of credit before the merchandise arrival. For the merchandise arrival on destination country, a specific date and time of arrival must be established, a "deadline".

What do you think are the advantages and disadvantages of making imports through electronic commerce, using virtual platforms such as Alibaba?

The main problem of making this type of purchases is that there are cases in which the product that one buys on the page is different from what is shown on the page, it has different features. That's why you have to look at the comments that users make on the page about the product you want to import. Another element that must be noticed is whether the supplier of said product offers a guarantee or not, especially when it comes to large products such as machinery. For example, Amazon is a page that does not take responsibility for the products it sells, it is simply a logistical facilitator. It is for the same that both in Alibaba and in Bestbuy or any of these pages, if the product's supplier offers a guarantee on it, it is much more advisable to make the purchase of it. Many times when one buys machinery in this type of platform, the supplier sends a specialized technician in the installation and assembly of the machine, thus ensuring that it works, besides that for it this is a basic requirement to be able to offer a guarantee. After the technician sent signs an authorization to operate the machine in the destination country, the guarantee is valid; It should be noted that the payment made to the technician for his/her services, are paid by the importer. It is not advisable to import by means of these machines too complex machines such as plastic dumpsters for example, however a sewing machine or that type of articles itself.

The e-commerce works quite well in supply chain management platforms with supply companies for spare parts for example. When the stock of these spare parts reaches a minimum point, the order of the spare parts to headquarters is automatically made; but that are internal platforms of each company, unless international platforms are used.

Do you think that some steps are saved in the import process, when making use of e-commerce?

Of course, many facilities are given. This saves hundreds of thousands of dollars for the logistical advantages it provides, the facilities of shipping, payment and search for

suppliers. You can get not very complex products and buy them, when it comes to simple products, as they are more complex products it is advisable to go directly to where the supplier and your company are and to verify all the product's features. E-commerce still does not replace 100% of the range of products that can be found in physical stores. This type of trade is reliable for a range of products, which do not require much guarantee or are not required returns.

Electronic commerce is much more developed in some countries than in other countries, and that is why it works much better in those countries, as it is in the United States. In Ecuador this topic is not very developed, however there are companies that have got it, such as DePrati.

7) Interview with Dr. Jaime Moreno Chamber of Commerce of Cuenca Legal Director

What is the development of electronic commerce in the city of Cuenca?

E-commerce is already embedded in the world and we are already in the society information, in a knowledge economy. Unfortunately our country by different edges is not at the forefront or up to date on this. The Chamber of Commerce of Cuenca makes a permanent effort to ensure there are more transactions through electronic commerce. The Electronic Commerce Law, Electronic Signatures and Data Messages indicate any activity that uses any electronic support or in its entirety uses it, since it constitutes electronic commerce. Then, making a broad interpretation, the fact that I use the email to establish contact, that google the product, already implies that this type of commerce is being used. However, the guidelines that we have in our country are really complicating the activity, we have taxes that are not right as is the tax on the exit of foreign currency, since this ultimately manages to make the product more expensive. On the other hand, there are many technical regulations at the time of clearing any merchandise.

Specifically in Cuenca, e-commerce is used with different networks _ from a decade past the 1980s, they still have resistance, but for those who are natives in the information society, it is absolutely clear. Yes, we need security in this trade, keep innovating; in Cuenca we have some companies that innovate and are at the forefront, such as payment platforms of the Paypal type or trading platforms such as Compras.ec, among others, are platforms that we are promoting with the Chamber of Commerce of Cuenca. With this, electronic commerce will have more development; it would be much easier if we had

transactional facilities. It is necessary to educate people about this issue, if there have been problems of identity theft, fraud, through electronic networks; you have to learn the correct way to do formal and secure electronic commerce. The changes are not given by obligation only but by conviction, we lack much to learn and educate, but Ecuadorian legislation is not the best for this. Cuenca does have advantages and possibilities but we are not taking advantage of them because there is no guideline from the public in the local policy that makes this possible, despite having created a Local Council, a permanent commission of electronic government, which is understood to be looking for, not only an internal operation within City Hall, but linking the private activity.

Does Ecuador need regulation on electronic commerce?

Those of us in private sector have the following premise as the maxim: "Everything that is not prohibited is allowed". The good thing about the private sector is that it is capable of doing many things without needing many regulations, what are needed are other conditions to be able to work. In Ecuador there are costs that are excessive and if you want to make imports through electronic commerce or otherwise, and is done formally, there are costs that have no reason to be, for example ten cents now asks Customs. What is being achieved is that people do not bring things from abroad by formal means: paying taxes, paying patents, having workers who are duly affiliated, paying for basic services; but of contraband. It generates a culture in society that does not respect the law, to try to save certain costs; costs between products are really incomparable.

Regulations that exist are basic, if we remember Electronic Commerce Law, Electronic Signatures and Data Messages, this law takes the UNCITRAL model which is from United Nations, a very basic model and that better than in certain areas, social networks and others, go self-regulating, I do not think you have to legislate. There are advances that are being made, for example in the Mediation and Arbitration Center of the Azuay Production Chambers, cyber courts are being created to make mediations using information and communication technologies, as there are already in Peru and many other places. We need a lot, stage for example has made an investment in a data center, which is an investment of eight million dollars that is underemployed, then if we do not go hand in hand with education and training to generate a system; so, it is useless to buy neither software nor hardware.

Are you aware of any private Ecuadorian company that uses e-commerce platforms to perform different transactions, such as finding suppliers or buying products directly?

No doubt they do exist; internet is used for everything. Cuenca is inserted in the world; there are businesses and local industries that are exporting in this way. There are sites doing it, being they B2B, B2C, all the modalities exist, but we could increase and improve them.

Have you had any contact with the Ecuadorian Electronic Chamber of Commerce, do you know how it works?

We have not had contact with them, however I was among the founders of the association that was created in Cuenca, called Computing Law, which was an institution created from the legal perspective for those of us in that area. I think it is good to take the initiative to create an Electronic Chamber of Commerce, but as far as I know, it is very incipient, it is an idea that has yet to mature; it would be good if it would develop, but it still needs a lot. E-commerce is present in the world and we must take advantage of its advantages that we should take advantage of, it is much faster, it is friendly to the environment, and it helps reduce costs. What is needed is to develop the legal part of this, few pages have terms and conditions of use, almost no page made here has privacy policies, and it is sold informally through social networks such as the Facebook Group "Mujeres Cuenca".

Does this type of trade affect formal local commerce?

In general, it is not something that affects because it is not too large a quantity; however the problem of informal trade is that it is contraband. The costs of imports and the legal uncertainty that we have, are generating that, the costs in Ecuador are not competitive and people prefer to save. It has been seen in recent years, on the northern and southern border, that people are going to buy different items such as school supplies, computers, tires, etc. In Cuenca it is known there is contraband, for example consignment liquors; With the trade agreement with the European Union we expect these prices to go down so that this contraband is no longer given. What the State is doing is a bad business, because it covers a small problem, the culture of keeping the law to the people is changing.

How can local e-commerce platforms become internationalized?

Currently these platforms are experiencing normal growth, what these platforms are doing is taking an initiative forward, but in order for them to grow and go beyond borders, resources must be invested and accelerated, because there is increasing competition worldwide. Information and communication technologies have no borders, and one acquires the product or service that is best and most convenient for them. Partnerships should be made with larger internet companies, to be able to provide competition if they want to survive over time.

Which platforms do Cuenca Chamber of Commerce members use most to make transactions through electronic commerce?

Essentially those that have available: Facebook. To buy products, in terms of platforms such as Alibaba, Aliexpress, is used by people who trade a few, our partners have already defined their suppliers; very few are direct importers, they are merchants, they generally buy their products from an importer to sell them later. There is a lot of ignorance regarding the advantages that e-commerce can offer. In fact there are many people who come to the Chamber of Commerce to be helped to start being the direct importers of their products, not just the merchants, just to be able to compete and lower costs, but they do not have the knowledge and support necessary to know how to import.

Which limitations exist for electronic commerce in our country?

There are too many controls and few incentives, for example in the United States when sales are made online, taxes are not paid as VAT, that is why this type of trade is so widespread in that country. They buy up basic items such as detergents through an application or on a web page and it would be arriving in a matter of two hours at the client's house. Here there is no such thing, firstly it is not in the buying culture of people buying online, and they still prefer a physical store where the products offered are tangible. However, if you buy online in international stores such as Amazon products such as clothing or shoes, practically is a habit, the problem is that if a local store such as Bazar La Victoria offers products through a website, people do not have confidence.

Another big problem in terms of imports of all kinds, which had the previous government were safeguards, these were aimed at protecting national industry, however they were also protected products that we do not produce, then the government described them as

sumptuary. They even protected certain musical instruments and school supplies, without mentioning technological products.

Aside from the incentives, which should come from public sector, private sector does not provide much support in the financial field. People when buying online should have a payment means and getting a payment button installed on a website is too expensive, even for large businesses. Many e-commerce pages at the time of charging, end up making the physical transaction, private banking could release this restriction in some way giving facilities.

Businesses are not prepared here in our country to serve electronic customers; they do not have the necessary logistics to deliver the product, to handle the product. An entity such as the Chamber of Commerce must integrate financial actors, traders and logistics operators, those three should work together, establishing advantages for all. We must improve the issues of customer service, electronic invoicing, page development, logistics, and the Chamber of Commerce is beginning to be a support in this regard.

What do you think of the new customs tax?

First of all, we do not understand why Customs, which has been working for 150 years and that already has the resources it needs to work within general budget of the State, will now charge ten cents to do what it has already done. It's like the SRI charges ten cents more, simply for charging. Second, that rate is technically the contribution for the benefit of a given service, tax is something indeterminate, when a tax is paid it is not known if the money collected will go to security, education, roads, anyway; a rate is for something punctual and what is the punctual? It is collection desperation. This takes away our legal security, this is what gives us confidence and allows relationships of any kind to exist. This security is not only having clear rules, but stable over time, with the rate this legal security is eliminated. If someone invests in Ecuador and there are such measures, one will want to withdraw their capital from here. On the other hand, weight, within rate calculation, does not have logic the way in which this is measured: if I have a fan of plastic and one of metal, the metal will be much more expensive because it weighs more. This rate really has nothing but a tax collection. Customs has begun to confront people who are already complying with the law, when it should be supporting them, because the private sector has a role that is generating public and private wealth, since the public sector does not generate resources, it administers them. After all, what the rate achieves

is to increase the price of the products and the final consumer has to pay for the consequences and on the other hand this rate drives away both domestic and foreign investment, Ecuadorians are investing more in other places than in Ecuador.

8) Interview with Eng. Juan Francisco Vanegas Marcimex National Purchasing Manager

100% of Marcimex's imports are direct, that is, it is purchased directly from the manufacturer, usually from China, Korea and Japan. Everything is handled clearly with the supplier, imports, import permits, nationalization. Regarding the way in which they seek their suppliers, he mentioned three alternatives:

- First of all is visiting different international fairs, in this case in China, in the city of Canton, which is one of the largest fairs, this is usually done on October or end of April, there are all exhibitors worldwide, mainly all Chinese producers.
- Second alternative to search for suppliers is through the import manifests of Ecuador. For example, if it is needed a musical box, look through the cargo customs manifests who have imported musical boxes and that way I can identify who has been the provider of them. Then you have to contact the provider.
- Third alternative is paid platforms, such as the case of "Ariba", which are search platforms for suppliers, where you simply search for the product that is needed, according to its features, and there you can see all the suppliers at the same level, as long as they have paid to be included in this list. It is a paid platform with which one can always be sure that suppliers are trusted and that they deliver quality products.

As for the possibility that Marcimex could eventually prefer to import products through a virtual platform directly, he said that it is not something that can be known with certainty, since it depends on which type of products. In the case of Marcimex, they import products from certain brands LG, Samsung, Sony, Panasonic, and therefore they go directly to the producer, not to an intermediary, because they are brands that are already developed. He thinks that if it were a smaller business, not of the magnitude of Marcimex, it could be an option for them, mainly because the products that matter are large and complex.

Regarding the recurring problems that Marcimex has as a company when doing traditional imports, the engineer mentioned that the main one is the problem of production

times in China. China has an over demand because the whole planet buys from this country, so the production quotas are fairly disputed among buyers. The Chinese supplier, by itself, is not very fulfilled in its production; so, shipment's dates and the products' delivery generate a great inconvenience.

The second problem is the fact that Ecuador has a very complex import regulation, so in order to bring a product, it has to pass tests and the products must comply with certain specific regulations, which hinders import process.

On the other hand, there is the issue of tariff increases, which in the end does not affect the importer as such, but rather the end customer, who ends up paying for that.

About Customs new rate, he thinks that in a beginning, with the form in which it was calculated, it was going to be another safeguard. However, with the modification that was made, it is expected to affect less, initially it would affect between 9 and 10% the cost of Marcimex products. It is expected to affect less, although it is quite related to product's weight, and its products are electric appliances are quite large, the cost of them is rising on average from 2 to 3 dollars. It is not a strong impact on consumer prices; however they hope that this rate does allow smuggling to be controlled, which is supposed to be their goal. It should be noted that there is a lot of contraband of household appliances in our country, which comes mainly from Colombia and Peru. They hope that the money collected will not go solely to fiscal coffers for a fiscal deficit issue, because in this way it would not be fulfilling an effective control of contraband. So, in theory, he thinks that this rate would be fine, as long as these percentages are still low. Unfortunately there is no decree defining the control units of this rate, but once one matters, in the Ecuapass you know what the percentage is, today for example in the case of motorcycles it is five thousand points, but it is not known if tomorrow this can go up and down, there is great instability in that regard. There is no legal framework that is defined long in this regard.

Engineer Vanegas states that the way in which they handle instability in terms of customs duties, or tariffs and the generation of new product orders is somewhat complicated. In Ecuador there is currently a lot of speculation regarding the change of tariff items in 2018, but it is not known. Likewise, it is necessary to be supplied with all the products because Ecuador does not produce any of them. They consider it a lottery, and they have to make their orders little by little so that the demand can be covered. However, it has happened to them that they have had some breakdowns of inventories, for example in the month of

December 2017 they had a breakdown of large television inventories because they imported a certain amount and the market demanded more, due to rumors that the next year its price will rise.

9) Interview with Engineer Fernando Vélez, IMPORTEC Manager and DHL user.

Engineer Fernando Vélez, IMPORTEC manager and DHL user, was interviewed. The interviewee commented that he regularly (at least once every two months) imports through the Courier regime, however it is not always the 4x4. His imports have a commercial purpose and he usually makes them in the electronic platform Alibaba. IMPORTEC company is dedicated to imports and machines commercialization and spare parts for mining extraction and according to the Engineer he told us, clients, who own mines, usually need specific spare parts in a certain time, in order to continue with their activities, this is usually when the machines need parts changes due to wear. Due to the immediacy with which customers require these parts, they must request these parts shipment to Chinese suppliers, which in most cases have been found on Alibaba, and they immediately send them by DHL. The interviewee told us that in these cases they use the DHL express service, and that he has never had any problems with this service and that he is satisfied with the results he has obtained from imports made in this way.