



**UNIVERSIDAD DEL AZUAY**  
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*“The importance of Customs Agent as a notary in foreign trade policy based on national laws of nature as well as in the Kyoto Convention on Customs”*

**Graduation project before obtaining a BA in International Studies  
with a major in Foreign Trade**

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## **DEDICATION**

I dedicate this work to my parents for their patience and support, my sisters for their trust and encouragement, to my family and friends who in one way or another have been my inspiration and strength for the journey in the completion of this work.

## **ACKNOWLEDGEMENT**

First I thank God for the strength to finish this job, my parents, family and friends for the unconditional support, the pressure and trust they have placed in me. I would also like to especially thank Dr. Esteban Segarra for his dedication to my work and Dr. Claudia Campoverde for her immense contribution.

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## **RESUMEN**

A través del proyecto “La importancia del Agente de Aduana como fedatario en el comercio exterior basado en normativas legales de índole nacional así como en el Convenio de Kioto acerca de Aduanas” se evidencio la situación normativa actual dentro de nuestro país en el tema aduanero, así como los planteamientos y propuestas a nivel internacional en cuanto a modernizaciones aduaneras y marcos normativos supranacionales. De la misma forma, el estudio permitió conocer la situación tanto de importadores como exportadores dentro del Ecuador y la importancia que tiene el Agente de Aduanas como su representante ante la Aduana, descubriendo la relación de dependencia directa para con esta figura que han desarrollado gran parte de importadores y exportadores. Finalmente, la relevancia del presente proyecto radica en la determinación de la importancia del Agente de Aduanas dentro de las prácticas diarias y los diferentes procesos como la nacionalización de mercancías, además de determinar la posibilidad de prescindir de esta figura dentro de los diferentes procesos aduaneros.

## **ABSTRACT**

The project “The importance of Customs Agents as a notary in foreign trade policy based on national laws of nature as well as in the Kyoto Convention on Customs” evidences the current regulatory situation in our country in the customs field and the international proposals and approaches in customs modernizations and supranational legal frames. Similarly, the present study shows the current situation of importers and exporters within Ecuador and the importance that the Customs Agent has as their representative in the customs procedure, this fact reveals the direct dependency relationship developed with this figure. Finally, the relevance of this project lies in determining the importance of Customs Agents in the daily practices and different processes such as the nationalization of goods; moreover it determines the possibility of dispensing with this figure in different customs processes in the future.



## **INTRODUCTION**

The present study focuses on the importance of Customs Agents as a notary in foreign trade with the main objective of determining the actual relevance of the Customs Brokers within the trade, and as an assistant between the importer / exporter and Customs.

The analysis of the different variables and the players within trading shows the role and importance of each link in the value chain, specifically the interaction between Customs - importer / exporter where the customs agent acts as notary and legal representative for the importer and exporter in customs.

Thus, through various interviews of those mainly involved, the study aims to determine the relevance of Customs agents in Ecuador, the participation and interest of importers and exporters in the different customs processes, and the private relationship with Customs and how these relationships affect foreign trade.

This work is comprised of four chapters that focus on the study of customs policy in Ecuador, as well as various internationally oriented proposals, customs modernization, and its maximum simplification. This is done in order to potentiate the work of Customs, facilitating and accelerating trade within nations and to benefit the community at large.

The first chapter establishes a theoretical framework as well as a brief study of the Constitution of the Republic of Ecuador and its provisions on International Treaties. It also presents an analysis of the different participants in the customs process in its most basic form as a prelude to the study of customs Agents in later chapters.

The second chapter discusses national legislative measures in customs matters primarily focused on the work of Customs Agent duties, obligations, licensing, etc.

Chapter three has a more international focus, encompassing legal regulations raised by supranational bodies such as the World Customs Organization or WCO. This

chapter also considers the representativeness of the Customs agents internationally and alternatives regarding customs modernization.

After interviewing mainly customs officers, customs agents, importers and exporters, the fourth chapter presents conclusions which reveal the current situation of Customs - customs Agent - Importer / Exporter relations. These conclusions show the faults affecting the optimal flow of foreign trade in Ecuador and the areas and issues that need to be corrected for the proper functioning of the customs system, as well as increasing economic dynamism within the country.

This paper is a guide to the current operation and interaction between the Customs and importer / exporter, the customs agent intervention, the role of customs in mainly foreign trade, the establishment of models focused primarily in trade facilitation, and the simplification of different customs processes leading to the economic growth of several nations.

To develop this study, we used various research methods such as the inductive-deductive method. Interviews and surveys were used as a primary source of information, supplemented with a review of research publications, in addition to books, digital press releases, and online publications.

## **1. The Importance of Customs Administration Assistants**

Since the beginning of time, man has organized himself into social groups, followed by tribes, until the formation of what is now known as States. Because of commercial relationships that extended beyond borders, there are entities whose primary purpose is to control trade, prohibiting the passage of certain goods or collecting taxes on imports or exports.<sup>1</sup>

However, the need to exchange goods and services originates from the inequality of natural resources, human differences, mainly with regard to skills, division of labor and specialization; thus trade arises as a need to exchange surplus commodities with others. This phenomenon initially began as bartering, later with the use of beans as currency and other materials, etc. Over the years, means of communication and transportation have improved, which in turn have benefited trade.

Foreign trade has increased as the needs of the people have enhanced (i.e. seeking more and better forms of economic development as it occurs today). When the exchange zone surpassed national borders there began a need for foreign trade and the need for regulation through different control points located in different areas.<sup>2</sup>

As time passed, trade became controlled by the individual states. Later on, countries delegated this activity to a specific organism, imported and exported goods required government authorization, thus Customs was created.<sup>3</sup>

In this way figures like Customs Agents were born and acquired great relevance as an auxiliary of the customs service, maintaining a place of great importance within business processes, both import and export. However, as technology advanced, the real importance of the Agent has come into question. Therefore, it is essential that we define all of the variables involved in international trade to understand how all aspects work together.

This chapter analyzes the main variables involved in trade in order to foster better understanding and development; for example, understanding the macro environment

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<sup>1</sup> COSIO JARA, Fernando. "MANUAL DEL DERECHO ADUANERO." 2007.

<sup>2</sup> TREJO VARGAS, Pedro. "ADUANAS, RÉGIMEN JURÍDICO Y FACILITACIÓN." 2008

<sup>3</sup> COSIO JARA. Op. Cit.

in which trade occurs, the participants, and the role played by the agent. In the end, the question will be answered; can the future of international trade be achieved without the need of Customs Agents?

Chapter one also attempts to understand all the processes comprising trade and the leading figures that involve it. Furthermore, we explain posed regulatory frameworks and commercial activity in general, stressing the World Customs Organization and its most controversial proposal as the Revised Kyoto Convention and the position of Ecuador, particularly how it relates to the Constitution of the Republic regarding the Conventions. The chapter concludes with an analysis of the figures involved in the different customs processes used in Ecuador.

## 1.1 Foreign Trade

Some authors define Foreign Trade as, “economic activity consisting usually for-profit and the exchange of goods and services, linking product offerings with the needs (demands) of consumers and facilitating circulation of wealth between countries.”<sup>4</sup>

Alfonso Ballesteros Roman says, “Foreign Trade is economic activity based on the exchange of goods, capital, and services undertaken by a country with the rest of the world, regulated by national or bilateral agreements.”<sup>5</sup>

As mentioned in his book, *Foreign Trade Manual*, Joan Chabert states, “Basically, the term foreign trade is the free flow of goods and receiving - services, made between natural or legal persons established in different countries.”

The Vienna Convention, in Article I, narrows the definition of foreign trade as, “the exclusive exchange of goods between parties in different countries, and not to the reception - including services, in practice many of these services complement or are part of trade in goods, using the same means for financing the collection and payment for both operations.”<sup>6</sup>

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<sup>4</sup> LAVANDA REYES, Flor. “Negocios Internacionales.” Peru. 2005

<sup>5</sup> BALLESTEROS ROMÁN, Alfonso. “Comercio Exterior, Teoría y Práctica.” Spain. 2001.

<sup>6</sup> CHABERT FONTS, Joan. “Manual del Comercio Exterior.” Barcelona, Spain. 2005

At present, foreign trade is the practical objective of trade policy that is geared to protectionist purposes; liberal, neoliberal, and statesmen depending on the economic system. However, in a globalized, increasingly competitive market, open foreign trade is one of the main pillars for the development of a state and can be regulated by international agreements or treaties through bilateral exchanges, whether regional or multilateral. The primary objectives are: to participate in the new world order called “globalization,” guarantee preferential access, insure products to markets or inputs applying national treatment, diversify economic relations, harmonization of procedures and peaceful resolution of disputes, conformation strategic partnerships to promote technology transfer, strengthen presence abroad, and domestic market position as a strategic center business.<sup>7</sup>

## **1.2 Participants in Foreign Trade**

Regarding Foreign Trade participants, some authors state that, “. . .all those involved in business processes must act under the principle of good faith in order to eliminate obstacles that continue to hamper the various import and export processes.”

The main participants of foreign trade are:

- Official Agencies
- Financial Institutions
- Contracting Subjects
- Trade Documents
- Customs Control
- Customs Agents

It is important to frame the role of each figure and their respective relevance within Foreign Trade to have a peripheral knowledge of the environment; however, for the purposes of this study, only a few points will be detailed.

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<sup>7</sup> TREJO VARGAS. Op. Cit.

### **1.2.1 Official Agencies**

Official Agencies consists of those entities responsible for commercial activity regulation within each country; always depending on trade regimes and the degree of freedom, both of international economic relations, in field exchange, and foreign transactions.<sup>8</sup>

### **1.2.2 Financial Institutions**

Within financial institutions are commercial banks whose main business is to receive public money on deposit or under any other contractual arrangement and use that money to obtain other sources of funding to grant credits in various forms, or apply for transactions subject to market risks.

Within trade, the importance of financial institutions lies in the collection of tariffs. Among the main reasons why this activity is delegated to banks is the administrative integrity in the handling of tax cases, in addition to better infrastructure in relation to customs as banks have interconnected branch networks on a national level, thus providing a more efficient service.<sup>9</sup>

### **1.2.3 Contracting Subjects**

In all types of trade there are always two parties, a buyer and a seller. However, in Foreign Trade, these parts are best known as an *importer* and *exporter*.

The importer is the person introducing the goods that enter the country where they plan to nationalize, transform, or sell, that is, said merchandise is destined for a third person. The exporter refers to the person carrying out the export or the person on whose behalf it is made.

Both the nations involved in the transaction, as well as the financial institutions; depending on who sells and who buys determines who the importer or exporter is.

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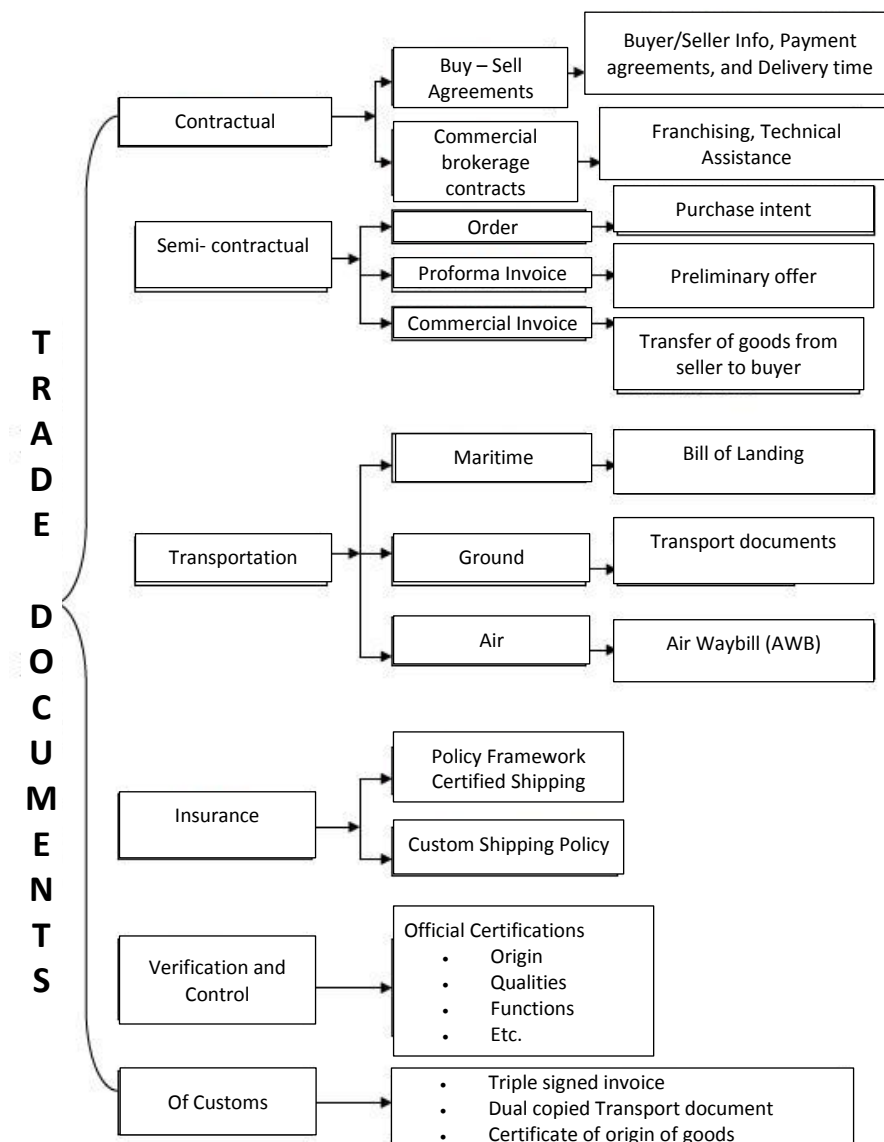
<sup>8</sup> CHABERT FONTS. Op. cit

<sup>9</sup> COSIO JARA. Op. Cit

## 1.2.4 Trade Documents

As with any business transaction, the documents required to carry out the transaction play a role of paramount importance, in this context they are known as *trade documents*. The most important trade documents are:

- Contractual and semi-contractual documents
- Transport documents
- Insurance documents
- Verification and control documents
- Customs documents, etc.



**Figure 1: Types of documents concurrently present in commercial transactions**

### 1.2.5 Customs

Customs can broadly be understood as the state agency responsible for monitoring international freight traffic, operations involving the entry and exit of goods from the territory of a State, or the generation of customs duties.<sup>10</sup>

Pedro Vargas Trejo refers to Customs as, “. . . a Foreign Trade instrument [that] should be governed by a legal framework to make it more competent, electronic, and consolidate its transformation into an entity facilitating and promoting foreign trade, not forgetting its audit work and control of goods.”

The Kyoto Convention in its revised edition also defined customs as, “the State Service responsible for the application of customs legislation and the collection of duties and taxes and also charge of the enforcement of other laws and regulations concerning, among others, import, export, transit, and storage of goods.”<sup>11</sup>

Tossi, in his dictionary on Customs Law says, “Customs is sharing with competitors assigned primarily to exercise the function of perceiving and controlling public income emanates from duties and taxes levied on import operations or export control and international freight traffic.”<sup>12</sup>

Peru defines customs as, “. . . the agency responsible for the implementation of customs legislation and control of the collection of customs duties and other taxes; enforcement of foreign trade legislation, generation of traffic statistics that produce and exercise such other functions as the laws entrust upon it. The term also refers to any part of the customs administration, a service, or an office. Thus, Peruvian law defines Customs as an organization and a venue.”<sup>13</sup>

Venezuelan legislation has its Customs agency responsible for implementing customs policy; which, as previously noted, is part of the foreign trade policy of a State and is understood as, “a set of ideas based on the principles of political tax, on which rest the rules and administrative procedures used by the state media for regulating economic affairs from the exchange of goods and / or services with other

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<sup>10</sup> COSIO JARA. Op. Cit.

<sup>11</sup> Convenio de Kioto Revisado: Capítulo II, Definiciones

<sup>12</sup> TOSSI, Jorge Luis. “Diccionario de Derecho Aduanero.” Buenos Aires: Ediciones Depalma. P.5.

<sup>13</sup> COSIO JARA. Op. Cit.



countries through international relations that are established to achieve fluency in foreign trade”<sup>14</sup>

Pedro Vargas Trejo poses a Customs concept focused on current modernity which he defines as, “. . .the state agency responsible for implementing the substantive functions of trade facilitation, collection of contributions recognizing applicable exemptions and franchises of the audit and physical verification and documentation of goods entering or leaving the country through the different customs through different traffic borders and the enforcement of regulations and restrictions tariff; prevention and sanctions for irregularities, acts of terrorism in the border, conducting foreign trade statistics, and perform its functions using equipment and technology while respecting the rights of users.”

However, the concept of modern customs is not limited to the aspects of computer improvements, automation, technology upgrade or infrastructure and equipment, but goes beyond; it should also include elements of facilitation, competitiveness, constant staff training, “smart” offices, harmonization and simplification of procedures, respect for human rights, a good relationship with the private sector, giving certain substantive customs duties and customs brokering, and the optional use to promote other integral customs services. Obviously, for this to be achieved, it must be accompanied by modern and transparent customs legislation to ensure the correct performance of all users and authorities.<sup>15</sup>

For Ecuadorian regulatory standards, the Code of Regulation of Production, Trade and Investment, which we refer to it as RCOPCI, defined in Article 2, the Customs Authority or Customs is, “. . .a competent public administration body, foreign trade facilitator to implement customs legislation and its complementary and supplementary laws, determiner and collector of taxes on foreign trade and any other penalties legitimately established for foreign trade operations, which controls customs authority, and that lends itself by granting customs services provided in the Organic Code of Production, Trade and Investment.<sup>16</sup>

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<sup>14</sup> SENIAT: Sistema Aduanero Venezolano; ¿Qué es la Aduana? ([www.seniat.gov.ve](http://www.seniat.gov.ve))

<sup>15</sup> TREJO VARGAS. Op. Cit.

<sup>16</sup> Ministerio de Industrias y Productividad. “Código Orgánico de la Producción, Comercio e Inversiones.” 2010

Similarly, concerning Customs Authority, Ecuadorian legislation stands out as the competent public administration body, foreign trade facilitator to implement customs legislation and its complementary and supplementary laws, determiner and collector of taxes on foreign trade and any other penalties legitimately established for foreign trade operations, which controls customs authority, and that lends itself by granting customs services provided in the Organic Code of Production, Trade and Investment.

However, it is important to highlight two aspects included within Ecuadorian law regarding the participation of both the active subject and the taxpayer. The Organic Code of Production, Trade, and Investment (COPCI) defines these as:

**Active subject:** Customs tax liability given by the State, through the National Customs Service of Ecuador as reported by the Organic Code of Production, Trade and Investment, in its chapter number II, Article 111.

**Taxpayer:** Person who should meet the relevant tax or charge as reported in chapter II, Article 111 of the Organic Code of Production, Trade, and Investment.

### 1.2.6 Customs Agent

Customs Agents are better known as “Customs Auxiliary Civil Servants” in Peru and “Ministers of faith” in Chile. Basaldúa defines them as those who professionally manage the clearance of goods at customs. They also perform brokering services among the parts involved, i.e. those who carry out one or more customs operations and the customs procedure, profiting from their profession.<sup>17</sup>

Ares Petit states, “. . . whatever the interpretation, in light of the doctrine that is made of the figure of the customs agent, to which he has been endowed with the status of trader, partner of the Administration, public official, all the while realizing the undoubted fact which is simply to act on behalf of a third party.”<sup>18</sup>

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<sup>17</sup> BASALDÚA, Ricardo Xavier. “*Cuestiones de Derecho Aduanero*”

<sup>18</sup> ARES PETIT, José Luis. “*La Responsabilidad Tributaria de los Agentes de Aduana.*” 1984.

The Organic Code of Production, Trade and Investment, in Book V, Chapter IV, Title V, Section 227, defines the Custom agent as, “the person or entity whose license, issued by the Director or the Director General of National Customs Service of Ecuador, empowers him to manage consistently and for others, the release of goods, to the effect of signing the customs declaration in cases established by the regulations, to be obliged to charge for their services according to the minimum fee table that is fixed by the Director or the Director General of the National Customs Service of Ecuador. Such license will have a term of five years, which can be renewed for the same term.”

It is very important to emphasize the meaning of customs clearance or clearance of goods quoted above. The Organic Code of Production, Trade and Investment, in Book V, Title II, Chapter V, Section 139, defines it as, “the administrative procedure which should be carried out on goods entering or leaving the country, the process begins with the presentation of a DAU or the Single Customs Declaration which culminates with the release of said goods.”

The Customs Agent may contract with any operator involved in international trade and will be forced to respond to the National Customs Service of Ecuador for the information contained in the documents.

Similarly, the customs agent shall be considered as notary and public auxiliary concerning data entered in customs declarations that are made, in conformity with the information and documents that legally should form the basis for the customs declaration, subject to verification by the National Customs Service of Ecuador. In addition to the authors, the customs agents, who in the exercise of an illegal activity, whether they participated as perpetrators, accomplices or accessories, shall be subject to criminal liability established for crimes against public trust over the offenses of forgery in general, in which case no prior judicial declaration is required in civil matters for the exercise of penal action under Article 180 of the civil Procedure Code. In any case, for purposes of responsibility, customs agents are considered as public notaries.

On shipments involving merchandise, the customs agent is solely responsible for the customs tax liability, without prejudice to administrative or criminal responsibility.

Notwithstanding the foregoing, the customs agent is not responsible for the valuation of goods.

The Regulations to the Organic Code of Production, Trade and Investment, issued by the executive branch of Ecuador in 2010 and published in the same year, states in Chapter XIV, Article number 256, that the Customs Agent is as follows: “The person or entity whose is licensed, entitling him to manage consistently, and for others, the clearance of goods.

As far as Customs agents comprising both national and international regulatory framework, it is necessary to consider two important aspects that should be included in the work of the agents as such; these aspects are therefore the principle of “Good Faith” and “Responsible Solidarity.” These aspects allow the agent to perform his duty to the best of his ability.

**The principle of good faith** is defined as a procedural principle which is presumed in all proceedings or customs procedure, a principle that is applied to the parties which will involve complete sincerity and collaboration in the process, in this case being applied to the respective procedures.<sup>19</sup>

Regulation of the Conduct of Business of Customs Agents, issued in 2008 by the Board of the Customs Corporation or CAE, better known today as Ecuador Customs Service or SENAEC defines **Responsible Solidarity** as, “. . . the customs agent's responsibility incurred by the State, together with the taxpayer, the tax liability regarding customs formalities relating to release of the goods in which it intervenes, without prejudice to the criminal liability that it legally belongs to.”

The Organic Code of Production, Trade and Investment, in Book II, Title IV, Chapter II, Article 46, describes “liability” as, “. . . the operators and administrators of the Special Economic Development Zone will be jointly and severally liable to income, ownership, maintenance and final destination of any goods entered or processed in authorized areas, and legally liable for their use and proper destination.

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<sup>19</sup> Revista Judicial. “Principios Constitucionales Fundamentales del Derecho Procesal Ecuatoriano.” (www.derechoecuador.com)

After a generic review on Foreign Trade and its participants, it is important to take a critical approach to the business situation applied directly in Ecuador, analyzing national rules first, then supranational rules as in the case of the Kyoto Convention, as well as another supranational institution: the World Customs Organization.

### **1.3 National Legal Regulations**

Regarding the laws governing national activities, in areas such as trade, customs and others, the legislative hierarchy is the Constitution of the Republic of Ecuador, followed by international conventions or treaties, organic laws, ordinary laws, rules and ordinances of regional districts, decrees and regulations, ordinances, agreements and resolutions, concluding with other acts and decisions of public authorities as indicated by the same constitution in Art 425.<sup>20</sup>

Within the customs area, Ecuador regulates its activity through the Organic Code of Production, Trade and Investment, which entered into force in 2010, repealing prior Customs Laws. The RCOPCI which became law in 2011, in conjunction with COPCI, is the paramount framework that establishes order in the customs area. This also includes issuing and publishing regular newsletters and Resolutions informing about changes and developments of such customs.

### **1.4 Supranational Regulations**

Concerning international regulation policy, the Republic of Ecuador adheres to a range of agencies and organizations and has participated in several treaties of a supranational nature. That is, Ecuador is under several international treaties and organizations that take precedence over the group of participating States.

Between international organizations and other entities in which the Republic of Ecuador participates as a member, are:

- Organization of the United Nations or UN
- World Trade Organization or WTO

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<sup>20</sup> Editorial Corporación de Estudios y Publicaciones. *“Constitución de la República del Ecuador”*. 2008.

- World Customs Organization or WCO
- Organization of American States or OAS
- International Monetary Fund or IMF
- World Bank or WB
- Andean Community or CAN
- Bolivarian Alliance for the Peoples of Our America, or ALBA
- *Mercado Común del Sur* or MERCOSUR
- Union of South American Nations, or UNASUR, among others.<sup>21</sup>

The international treaties that Ecuador has adhered to are:

- The Cartagena Agreement
- The Generalized System of Preferences
- Andean Preference Act of the United States of America
- Andean Trade Preference Act of the European Union
- The Global System of Trade Preferences among Developing Countries

Multilateral agreements for products such as:

- The International Cocoa Agreement, etc.<sup>22</sup>

#### **1.4.1 World Customs Organization**

The World Customs Organization or WCO is the only intergovernmental organization exclusively focused on customs matters. With memberships around the world, the OMA is known for its work in areas covering the development of global standards, the simplification and harmonization of customs procedures, trade supply chain security, the facilitation of international trade, improving the application of Customs and compliance activities, initiatives in the fight against counterfeiting and piracy, and promoting integrity and sustainable global programs of Customs Capacity Building.

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<sup>21</sup> Organización de los Estados Americanos. “*Sistema de Información sobre Comercio Exterior.*” (www.sice.oas.org)

<sup>22</sup> Consejo de Comercio Exterior e Inversiones. “*Acuerdos Comerciales del Ecuador.*” (www.comexi.gob.ec)

Among the main proposals managed by the WCO is the Harmonized Nomenclature System of Goods, in addition to managing the technical aspects of the agreements of the World Trade Organization on Customs Valuation and Rules of Origin.<sup>23</sup>

#### **1.4.1.1 Kyoto Convention**

The Kyoto Convention, or better known as the International Convention on the Simplification and Harmonization of Customs Procedures, was a proposal put forward by the World Customs Organization in the year 1974. It later entered into a facet of revision and update to match the current demands of governments and international trade requirements in general.

In 1999, the Council of the WCO adopted the revised version of the Convention as a model for efficient customs procedures required in the 21st century. Once implemented, it shall meet the efficiency requirements that globalization demands concerning external trade.

The guiding principles of the Convention are:

- Transparency and predictability of customs
- Standardization and simplification of goods declaration and supporting documents
- Simplified procedures for authorized persons
- Maximum use of information technology
- Minimum necessary for customs control to ensure compliance
- The use of risk management and audit-based controls
- Interventions coordinated with other border agencies
- Trade Partnerships

The revised Kyoto Convention promotes trade facilitation and effective controls through its legal provisions. Similarly, the Convention established a series of mandatory rules, which must be accepted by all Contracting Parties without prejudice. The revised Kyoto Convention entered into force on February 3, 2006.<sup>24</sup>

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<sup>23</sup> World Customs Organization. "About us" ([www.wcoomd.org](http://www.wcoomd.org))

<sup>24</sup> World Customs Organization. Op. cit

Given the category of the World Customs Organization as a supranational entity, the Kyoto Convention could be considered as very beneficial for Ecuador in the customs area if it would be adopted in later years. However, concerning the constitution of the Republic, which document should take precedence? By Ecuador acceding to this international agreement, its constitution could not be violated from any point of view. Thus, an article of the constitution would be needed intended to show the hierarchy of the Constitution with regard to treaties.

### **1.5 Analysis of the Ecuadorian Constitution in determining hierarchy on international treaties**

“**Art. 425.** - The rank order of application of the rules is as follows: The Constitution, international treaties and conventions, the organic laws, ordinary laws, rules and ordinances regional district, the decrees and regulations, ordinances, agreements and resolutions , and other acts and decisions of public authorities. In case of conflict between different rules of hierarchy, the Constitutional Court, judges and judges, administrative officials and servants and public servants, will be settled by applying the standard hierarchical superior. Hierarchy considered, as appropriate, the principle of competition, especially the ownership of the exclusive competence of the autonomous governments.”<sup>25</sup>

As referred to in Article 425, as well as cited above, the Constitution is above all law, including international treaties, however, it must be remembered that only the International Treaties on Human Rights are above any constitution. The Kyoto Convention is far from being a Convention on Human Rights, is inferior to the Ecuadorian Constitution of 2008; although it is beyond any kind of regional policy, it is subject to the Ecuadorian constitution; thus, if Ecuador ever decided to accede from the Convention due to any type of violation or infringement on the Constitution, it would be free to legally abstain from its obligations at that point.

Upon completion of the study in their regulatory frameworks, to start with the pure study of customs, we proceed to analyze the customs field and sub divisions that are managed for the classification of the various characters involved in customs

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<sup>25</sup> Editorial Corporación de Estudios y Publicaciones. Op. Cit.



processes. The main distinctions contained within the COPCI are: the Auxiliary of Customs Administration (AAA) and the Authorized Economic Operators or AEOs.

Therefore, national and international rules are defined as follows:

### **1.6 Auxiliaries of Customs Administration (AAA)**

According to the SENIAT or the National Integrated Customs and Tax Administration of Venezuela, the auxiliary of the Customs Administration are those natural and legal persons, who authorizes the Customs Administration by administrative act, to act with the competent bodies, in the name and on account that contracts its services, in processing customs operation or activity.

These people, as auxiliaries of the Customs Administration, have the function to work with the customs authorities in the proper application of legal rules relating to customs and foreign trade, and in this sense, they are responsible to the National Treasury for violations committed to the customs regulations arising from their acts or omissions in the performance of their duties. At the same time, they have an obligation to their clients to facilitate compliance with customs legislation through its brokerage activities in customs activity.

Following this auxiliary role, these people are required to comply with certain obligations under the Tax Administration, in order to preserve the permissions granted to operate as such, and avoid administrative penalties that come with incorrect application of the rules and procedures.

The obligations that commonly surround the figure of the Customs Administration Assistants are:

- 1.5 Keep records of all acts, operations and customs procedures which involve, in the manner and means established by the customs legislation.
- 2.5 Preserve and make available to the Tax Administration, the documents and information relating to its management, for the period specified in national legislation.
- 3.5 Showing, at the request of the Tax Administration, the books, its attachments, files, records and other information of significance tax or customs and

electronic files, magnetic or similar supporting or containing such information.

4.5 Transmit electronically, customs documents and statements concerning acts, and operations involving customs procedures.

5.5 Comply with the procedures for the electronic transmission of data, following the software used by the Tax Administration.

6.5 Meet legal requirements and are subject to administrative procedures, and operations involved in customs procedures.

7.5 Prove to the Tax Administration employees who represent them in their border management, for the purpose of its proper identity cards.

8.5 Ensure fiscal interests.

In States such as Venezuela, within this classification are contained:

Customs Agents

Customs warehouses or depots

Transport Companies

Licensed laboratories<sup>26</sup>

However, within Ecuadorian regulations, paragraphs about the Auxiliary of the Customs Administration, in terms of concepts or subdivisions are not much different from those discussed above.

Concerning the Auxiliary of the Customs Administration, the COPCI mentions Customs Agents in Title V, Chapter I. In Chapter II, contained in the same TITLE V, the COPCI focuses on Authorized Economic Operators.

## **1.7 Authorized Economic Operators or AEOs**

Regarding Authorized Economic Operators, Fernando Cosio Jara states, “. . . the state began to give way to private functions to provide the public with some virtues of private enterprise. Since ancient times it started giving the collection of fees to

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<sup>26</sup> SENIAT: Sistema Aduanero Venezolano; “Auxiliares de la Administración Aduanera.” (www.seniat.gov.ve)

certain individuals, recently giving the consolidation of modern states, customs retook administration of these funds.

However, when the efficiency of the public official of the entire world comes into question, one begins to develop again the need to assign the tax functions to the private sector.

Thus, the state promotes the participation of economic agents in providing customs services, processes by delegating to the private sector, in this division, not delegated functions of a body with power, such as the exercise of the customs power and the power to impose sanctions or coercive collection, but delegating peripheral activities such as paying taxes or storing goods.

The administration, as all subjects of law, not only perform legal acts but also technical activity that does not involve any change in legal situations or produce specific legal effects associated with its own emanation.<sup>27</sup>

Those in customs duties of a “technical” nature are delegated by economic agents such as:

- Importers
- Exporters
- Beneficiaries of regimes
- Customs Operations and destinations
- Financial entities
- Trade operators and other persons involved in foreign trade operations

Including:

- Business Managers or verifiers
- Carriers
- International Freight or Transitory
- Customs Agents<sup>28</sup>

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<sup>27</sup>JENKINS, Gleno. “*Autonomía y Relación de la Administración Tributaria*”

<sup>28</sup>SANZ RUBIALES, Iñigo. “*Actividad de Inspección y Certificación Lecturas y Casos.*” 2006.

Moreover, in the Ecuadorian legislation, about AEO Customs, Chapter II of the Code of Production, Trade and Investment, in Article 231, defines Authorized Operators Trade as, “the natural person or legal entity involved in the international movement of goods, whatever the role it has assumed, that meets the safety standards equivalent supply chain established by the National Customs Service of Ecuador, to access facilities in customs procedures. Authorized Economic Operators include: manufacturers, importers, exporters, carriers, consolidators, deconsolidators, international freight forwarders, ports, airports, warehouses, temporary storage, courier, terminal operators, and will be regulated under the provisions to the effect issued by the Director or the Director General.

To qualify as an Authorized Economic Operator (OAS) the entity must comply with the requirements of the regulations of the Code.

Authorized Economic Operators are not those who have been sanctioned by customs offenses or legal persons whose representatives, partners or shareholders are disqualified on that situation. Those who use any type of simulation to be an AEO being caught by the prohibition in this article will lose that quality as well as the natural person or legal entity that has contributed to obtain an authorization under these conditions, who also may not be permitted again. In case of violation of customs rules and without prejudice to the corresponding penalty, the Director or the Director General may suspend or revoke the authorization of the Authorized Economic Operator as provided in the regulations of this Code and the regulations issued by the Service Ecuador Customs to regulate the activity of Authorized Economic Operators.

## **1.8 Comparative Analysis between the AAA and OEAs**

According to the compilation of both concepts and classifications collected and displayed above, there are clear similarities between the two groups, i.e. between the Customs Administration Assistants and Authorized Economic Operators, so you could argue that although given different acronyms, its functionality is basically the same.

Both groups focus on servicing Customs by delegation of functions, serving as public servants, and in the case of COPCI simply not make any differentiation between the groups might be available to the presumption that both share many more similarities than differences, concluding that they have the same group of people with the same obligations and approaches.

## **1.9 Conclusion**

As the first findings from the first chapter, we can determine the importance of foreign trade both from its inception until the present context, as a key tool for progress within each nation.

In the same way, although there are several concepts proposed by various experts, they clearly agree that foreign trade is mainly based on the exchange of goods, capital and services, in addition to this, a comprehensive understanding of the structure of foreign trade, i.e. its participants and its relevance within it.

Not forgetting the principle of good faith on the part of all participants, focusing towards mutual benefit from the truth and honesty in the different processes. Among the participants of foreign trade, are both the Customs and the Customs Agent.

Besides this, it is important to establish clear notions about the laws, both nationally and internationally, that regulate or influence the functioning of the Customs in Ecuador, emphasizing the main proposal contained within the subject, i.e. the Kyoto Convention held by the World Customs Organization.

Subsequent analysis focused on the Constitution of Ecuador and its hierarchy with respect to international treaties, and that although Ecuador has not acceded to the Kyoto Convention, if they do, it is vital to know the position of Ecuador and the constitution with regard to international conventions.

Analyzing the issue of classification of the major groups involved in foreign trade, and the concepts used in these issues and their subdivisions to establish clearly what is the real difference between these groups.

## **2. Regulatory Framework Governing the Activities of Customs Agents Nationwide**

Today, globalization has been one of the main triggers for improvements and developments both in commerce, technology, telecommunications, customs, etc.

These developments, and the impact they have had on society, have resulted in a modernization of customs, as well as foreign trade in general.

Customs agents are one of the main points under discussion at present mainly because of the proposals of the World Customs Organization in its famous and controversial Kyoto Convention which raises the eradication of foreign trade. All these points will be analyzed more specifically and in detail in the next chapter; however, as has been referred to in the previous chapter, it is vital to know the powers of agents in Ecuadorian regulations.

The national laws governing customs activity are: the Organic Code of Production, Trade and Investment or COPCI; the Code of Regulation of Production, Trade and Investment or RCOPCI; and Regulations governing the conduct of business Customs Agents. These government agencies place Customs Agents as those responsible for managing the clearance of goods as well as customs tax liability without acquiring responsibility for the valuation of goods.

The Customs agent has been present in society since ancient times although such work was not regularized through legislation until the twentieth century. In Mexico, Máximo Carvajal Contreras made the first of Customs ordinance regulations in the year 1891. In Ecuador, it was not until 1978 that the activities of a Customs agent appeared in national regulations.

This chapter is relevant to the development of this study as it allows us to understand the national legislative framework of the Customs Agent. In addition, it allows us to understand the specific activities the agent has according to the established legal framework in Ecuador. These activities include: duties, obligations, powers, license duration, as well as potential damages and injunctions.

In general, this chapter helps us to better understand the role of the agent within trade on a national scale. Later chapters will explain this same role in a global context and under supranational laws.

## **2.1 Rights of Customs Agents**

The Organic Code of Production, Trade and Investment, in Article 228, among the main rights that count for is the right to be recognized within the territorial boundaries of our country, i.e. recognition of their competition at national.

The main rights recognized by Agent Regulation Code of Production, Trade and Investment, Article 257 provide that the agent should, “. . . be aware and stay updated about the procedures and powers as legislation dictates. Also, know all process steps that may be of interest or directly involved in Customs.”

It is also necessary for the Customs Agent to know representatives and officials of the National Customs Service of Ecuador, especially those which with a particular association is maintained because of the formalities of the various administrative procedures; in addition to complaints and suggestions based on the operation of the SENAЕ given its relations with the entity and its officials.

Finally, the main duty of a customs broker is to receive adequate protection in the event there are complaints involved; mainly where the customs authorities expose an Agent for breach of statutory regulations.

## **2.2 Duties and Responsibilities of Customs Brokers**

The main duty of a customs broker is contented in the COPCI, in Article 228, which is to fully comply with the conditions laid down in the COPCI and the RCOPCI, among other rules and regulations issued by the SENAЕ; this is also in addition to providing proper advice to all importers / exporters who require their services.

In the RCOPCI, in Article number 258, regarding the obligations of operators, it explains, “the Customs Agent is obligated to carry out all its activities based on

regulations, codes, and other regulatory requirements, such as those of a supranational nature and those issued by domestic entities.”

Within the entire clearance process involving the merchandise, such agent shall verify compliance with the formalities as to the documentation required in the customs declaration, since joint liability is implicit in the work of a Customs Agent.

The Customs agent must also maintain a chronological record of all customs clearances made; if the agent serves as a clerk for several customs districts then he/she must maintain a similar record in its primary tax home. Furthermore, the customs agent is obliged to cooperate in all activities related to customs control, to include reporting to the proper authorities any information that directly affects the state treasury and/or the administration.

Finally, the Agent shall submit signed customs declarations decreed in national and supranational law.

#### **2.4.2 Impediments to become a Customs agent**

As outlined in the RCOPC, in Art. 260, any citizen who has received some type of criminal customs, or taxation conviction; individuals that have any type of debt or are in default on obligations to Customs; contractors listed as defaulted in the records of the Comptroller General; or those who have declared bankruptcy and have not yet recovered are prohibited from being agents. Furthermore, those individuals who hold public positions, with the exception of those who hold positions as university professors; those who have not submitted or possess the necessary assurance as outlined in the RCOPCI; those people who work as a Foreign Trade Operator or Service Provider in capacities such as: control, monitoring and evaluation; those persons to whom the National Customs Service of Ecuador or SENAE have canceled or revoked their Customs agent license as well as the spouse or relative up to the fourth degree of consanguinity; SENAE official employees; former public officials or former SENAE servers, and those legally representing a person who works as a Customs agent are also forbidden from serving as Customs agents.



## **2.4 Customs Agent License**

The RCOPCI in Article 259 determines that the National Customs Service of Ecuador or SENA E will be responsible for issuing the conditions and requirements for obtaining, renewal, suspension, and cancellation of licenses for Customs agent; they are also only to be conferred upon persons who possess tertiary qualification, issued by legally recognized entities.

### **2.4.1 Voluntary Cancellation of Customs Agent License**

The voluntary cancellation of the Customs Agent's license may occur, as noted in the RCOPCI in Art. 262, when the Agent decides to freely and voluntarily waive the right to exercise the activity in question; this should also be reported to the Directorate General of SENA E where the request will be received and accepted.

### **2.4.2 Voluntary Suspension of Customs Agent License**

As referenced to in the COPCI, a customs agent may request the suspension of his/her license in the following cases: serious illness, accepting a position in a public office, or a voluntary decision.

Upon request, the suspension will last only as long as the event takes place; however, when the suspension is requested on a voluntary basis, it may not last more than two years. Reactivation requests must be submitted within a maximum period of 30 days after completion deadlines; if no such request is made then the license becomes null and void.

### **2.4.3 Procedure for Cancellation or Suspension of Customs Agent License**

Article 264 of the COPCI states that, “the procedure for the suspension or cancellation of the license of Customs Agent will be headed by the SENA E. In addition, the Agent will maintain the amount required as collateral, even within one year from the date of cancellation or suspension of the license and during that period the SENA E will verify customs declarations previously made under that agent’s name.”

Only in the event that the cancellation of a license of a Customs Agent was made by a senior citizen will the entire guarantee be reimbursed.

#### **2.4.4 Expiration of Customs Agent License**

As stipulated in Article 265 of the COPCI, expiration of the Customs Agent license will not occur as long as a respective renewal has been processed by the licensee. However, the law allows those agents who have allowed their license to expire to apply for a new license.

### **2.5 Penalties for Customs Agents**

The following are the penalties for Customs Agents when they commit a crime or violation as stated in The Organic Code of Production, Trade, and Investment, Article 229.

#### **2.5.1 Suspension of Customs Agent License**

At the moment a Customs Agent does any activity that goes against national regulations, the incurring offense or contravention is punishable with a license suspension of up to 60 calendar days; for example, a Customs Agent has breached the provisions both in the RCOPCI, COPCI, as well as other regulations within a period of 12 months in 3 or more occasions.

Other provisional breaches include:

- Refusing to act as facilitator of trade activities related to customs control, i.e. refusing to cooperate in investigations or hindering other activities to SENAE.
- Do not submit the relevant supporting documents when submitting the customs declaration, if required.
- Failure to comply with the Organic Code of Production, Trade, and Investment.

#### **2.5.2 Cancellation of Customs Agent License**

As is understood in the Code of Production, Trade and Investment, Customs Agents can be punished with a cancellation of their licenses when the following crimes or offenses occur.

- Relapse in license suspension for a period of one calendar year.

- A Customs Agent receives a guilty sentence for having committed a customs offense
- Improperly filed clearance processes
- Death or dissolution of the licensee.

## **2.6 Guarantees**

According to Article 20 of the rules and regulations governing the conduct of business of Customs Agents, “. . . any individual who aspires to become licensed Customs Agent shall provide a guarantee on behalf of the National Customs Service of Ecuador once they have rendered and approved the evidence adduced, in addition to complying with the requirements stipulated in the regulations.”

Moreover, as stipulated in Chapter IX of the Organic Code in article 232, “. . . customs bonds, or liens, arise from the time the goods are subject to customs authority, i.e. the moment goods are under customs containment; including inside the retention processes and / or seizure; goods can be taken out when the payment or termination of the tax liability in customs has been made.

Similarly, as indicated in Article 233, the customs guarantee ensures the payment of taxes on foreign trade, and the payment of formalities by the Customs Administration, etc. Settlement must be made by the operators of foreign trade according to the nature of their activities.

Customs securities can be divided into general and specific categories, and may be incorporated in the following ways:

- Cash deposits
- Certificates of deposits in financial institutions
- Credit with the SENAE
- Bank guarantee
- Insurance Policy
- Letter of guarantee
- Real estate mortgaged in favor of SENAE
- Etc.

Concerning general guarantees, the COPCI states that said guarantees must be submitted to the Directorate General of SENAE in the following cases:

- 1) The exercise of the activity of a Customs Agent
- 2) For legal persons authorized to provide Accelerated Couriers and international postal traffic.
- 3) Temporary Deposits
- 4) Guaranteed Dispatch
- 5) Warranty for Free Stores and Warehouses
- 6) The functioning of Deposits

### **2.6.1 The exercise of the activity of a Customs Agent**

Whether a natural or legal citizen, all must submit a guarantee whose amount shall be one percent of the average of the three previous fiscal years of taxes and other surcharges made on customs declarations. If the Agent has exercised its functions for a period less than three years, the warranty will be one percent of the taxes and other surcharges made during the previous year.

In new cases brought forth by management, one must present a general guarantee which amount shall be equal to \$30,000 U.S. Dollars, and in no case will guarantees be received of more than \$200,000 U.S. Dollars.

Guarantees will have a duration of one year and should be submitted during the month of April of each year to the Directorate General of SENAE. If the guarantee is not validated then the exercise of duties by Customs agents cannot be made.

As for specific guarantees, Article 235 states that deposits may be made by cash, certified checks, credit notes or other tax administration.

Specific guarantees must be presented in the following cases:

- For temporary admission re-exportation in the same state or temporary admission for inward processing.

- For domestic companies performing public passenger transport, cargo and national or nationalized with ships or aircraft entering the country under the temporary admission re-exportation in the same state.
- For the case of forced arrival, means of transport that are used to transport goods to their final destination
- For the transit procedure
- To enter the national territory of private vehicles for tourism.
- To enter the national territory of ships or aircraft for repair under the temporary admission for inward processing.
- For goods imported into the country under international fair regime.
- When the Certificate of Origin is not present or when having been submitted does not comply with formalities.
- When disputes arise, upon payment of taxes on foreign trade declared, one may present a security equivalent to the amount of taxes in dispute.
- Pending visa required for the exemption to income of household goods and / or team.
- Pending administrative resolution of tax exemptions.
- Direct customs clearance.
- Direct unloading.
- Goods exempt from taxes or special arrangements, usually by diplomatic missions and consular offices accredited in the country.

There are other general or specific guarantees, due to their nature or risk, which are required. Also, securities must meet certain requirements; included in these are:

- Guarantees must be expressed in U.S. Dollars;
- Guarantees must be unconditional, irrevocable and immediately recoverable, in full or partially, conditions to be included in the text of the warranty rendered;
- For all cases, the Customs Administration will have an additional thirty days from the expiration of the warranty to initiate collection action when such action has been initiated on the due date;

- Should a general guarantee be partially executed, the authorized operator must return the value executed so that the overall value remains entrenched throughout the authorization period;
- Bank guarantees and insurance policies should always record the signature of the insured;
- Without prejudice to administrative actions as may be appropriate for non-renewal and / or warranty period generally proceed with the immediate suspension of the operation code, for which the unit that guards the guarantee shall notify the competent area;
- For cases in which operators can authorize a term exceeding one year; one must file a warranty for the entire period, or in their absence annual renewals, but may not exceed the term originally authorized, respective renewals, or authorization regime subject to the conditions in the preceding articles.
- In the case of guarantees provided by diplomatic missions, consular offices, and public sector institutions, these must comply with the following formalities:
  - An original letter.
  - Signature and seal of the legal representative or the person holding the representation in the country.
  - Time lapse of code and its regulations.
  - Details of the scheme to which the goods are guaranteed, subject, and description; with the identification of the transport document and the endorsement of the customs declaration.
  - Certified or notarized copy of the document certifying the quality of the person signing the letter;

As a side note, Article 238 states that an exception from customs guarantees is made for material or goods used for military purposes.

## **2.7 The Customs Agent Auxiliary**

Article 230 of the Organic Code of Production, Trade, and Investment; as well as Article 261 of the COPCI; specifically focuses on the Special Customs Agent. The

Customs Agent Auxiliary is those who cooperate with the Agent in the exercise of their activities, according to the National Customs Service. Similarly, the main duties for an auxiliary agent are to obey the rules set out in the COPCI, RCOPCI, and other related regulations. On the other hand, they may act on behalf of the Agent in all activities related to customs administration, but cannot include a signature on the customs declaration. However, in case the Assistant commits an infraction, by action or omission, the blame would fall directly on the Customs Agent.

With regards to the license of an Agent Assistant, this will have the same validity as the license of the customs agent and may be canceled in cases such as: a sentencing for committing customs offenses, death of the holder, and those stipulated by the COPCI.<sup>29</sup>

## **2.8 Conclusion**

In conclusion, although the work of Customs Agent and its relevance have come into question by several institutions, their roles in our environment are still needed as covered by the Code of Production, Trade and Investment or COPCI, together with the RCOPCI.

These regulations describe the activities of the Customs agents and their assistants. The regulations and codes consider matters such as the licensing of agents and their assistants as well as everything related to this; including the different processes of cancellation, suspension and revocation.

Finally, we have also considered the main duties and responsibilities of a customs agent and impediments to be a customs agent. We considered the guarantees one must submit to be a customs agent to perform their duties; this makes it more relevant to understand the field of competence of agents to establish subsequent judgments concerning their relevance in Ecuador.

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<sup>29</sup> Ministerio de Industrias y Productividad. *“Código Orgánico de la Producción, Comercio e Inversiones.”* Corporación de Estudios y Publicaciones. 2010

### **3. The Kyoto Convention**

Society today is undergoing a period of change such as global warming, the search for renewable alternatives to fossil fuels, nuclear practices, terrorism, economic crises. Traditional phenomena like globalization and technological innovation have left a completely different environment than what existed 50 years ago.

The truth is that our reality is concurrently different, but the only way to cope with all these changes is through integration and community development, for which the Customs agencies of the world play a basic role.

Similarly if the environment has evolved rapidly, the importance of customs in Ecuador is no exception. Gone are the days when its only function was the collection of taxes, control access, and the output of goods. The requirements of Customs now include the role of foreign trade facilitator, protector of society, and fighter to eradicate terrorism.

Some points contradictory, such as the supervision and control of the entry and exit of goods and trade facilitation, should be established as a priority, forming a harmonious balance where neither is relegated to the background. The truth is that Customs should now be able to perform control functions while managing a larger volume of goods crossing borders, faster and with constant pressure to reduce costs and minimize delays in inspections of goods.

Secondary functions of Agents are the enforcement of restrictions and regulations aimed at areas such as public health, combating illicit trafficking of arms, drugs, and endangered species.

All of these purposes are completely within reach through strategies focused on achieving the right balance, modernizing the different control methods, and encouraging cooperation between the different entities, with a tangible commitment of importers, exporters, OCE's, customs, and governments alike.



## **3.1 World Customs Organization**

### **3.1.1 General Considerations**

Today, among the organizations that are relevant mainly in the business environment, is the World Customs Organization or WCO; it is responsible for the regulation of activities and customs operations around the world in its member countries.

The main purpose of the WCO is the harmonization of customs procedures and regimes, as well as secure and facilitate global trade in goods in different customs territories, carried out through a series of recommendations to the international community.

### **3.1.2 Mission**

The WCO is an independent intergovernmental organization with competence in customs matters whose mission is to increase the effectiveness and efficiency of customs administrations globally; it is based on the following points:

- Establish, maintain, support, and promote international instruments for the harmonization and uniform implementation of simplified customs, procedures, systems, and effective governing of the movement of goods, people, and conveyances through the customs border.
- Strengthen the efforts of member countries to ensure compliance with legislation, all the while attempting to maximize the level of cooperation among themselves and with other international organizations in order to combat customs offenses and other crimes worldwide.
- Helping members to face the challenges of the current business environment and adapt to new circumstances, to promote communication and cooperation among themselves and with other international organizations; in addition to enabling customs integrity, human resource development, transparency, improving working methods and management of customs administrations and the exchange of best practices.

### **3.1.3 Organization**

The WCO is composed of 171 nations (as of January 2007), grouped into 6 regions. Each region has a Chairperson, who is also Council Vice President at the same time. The Council is composed of the Directors or Director Generals of Customs of the member countries themselves in session twice a year. The main functions of the Council are to elect a Secretary General, who is responsible for the good performance of the WCO. Office of the Secretary General Politics follows a Commission formed by 24 members, which is advised by a Finance Committee consisting of 17 members. The functions and work of the WCO consists mainly of the following committees:

- Permanent Technical Committee
- Harmonized System Technical Committee
- Technical Committee on Valuation of Goods
- Technical Committee on Rules of Origin
- Committee on Law Enforcement
- Finance Committee

However, of the aforementioned committees, the most important are:

#### **A) Permanent Technical Committee**

The main objective of this Committee, also known as the Technical Committee for Facilitation of Procedures, is to simplify and harmonize customs procedures and systems used by the various customs administrations of member countries. The main support to reach their goal of facilitation is through the "International Convention on the Simplification and Harmonization of Customs Procedures" also known as the "Kyoto Convention," which entered into force on September 25, 1974. This Convention was revised for several years until finally in 1999; the revised version came into force on February 3, 2006, with the accession of 40 Contracting Parties.

The WCO in coordination with the Committee ensures uniform interpretation and application of the naming conventions and valuation; it also seeks greater harmony and uniformity in the customs systems of member countries through the

study of customs techniques employed by these countries. Another important function of the Committee focuses on the mutual assistance between national customs administrations to prevent, investigate, and punish the violation of customs legislation developed in 1977 at the “International Convention on Mutual Assistance for the Prevention of Crime in Customs Matters.”

As mentioned above, the Committee seeks to ensure uniformity in customs procedures and their work has resulted in a “Customs Glossary” which of the international customs terminology. This Committee has also made important free membership agreements for WCO member countries, the United Nations, and other specialized agencies.

#### B) Harmonized System Technical Committee

As its name implies, this system's main function is to establish a system of classification of goods which is internationally accepted to facilitate the establishment of tariffs, exchange of trade statistics, supervision and monitoring of dangerous goods, rules of origin, and the implementation of risk analysis systems. The efforts of this committee resulted in the development of the “International Convention on the Harmonized Commodity Description and Coding System,” held in Brussels on the 14 of June 1983 and entered into force in 1988.

#### C) Technical Committee on Valuation of Goods

This Committee aims to establish a definition of the customs value of goods through a universal rating system composed of quantifiable, predictable, simple, and equitable elements. The agreement on customs valuation of goods, also called the “Brussels Definition of Value,” was developed by the Committee and took effect on July 28, 1953. Having not achieved universal acceptance, this instrument had to be replaced by the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade or GATT, better known as the Customs Valuation Agreement of GATT / WTO. This is one of the agreements resulting from the multilateral rounds of trade negotiations conducted in Tokyo and concluded in Geneva in 1979 under the auspices of GATT.

#### D) Technical Committee on Rules of Origin

This committee works closely with the WTO and is responsible for addressing technical issues relating to the application of the Rules of Origin by its members, for which they set clear rules and provide appropriate solutions on the subject, based on the facts presented. The result of the work of the Committee on Rules of Origin led to the Agreement on Rules of Origin, part of the Agreement created by the WTO and whose main objective is the establishment of harmonized rules of origin, to be developed and implemented in a fair, transparent, predictable, consistent manner, without having a negative effect on trade, and provide for greater safety in the development of world trade.

### **3.1.4 Background**

In 1945, after World War II ended, European economies were devastated. However, upon acquiring the capital necessary to rebuild the cities and buy satisfiers to remedy the diseases suffered, goods were exchanged across borders in different countries. This created various problems including: the production of documents in different languages to cover the goods, the existence of double reviews, high administrative costs, inequitable taxes, and in the end this was reflected in higher prices for consumers. This generated awareness in governments and motivated the customs' administrative origins “. . . of what is now known commercially as the “World Customs Organization” or WCO, whose official name remains “Customs Cooperation Council” or CCA.

In 1948 the study group established two committees: an Economic and one for customs matters. The Economic Committee is the direct predecessor of what is now known as the Organization for Economic Cooperation and Development (OECD), while the Customs Committee became the Customs Cooperation Council.

The first objectives that the Council urgently needed to address were; first, the lack of an internationally unified nomenclature to fully identify and define, through classification and individual numbering, the name of the goods; second, there was no definition for “the value of the goods,” necessary to standardize the taxation of ad-valorem taxes and generate certainty for international trade in the countries acceding to the GATT or CCA.

Studies by the CCA focused to compare customs techniques used in several countries in order to generate an operating pattern to be used by members of the Council; this contributed greatly to the creation of a common valuation customs and tariff nomenclature. The results of these studies led to three agreements that were signed in the city of Brussels on December 15, 1950:

- Convention on Nomenclature for the Classification of Goods for Customs Tariffs (Brussels Nomenclature Agreement or BNA) -- It should be noted that this Convention created a provisional committee in February 1953 to continue work on the application of the nomenclature initiated by the Customs Committee of the Research Group for the European Union. Subsequently, on September 11, 1959 the Nomenclature Committee was formed and conducted its first session on May 23, 1960.
- Agreement on Customs Valuation of Goods (Brussels Definition of Value, BDV)
- The Convention establishing a Customs Cooperation Council (CCC)

The implementation of these agreements and the growth that the Council had, were reason for the January 26, 1953, in Brussels. The inaugural session of the CCA, chaired by the Minister of Foreign Trade of Belgium, Mr. Joseph Meurice, also included the participation of 17 country members of the Agency at the time (West Germany, Austria, Belgium, Denmark, Spain, France, Greece, Ireland, Italy, Luxembourg, Norway, Netherlands, U.K., Sweden, Switzerland, and Turkey), respectively represented by the Director-Generals of Customs.

By 1994, the Policy Commission of the CCA proposed and agreed to change the name to the "World Customs Organization." Motivation for this change was based on the growing number of Contracting Parties of the Organization, which also sought to establish reciprocity to the recent creation of the World Trade Organization during the negotiations of the Uruguay Rounds in 1994; it was felt that in this way the office and commercial media could clear their strong ties and also represent the good relations between the two organizations.

The WCO, which began in 1953 as a European body with 17 contracting parties, has become a global organization that currently has the participation of 171 members, and has positioned itself as an independent intergovernmental body whose mission is to increase the effectiveness and efficiency of customs administrations. The WCO is an intergovernmental organization excellence in global competition in customs.<sup>30</sup>

### 3.1.5 Main Efforts

Main efforts made by the WCO since its establishment:

<b>Name</b>	<b>State</b>
Convention Establishing a Customs Cooperation Council	Signed in Brussels on December 15, 1950. Entered into force on November 4, 1952
International Convention on the Harmonized Commodity Description and Coding	Entered into force on January 1, 1988
Convention on nomenclature for the classification of goods in customs tariffs and Amendment Protocol	Entered into force on September 11, 1959
ECS Notebooks Customs Convention on Commercial Samples	Entered into force on October 3, 1957
Customs Convention on the temporary importation of containers	Entered into force March 15, 1962
Customs Convention on the temporary importation of professional equipment	Entered into force on July 1, 1962
Customs Convention concerning facilities for the importation of goods for display or use at exhibitions, fairs, meetings or similar events	Entered into force on 13 July 1962
Customs Convention on the temporary admission of goods (ATA Convention)	Entered into force July 30, 1963
Customs Convention on welfare material for seafarers	Entered into force December 11, 1965

<sup>30</sup> TREJO VARGAS, Pedro. "ADUANA: Régimen Jurídico y Facilitación." 2007

Customs Convention on the temporary importation of scientific equipment	Entered into force on September 5, 1969
Customs Convention on the temporary importation of educational materials	Entered into force on September 10, 1971
* Customs Convention on the international transport of goods (ITI Convention)	Held on June 7, 1971
Simplification and Harmonization of Customs Procedures (Kyoto Treaty)	Entered into force on September 25, 1974
International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) amended	Entered into force on 3 February 2006
International Convention on mutual administrative assistance for the prevention, investigation and repression of Customs offenses (Nairobi Convention)	Entered into force on 21 May 1980
* International Convention on mutual administrative assistance in customs matters (Johannesburg Convention)	Held on 27 June 2003
Convention on Temporary Admission (Istanbul Convention)	Entered into force on November 27, 1993
Customs Convention on Containers, 1972	Entered into force on December 6, 1975
Convention on the valuation of goods for customs purposes (BDV)	Entered into force on 28 July 1953

**Table 1: Conventions held by the WCO**

**\* Conventions that have not yet entered into force.<sup>31</sup>**

<sup>31</sup> World Customs Organization. “*Treaties and Agreements.*” Website: [www.wcoomd.org](http://www.wcoomd.org)

## **3.2 Kyoto Convention on the Simplification and Harmonization of Customs Procedures; main focus: Release of Goods and Customs Brokers**

### **3.2.1 General Considerations**

Because of current phenomena like globalization, advances in technology, and the e-commerce boom, customs of the world must meet increasing demands, made possible only by an efficient and effective manner, mainly in the release of goods.

However, the implementation of an efficient system that allows early release of goods is not the only urgent need for customs, considering its basic functions are: protecting society by simultaneously controlling goods entering and leaving the country, along with the collection of taxes, trade facilitation, prevention, and fighting against terrorism.

There are several elements conducive to the fulfillment of all the purposes mentioned above, in the shortest time possible; but it requires the implementation of both information technology as well as a legal instrument to regulate and harmonize customs procedures.

Under these conceptions the proposed World Customs Organization or WCO was born, The Revised Kyoto Convention targets the same potentiate customs capabilities to fulfill their functions with optimized time and resources. The Kyoto Convention, whose formal name is “The International Convention on the Simplification and Harmonization of Customs Procedures,” originally adopted in 1973, by the Council of the World Customs Organization during one of its meetings in Kyoto, Japan, entered into force in 1974.

With advances in technology, boosting trade, and competitive development of nations, in addition to the requirements of users and higher quality services requirements, conflicts with traditional methods and processes have arisen. These issues were in conflict with items discussed in the Kyoto Convention, 1974; thus the need for a review and update. The review process culminated with an amendment that was finally approved by the WCO Council in 1999. In February 2006 the Revised Kyoto Convention came into force, adapting to the demands of the



environment and the benefit of all involved in foreign trade, including the government and citizens themselves.

The implementation of the Revised Kyoto Convention adopted a legislative framework that mainly focused on the regulation of customs activity, improving the performance of the customs which triggers a series of beneficial factors for each Contracting State to this Convention.

Accession to the Convention entails modernization in areas such as the simplification of customs procedures, reducing administrative barriers; it also symbolizes a lead representative in terms of economic competitiveness of the adopting nation, increased participation by both small and medium enterprises. This in turn attracts investment leading to economic growth.

The Convention encourages governments, as well as importers / exporters, in specific aspects such as:

- Governments benefit from effective and efficient collection of taxes, and the increase in economic dynamism. In addition, improved methods for the protection of society and the effective use of resources.
- Meanwhile importers and exporters benefit from the reduction in transaction costs, eliminates delays in approval processes and release of goods, and simplifying business processes.<sup>32</sup>

Given the growth of the economy in some of the world's nations and the volume of both imports and exports increasingly projecting upward, the Revised Kyoto Convention proves to be the right tool for the harmonization of the various elements of foreign trade.<sup>33</sup>

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<sup>32</sup>World Customs Organization. *“Implementing the revised WCO Kyoto Convention International Convention on the simplification and harmonization of Customs procedures (as amended).”* Website: [www.wcoomd.org](http://www.wcoomd.org)

<sup>33</sup> World Customs Organization. *“Revised Kyoto Convention.”* Website: [www.wcoomd.org](http://www.wcoomd.org)

Since its entry into force in 2006, so far, over 80 countries have acceded to this proposal, Gabon being the last to sign in November 15, 2012. However several other nations are discussing the possibility of accession, as reported by the WCO.

As mentioned by the Secretary General of the WCO, Kunio Mikuriya, the Revised Kyoto Convention is considered a model promoter of facilitation and simplification of customs procedures, so it is not surprising that the trends in adherence are soaring.<sup>34</sup>

The Revised Kyoto Convention includes: a Body, a General Annex, and Specific Annexes or Chapters. However, for the parties to adhere to the Convention, the Body of the Treaty and the General Annex are mandatory or are a binding decision. Together, they form the minimum requirement and essential part of the harmonization of customs procedures, while the Specific Annexes or Chapters can be accepted partially, i.e. contracting parties may apply reserves in the Specific Annexes.<sup>35</sup>

Although a number of states have signed their accession to Revised Kyoto Convention, or are in the process of incorporation, several others have chosen to implement the principles of the Convention into national law, as is the case of Ecuador because although Ecuador has not signed their inclusion in the Convention, in 2010 it became law within which several of the principles contained within the WCO proposal are conveyed. However, this is a point that will be discussed below.

Both the incorporation into the Convention and access through national laws are very important points, but the benefits are much more representative when joining the Convention only to translate its principles into national regulations, although access is already a first approach to the improvement and harmonization of customs procedures.

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<sup>34</sup> World Customs Organization. “*Gabon accedes to the WCO Revised Kyoto Convention.*” Website: [www.wcoomd.org](http://www.wcoomd.org)

<sup>35</sup> World Customs Organization. “*The International Convention on the Simplification and Harmonization of Customs procedures (Revised) – Pathway to Efficiency and Effectiveness in the Customs Environment.*” Website: [www.wcoomd.org](http://www.wcoomd.org)

By signing the Revised Kyoto Convention, the contracting party acquires a certain status and certification to ensure that the nation has customs standards that are internationally recognized. Besides being a contracting party, the government has projected to themselves and their customs as promoting efficiency and modernity.

At the same time, if a contracting party had the intent to sign an agreement with another party, one of the main benefits would be the time saved in the negotiation process and regulatory guidelines in customs matters.<sup>36</sup>

### **3.2.2 Analysis of the Kyoto Convention, particularly Customs Brokers**

The Revised Kyoto Convention is structured as follows:

- Preamble
- Chapter I
  - Article 1: Definitions
- Chapter II: Scope of the Convention
  - Article 2: Scope of the Convention
  - Article 3
  - Article 4: Structure of the Convention
  - Article 5
- Chapter III: Management of the Convention
  - Article 6: Committee Management
  - Article 7
- Chapter IV: Contracting Party
  - Article 8: Ratification of the Convention
  - Article 9
  - Article 10: Application of the Convention
  - Article 11
  - Article 12: Acceptance of the provisions and reserves
  - Article 13: Implementation of the provisions

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<sup>36</sup> World Customs Organization. “*Benefits of the Revised Kyoto Convention.*” Website: [www.wcoomd.org](http://www.wcoomd.org)

- Article 14: Dispute Settlement
- Article 15: Amendments to the Convention
- Article 16
- Article 17: Duration of membership
- Chapter V: Final Provisions
  - Article 18: Entry into force of the Convention
  - Article 19: Depositary of the Convention
  - Article 20: Registration and authentic texts
- General Annex
  - Chapter 1: General Principles
  - Chapter 2: Definitions
  - Chapter 3: Clearance and other Customs Formalities
  - Chapter 4: Duties and Taxes
    - Assessment, collection and payment of duties and taxes
    - Deferred payment of duties and taxes
    - Payment of Duties and Taxes
  - Chapter 5: Security
  - Chapter 6: Customs Control
  - Chapter 7: Application of Information Technology
  - Chapter 8: Relationship between Customs and Third Parties
  - Chapter 9: Information, Decisions and Resolutions Provided by Customs
    - General Application Information
    - Information Specificity
    - Decisions and Resolutions
  - Chapter 10: Resources in Customs Matters
    - Right of Appeal
    - Forms and Resource Basics
    - Appellate Review
- Specific Annexes
  - Arrival of goods into the customs territory
    - Procedures prior to the filing of the goods declaration

- The temporary storage of goods
- Importation
  - Clearance for home use
  - Re-importation in the same state
  - Exemption from import duties and taxes
- Exportation
  - Exportation winner
- Customs warehouses and free zones
  - Customs warehouses
  - Free zones
- Transit
  - The Customs Transit
  - Transshipment
  - Haulage cabotage
- Transformation
  - Inward processing
  - Outward processing
  - Drawback
  - Processing products for home use
- Temporary Admission
  - Temporary Admission
- Crimes
  - Customs offenses
- Special Procedures
  - Travelers
  - Postal traffic
  - The means of transport for commercial use
  - Stores
- Origen
  - Relief consignments<sup>37</sup>

As mentioned previously, the Convention comprises a body, a General Annex and Specific Annexes, of which the submission of reservations by the contracting parties

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<sup>37</sup>World Customs Organization. “*Text of the Revised Kyoto Convention.*” Website: [www.wcoomd.org](http://www.wcoomd.org)

is permitted only in the specific annexes, however the Body and General Annex Convention are binding acceptance and the need to maintain a minimum of points adopted equally by all States that decide to adhere to reach the level of harmonization sought by the Convention.

The body of the Convention is mainly focused on the parameter concerning the adoption of the Convention as such, i.e. measures that focus on aspects such as the ratification of the amendments, basically only aspects of the application of the Convention, not about the merits.

Article 2 shows that the Convention does not set limits on the contracting parties, that is, if the joined nation wants to offer more facilities to the customs processes than those contained in the Convention it does not prevent it, nor is its jurisdiction to prevent the prohibition of goods subject to customs control. So it is clear that while the body of the Convention is a binding acceptance of parts, there is a level of flexibility that is quite beneficial as it does not infringe upon the interests of its contractors.

The General Annex proposals begin to truly focus on harmonization and simplification; Chapter 8 contains the main subject matter for this study's purposes, in addition to Chapter 7.

Chapter 7 proposes the implementation of information technologies that provide for better development of Customs and the performance of their duties, but mainly the initiative of becoming paperless.

The removal of paper in customs processes and the implementation of information technology, in addition to simplifying customs processes, allow procedures to become more efficient, which could lead to the obviation of the Customs Agent.

In addition to the implementation of Information Technology, Chapter 8 proposes the optional use of third parties in trade, i.e. the importer or exporter can act on their own without having to adhere to a third party such as a Customs Agent, in the event that he so decides. However it is important to establish that the decision depends entirely on the importers and exporters involved in processes. For example, in the U.S hiring a Customs Agents is optional yet several importers hire them anyway because the

Agents take charge of customs matters while the importer focuses on other aspects such as negotiation.

Considering these points, the fact that technology is implemented in a simplified procedure does not guarantee greater participation of importers and exporters if they refuse to get involved in trade, but this will depend on how one defines these aspects as a priority.

Finally, within the Specific Annexes are regulated aspects of special customs regimes, throughout the Convention all standards are recommendations easily applied in the vicinity of each contracting party due to the facility of the approach.<sup>38</sup>

### 3.2.3 World ranking regarding the Kyoto Convention focused on Customs Auxiliaries

According to statistical reports of the World Customs Organization, more than 80 States have acceded to the Kyoto Convention Revised version, although the trend is on the rise worldwide, to date, these are the contracting parties:

<b>List of Contracting Parties of the Revised Kyoto Convention</b>		
<b>Contracting Parties</b>	<b>Dates of signature without reservation or deposit of instruments of ratification or accession</b>	<b>The subsequent reporting dates in the specific annexes and chapters</b>
ARGELIA *	26/06/1999	14/06/2001
AUSTRALIA *	10/10/2000	
AUSTRIA *	30/04/2004	
AZERBAIYÁN	02/03/2006	
BANGLADESH	27/07/2012	
BIELORRUSIA *	20/12/2010	
BELGIUM *	30/04/2004	
BOTSWANA *	26/06/2006	

<sup>38</sup> Colegio de Contadores Públicos de México. “Impulsará Mejoras en Aduanas el Convenio de Kyoto.” Website: [www.ccpm.org.mx](http://www.ccpm.org.mx)

BULGARIA *	17/03/2004	
CANADA *	11/09/2000	
CHINA *	15/06/2000	
DEM. REPUB. OF CONGO *	24/06/2009	
CROATIA *	02/11/2005	
CHIPRE *	25/10/2004	
CUBA *	24/09/2009	
CZECH REPUB. *	19/09/2001	
DENMARK *	30/04/2004	17/06/2004
EGYPT *	08/01/2008	
ESTONIA	28/07/2006	
THE E.U. *	30/04/2004	
FINLAND *	30/04/2004	
FIJI *	29/01/2010	
FRANCE *	22/07/2004	
GABON	15/11/2012	
GERMANY *	30/04/2004	
GREECE *	30/04/2004	
HUNGARY *	29/04/2004	
INDIA *	03/11/2005	
IRELAND *	30/04/2004	
ITALY *	30/04/2004	
JAPAN *	26/06/2001	
JORDAN	08/12/2006	
KAZAKSTAN	19/06/2009	
KENYA *	25/06/2009	
KOREA *	19/02/2003	
LATVIA *	20/09/2001	
LESOTHO *	15/06/2000	
LITHUANIA *	27/04/2004	
LUXEMBURG *	26/01/2006	
MADAGASCAR *	27/06/2007	
MALASIA	30/06/2008	
MALI	04/05/2010	



MALTA	11/05/2010	
MAURICIO	24/09/2008	
MONGOLIA	01/07/2006	
MONTENEGRO *	16/06/2008	
MOROCCO *	16/06/2000	
MOZAMBIQUE	11/07/2012	
NAMIBIA	02/03/2006	
NETHERLANDS *	30/04/2004	
NEW ZEALAND *	07/07/2000	08/05/2000
NORWAY *	09/01/2007	
PAKISTÁN *	10/01/2004	
PHILLIPINES *	25/06/2010	
POLAND *	09/07/2004	
PORTUGAL *	15/04/2005	
QATAR	13/07/2009	
ROMANIA	27/12/2010	
RUSSIA *	02/02/2011	
RWANDA *	21/11/2011	
SAUDI ARABIA *	27/04/2011	
SENEGAL*	21/03/2006	
SERBIA *	18/09/2007	
SLOVAKIA *	19/09/2002	
SLOVENIA *	27/04/2004	
SOUTH AFRICA *	18/05/2004	
SPAIN *	30/04/2004	
SRI LANKA *	26/06/2009	
SUDAN *	16/08/2009	
SWEDEN *	30/04/2004	
SWAZILAND	31/10/2012	
SWITZERLAND *	26/06/2004	
THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA	28/07/2009	
TURKEY *	03/05/2006	
UGANDA *	27/06/2002	
UKRAINE *	15/06/2011	

UNITED ARAB EMIRATES *	31-06-2010	
UNITED KINGDOM *	30/04/2004	
UNITED STATES *	06/12/2005	
VIETNAM *	08/01/2008	
ZAMBIA *	01/07/2006	
ZIMBABWE *	10/02/2003	

**Table 2: Contracting Parties of the Revised Kyoto Convention**  
**\* Nations that were Contracting Parties since the 1973 Convention**<sup>39</sup>

The nations that have joined the Revised Kyoto Convention to date represent about 70% of world trade and according to the items included in the Agreement, customs modernization and technology must be established and in operation or are in full process (depending on the date on which the instrument of accession was delivered by the new contracting party). Measures are already beginning to be taken such as those related to the relationship between customs, importers, and exporters; specifically with Customs agents being optional. However, such a measure will be implemented as the respective transitions are given and apply more to the importer and exporter with Customs and the State.

### **3.2.4 Cases of Specific Nations Customs and Attitudes in Relation to the Kyoto Convention, Specifically Customs Brokers**

#### **3.2.4.1 The Case of Europe: Analysis of the Principal Countries**

##### **3.2.4.1.1 The European Union**

###### **3.2.4.1.1.1 Mission**

The customs in the European Union's mission is, “. . . monitoring trade flows of the community, contributing mainly to promote a fair and open trade; applying both the common commercial policy and other policies without forgetting safety regarding the supply chain.”

Besides Customs, authorities take measures focusing on three key points:

<sup>39</sup> World Customs Organization. “*List of the Contracting Parties to the Revised Kyoto Convention and their Instruments.*” Website: [www.wcoomd.org](http://www.wcoomd.org)

- Safeguard the financial interests of the Community and each of the states included.
- Defend the community against unfair trade, while promoting trade in legitimate ways.
- Preserving the European Community and its residents and its environment in close cooperation with other authorities for environmental protection.
- Finding and keeping a balance between customs controls and trade facilitation.
- Modernizing the different working methods through an electronic customs system that is easily accessible, thus supporting the increase of competitiveness of European companies.<sup>40</sup>

#### **3.2.4.1.1.2 Customs Generalities**

The customs union operating within the European Union, is not based solely on the traditional functions of Customs, this union forges its mission under much more extensive parameter controls such as environmental, health, agricultural policies, among others.

To fully achieve its mission, the office of the European Union relies on its "Community Customs Code" published in 2008, which repealed the previous code adopted in 1992.

This new Community Code has adopted a series of new principles that underpin the performance of the functions of the customs union, such as: the updates in the information technology which maximizes use, improved border management at the external borders of the Union, and a redistribution of tasks between the customs offices.

The electronic Customs Union handles issues such as the declaration of goods prior to arrival and handles the Automated Import and Export Systems, besides the "Single Window" and "Single Point of electronic access."

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<sup>40</sup> Comisión Europea. "Las aduanas, hoy" Website (ec.europa.eu)

Among the benefits that have different systems, the Automated Export System allows a process to start in a Member State and may end in another State, through a single transmission of data or documents, in the case a State wants to generate an export procedure, there is no need to generate that procedure again whenever the merchandise enters a new state in the Union. The Single Point of Access Electronic statements document both pre-arrival and pre-departure, any declaration created by a Foreign Trade Operator will remain connected with all customs office of the Member States.

The information portal of the EU allows economic operators to have access to all the necessary information within the various processes of both importation and exportation and provide useful information; this is not limited to customs issues.

The Single Window aims to facilitate trade processes through a single electronic filing of documents required by Customs, to include the interconnection between the windows within the Union; this allows those documents to be available for any office within a Member State, which facilitates cross-border movement of goods.

The European Union has adhered to the Revised Kyoto Convention since 2004, so all these modernization, technological, and legislative implementations are responding to a new regulatory framework that benefits the entire population of the Union European Member States together both as individual citizens, importers, exporters, among others.

On the subject of Customs Agents and their intervention in trade, hiring the services of a customs agent is completely optional. In case of, if one does decide to use the designation of a third party to act on behalf of the importer or exporter, they will have the option to do so directly or indirectly. If the importer or exporter to a third party designates as his direct representative, they shall act on behalf of the importer or exporter but will not have any liability to the office, in this case it will be the importer or exporter who will assume responsibility arising of actions taken at customs. Whereas if an exporter or importer to a third party is designated as an

indirect representative, this individual will take responsibility for the customs processes.<sup>41</sup>

### **3.2.4.2 The American Case: Analysis of the Principal Countries**

#### **3.2.4.2.1 The United States**

##### **3.2.4.2.1.1 Mission**

The mission of the Customs of the United States:

- To be the guardians of the nation's border.
- To be the front line of the United States.
- Safeguard national security and outside the border
- Protect the American people from terrorists and instruments of terror.
- Strongly enforce the laws of the United States while enhancing the nation's economic security through lawful international trade.
- Serve the American public with vigilance, integrity, and professionalism<sup>42</sup>

##### **3.2.4.2.1.2 Organization**

The U.S. Customs, or the U.S. Customs and Border Protection (CBP), operates 20 offices specifically dedicated to Field Operations, with centralized administration and operational support to 317 official ports, plus about 41,000 employees for protecting borders and ports.

U.S. Customs is part of the Department of Homeland Security and is headed by a commissioner and a support group. The main offices of the CBP are:

- Main Council
- Office of Anti-Terrorism
- Office of Equal Employment Opportunity
- Intelligence Bureau
- Office of Policy and Planning
- Bureau of Foreign Trade

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<sup>41</sup> Cámara de Exportadores de la República Argentina. “*La Modernización Aduanera en la UE. Hacia un nuevo Código Aduanero.*” Website: [www.cera.org.ar](http://www.cera.org.ar)

<sup>42</sup> Securing America’s Borders. “*CBP Mission Statement and Core Values.*” Website: [www.cbp.gov](http://www.cbp.gov)

### **3.2.4.2.1.3 Customs Generalities**

The U.S. represents one of the strongest economies in the world, and has been characterized as promoting foreign trade. However, after the events that took place on September 11, 2001, the U.S. has completely changed its approach to customs. Its cornerstone is rooted in national security; an example of this is the change of the office from the “Customs Service of the United States” to “Customs and Border Protection” (CBP)

The Customs Act governed within the U.S. is known as the “Customs Modernization Act” (Mod Customs Modernization Act), through which there are two basic principles: Dissemination of Information (Informed Compliance) and Reasonable Care (Shared Responsibility).

**Dissemination of Information:** the customs authorities of the United States have an obligation to publicize and make transparent the laws and regulations applicable to all foreign trade involved in these processes.

**Reasonable Care:** this principle aims to raise awareness among users of the office, especially to importers, of their responsibility in foreign trade operations.

Through these principles the office goal is to provide more confidence to the importer, as well as assess their levels of compliance with customs regulations and monitor their imports. If a fault is committed by the importer, the customs will be flexible, provided they are sporadic faults; the “one importer is innocent until shown otherwise.” All these measures are made in order to achieve a harmonious balance between national security, the fight against terrorism, without neglecting the control of goods and trade facilitation.

Thus, a strategy is implemented to control risks on importers, based on audits, and thanks to the information provided by the importer, Customs conducts research beforehand, performing inspections of goods which have some suspect, without delaying the passage or freight carriers rated “low standard.”

Through mechanisms such as electronic manifest or e-manifest, the carrier has the opportunity and obligation to report information required by Customs on cargo prior to arrival; this controls risks.

In 1984, the Customs Automated Commercial System was replaced by a system called “Automated Commercial Environment” or ACE. This is the only system that works within the U.S. for different customs processes such as sending e-manifests through the system, among others. Such is the ability of this system, which also currently allows the cancellation of taxes.

Since the main focus of U.S. Customs is national security, they have signed a series of agreements and implemented various programs to facilitate this objective.

C-PAT, or The Customs-Trade Partnership against Terrorism, is a voluntary initiative in which both parties can subscribe from the U.S. or Mexico; these can be importers, agents, producers, carriers, among others. The main objective of this program is to build cooperative partnerships to strengthen border security and prevent terrorist attacks within the supply chain.

The FAST Program, or Free and Secure Trade, is an initiative implemented by the governments of the U.S. and Mexico which aims to improve the economic prosperity of both countries, in addition to potentiate the border control; this program aims to achieve harmonization of the two nations in terms of customs processes present in their common border.

The Bioterrorism Act (BTA) is an initiative of the U.S. government to prevent any terrorist attack through imported food. This law requires the participation of the Food and Drug Administration (FDA) to ensure that something is edible before it is shipped to the U.S., once the information has been received, customs proceeds with the identification boarding and inspection, thereby safeguarding food entering the nation.

Finally, the United States acceded to the Revised Kyoto Convention in 2005; however Customs modernization had already begun.

In matters relating to the intervention of a customs agent in the clearance of goods, the U.S. offers services such as the “auto importer's customs declaration” which permits a person to dispense with the services of the agent, although many importers prefer to hire such services in this way while the agent is in charge of the office, importers can focus on other kinds of activities like proper trading.<sup>43</sup>

### **3.2.4.2.2 Mexico**

#### **3.2.4.2.2.1 Mission**

The mission of the Customs of Mexico and Customs Tax Administration Service (SAT) of Mexico is, “. . . to contribute to the growth, prosperity, and competitiveness of the country through an efficient, transparent, and predictable customs operation; to facilitate the movement of passengers and goods, which inhibits the unlawful conduct of companies, people, and officials; and to strengthen national security.”<sup>44</sup>

#### **3.2.4.2.2.2 Organization**

Customs are government offices that are scattered along the borders, coasts, and in major cities in Mexico; there are around 50 customs offices in the aforementioned areas.

The structure of the General Administration of Customs is made up of central administrative units such as:

- The Central Administrative Unit of Customs Operations
- The Central Administrative Unit of Customs Regulations
- The Central Investigation Unit Customs Administration
- The Central Administrative Unit of International Customs Affairs
- The Central Administrative Unit of Strategic Customs Planning and Coordination
- The Central Administrative Unit of Customs Equipment and Infrastructure

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<sup>43</sup> TREJO VARGAS, Pedro. “*ADUANA: Régimen Jurídico y Facilitación.*” 2007 and Securing America’s Borders. “*Border Security.*” Website: [www.cbp.gov](http://www.cbp.gov)

<sup>44</sup> Servicio de Administración Tributaria. “*Misión y Visión.*” Website: [www.aduanas.sat.gob.mx](http://www.aduanas.sat.gob.mx)



### **3.2.4.2.2.3 Customs Generalities**

Within the major progress made in modernizing the Customs of Mexico is the Investment Master Plan for the period 2008 - 2013, which targets the same projects. One of the principal objectives of this project is to simplify and modernize customs; not only focusing on a customs without the use of paper but on the exploitation of Information Technology. This is similar to the management of the Single Window for Foreign Trade and the Centralized Electronic Payment.

As control measures, and to combat smuggling, the projects implemented mainly focus on technological locks; some of the proposed options are to increase and improve the tariffs through secure wireless communication, the implementation “x” and gamma ray machines, sniffer dogs that are specialized in tracking and locating hazardous substances, among others.

There are also a number of plans aimed merely to improve infrastructure, such as the reorganization and expansion of the main central customs in Guadalajara, as well as equipment and construction in the southern border, among others. Many of these projects were established and became operational from January 1, 2011.

Among the most representative modernization programs is the “Customs Model” which focuses on four main points:

- Increased transparency
- Quality service to users
- Improving foreign trade facilitation
- Better control of customs clearance

Finally, it is important to emphasize that while Mexico has not signed any of the versions of the Kyoto Convention, they have already started projects focused on customs modernization in regard to the customs agents and the provision of their services. Mexican customs only offers exemption from hiring a customs agent in rare

cases and is mostly not applicable to importers; hence the work of the Customs Brokers is still vital to the proper functioning of foreign trade within Mexico.<sup>45</sup>

### **3.2.4.2.3 Brazil**

#### **3.2.4.2.3.1 Mission**

The Customs of Brazil, known as the Ministry of Finance of the Federal Revenue of Brazil's mission is, “. . .to exercise tax and customs control, tax justice, and respect for citizens, for the benefit of society.”<sup>46</sup>

#### **3.2.4.2.3.2 Organization**

The Customs of Brazil, or the Federal Revenue of Brazil, is a government body under the Ministry of Finance and is divided into Central Units and decentralized units.

The Central Units include the following areas:

- Secretary
- Internal Audit
- Special audit
- Risk Management
- Planning, Organization and Evaluation
- Social Communication
- Joint Parliamentary
- Air Operations
- International Affairs
- Tax Policy

Contained within these central units are sub-departments:

- Taxation

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<sup>45</sup> Servicio de Administración Tributaria. “Plan de Modernización de Aduanas 2007 – 2012.” Website: [www.aduanas.gob.mx](http://www.aduanas.gob.mx)

<sup>46</sup> Receita Federal. “*Misión, Visión y Valores de la Secretaría de Ingresos Federales de Brazil.*” Website: [www.receita.fazenda.gov.br](http://www.receita.fazenda.gov.br)

- Records Management
- Interaction with citizens
- Collection and Recovery
- Control
- Customs Administration
- Surveillance and Suppression
- Human resources
- Information Technology
- Scheduling and Logistics

Within the decentralized units are:

- Commissioner of judgments
- Regional Superintendents, which is subdivided into:
  - Police Stations
    - Agencies
    - Inspectorates
  - Special Inspectorates
    - Inspectorates
  - Customs Offices
    - Inspectorates
  - Specialized Police Stations:
    - Oversight
    - Tax Administration
    - Financial Institutions
    - Collection of Social Security
    - Commissariat for International Affairs<sup>47</sup>

### **3.2.4.2.3.3 Customs Generalities**

The Customs of Brazil has implemented the Customs System known as SISCOMEX or the Integrated Foreign Trade System, which facilitates different processes such as customs clearance, licensing, registration of importers and exporters, among others.

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<sup>47</sup> Receita Federal. “*Conozca a Secretaría de Ingresos Federales de Brazil.*” Website: [www.receita.fazenda.gov.br](http://www.receita.fazenda.gov.br)

Among the main activities focused on trade facilitation in Brazil are:

- The standardization of information and documents
- Streamlining procedures
- Systems Using Information Technology and Risk Management
- Single Window

In addition, the Brazilian Customs System facilitates the interconnection of all stakeholders and other entities gathered within the trade exchange and through the delegation of tasks; specific entities are responsible for vital procedures to complete the exchange.

- Ministry of Foreign Trade (SECEX)

The systems responsible for approving import licenses and export records and drawback are:

- The Federal Revenue of Brazil (SRFB - Customs)
- The Central Bank of Brazil (BACEN)

This system stores the database and export payments:

- Other authorities involved in SISCOMEX <sup>48</sup>

Finally, as in the case of Mexico, Brazil is not a party to the Kyoto Convention in any way. Even though they have undertaken very relevant customs modernization, customs agents still have a vital role in trade in Brazil.

### **3.2.4.3 Asian Case: Analysis of the Principal Countries**

#### **3.2.4.3.1 China**

##### **3.2.4.3.1.1 Mission**

China Customs focus on specific tasks, such as: Tax collection, control and monitoring of goods entering and leaving the country, verifies compliance with

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<sup>48</sup> Adex Data Trade. “*Brazil: Condiciones de acceso.*” Website ([www.adexdatatrade.com](http://www.adexdatatrade.com)) and Sistema Económico Latinoamericano y del Caribe. “*Sistema Integrado de Comercio Exterior Brasileño.*” Website: [www.sela.org](http://www.sela.org)

customs laws and regulations, anti-smuggling, research and publish statistics, conduct audits risk management, ports management, etc.

Thus, the mission of the Chinese Customs translates as, “. . . exercise customs administration based on the law, safeguard the entry into the country, serve national economic interests and promote social development”<sup>49</sup>

#### **3.2.4.3.1.2 Organization**

China Customs operates in more than 250 offices located in first class ports, including airports, borders and ports; there are nearly 200 second class offices, by provincial governments.

The structure of China Customs is divided into three vertical levels; the first level is the General Administration of Customs whose office is in Beijing, the second level is the Regional Administration of Guangdong, which commands the same seven regions customs activities located in the province; there are two supervisory offices, located in Tianjin and Shanghai; in addition to 41 regions and 2 customs schools.

The third level is made up of the 562 customs offices, which are themselves a dependence of the 41 customs regions mentioned above. There are also offices established within Chinese territory, customs extensions exist in Washington, Brussels, Moscow, and Hong Kong.

The staff of the Customs office of China is around 50,000 people, including customs police.

#### **3.2.4.3.1.3 Customs Generalities**

The Chinese customs system is regulated by the China Custom Law, which was adopted and entered into force in 1987; and in 2000, underwent renovations.

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<sup>49</sup> China Customs. “*About China Customs.*” Website: [english.customs.gov.cn](http://english.customs.gov.cn)

Customs procedures such as customs clearance is done through an electronic module, it works randomly; one must first submit an application or petition for import, once the taxes are paid generated the import customs clearance proceeds.

Other procedures performed electronically are: Chinese customs import and export modules, module risk management, monitoring and analysis of income, the magnitude of the fight against smuggling, among others.

The Shanghai Customs office has implemented a new process through which goods are released after a verification of assets, this process is optimizes the time in the clearance of goods by two hours. China has also reached agreements with more than 1000 companies to set aside the appeal stationer.<sup>50</sup>

China Customs has been part of the Kyoto Convention since 2000, which officially entered into force in 2006, although customs improvements did not wait until 2006 to be implemented. There are very extensive records about customs Agents activity in China, being a party to the Agreement and modernizations that entails, one might assume that both importing and exporting capabilities are run by their own customs clearance, however taking into account the example of countries like the U.S. where clearance is prioritized in the negotiation process, and considering the competitiveness of China and prioritization towards business, it could be concluded that the activity of customs agents is still very common.

#### **3.2.4.3.2 South Korea**

##### **3.2.4.3.2.1 Mission**

The mission of the Customs of the Republic of Korea is, “. . . to strengthen the national economy, provide customs and border protection, all to keep our nation safe. We are the face of the Republic of Korea and the border guards and customs of our nation, through a quick settlement, controlling goods entering or leaving the country, while applying the law strictly. We protect finance and national economy. We warn

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<sup>50</sup>TREJO VARGAS, Pedro. “*La Moderna operación del sistema aduanero de China.*” Website: [www.ccpm.org.mx](http://www.ccpm.org.mx)

the entry of elements hostile to the security of society and the lives of citizens. We promote lawful international trade and passenger traffic.”<sup>51</sup>

#### **3.2.4.3.2.2 Organization**

The Customs of the Republic of South Korea is organized as follows; the head is the Commissioner, Joo Jung Sup, followed hierarchically by a spokesman.

The next levels are:

- Deputy Commissioner
- Administration to Implement Free Trade Agreements
- Planning Department of Free Trade Agreements
- Support Department at Origin

The third level is the Audit Team headed by a Chief Auditor, followed by the General Services Division. Korean Customs is organized in many other departments focused on areas vital for optimal functioning, these are:

- Office of Planning and Coordination
- Facilitation Office and the Office
- Customs Audit Office
- Office of Research and Monitoring
- Office of Information Management and International Affairs
- Main customs
- Training Center Customs and Border Control
- Central Customs Laboratory and Scientific Services
- Customs Validation and Qualification Institute
- Customs Attaché Abroad
- Immediate customs<sup>52</sup>

#### **3.2.4.3.2.3 Customs Generalities**

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<sup>51</sup>Korea Customs Service. “*Mission & Vision.*” Website: [english.customs.go.kr](http://english.customs.go.kr)

<sup>52</sup>Korea Customs Service. “*Organization.*” Website: [english.customs.go.kr](http://english.customs.go.kr)

The Korean Customs System is one of the most successful worldwide, focusing and building environmental advantages such as the evolution of technology and optimal Internet access with which the Republic has allowed the development of a Settlement System Portal through the Internet, better known as UNI-PASS, for a cost effective and efficient customs clearance.

Not only does South Korea have the first system in the world that has 100% Electronic Settlement, but it is listed as the most efficient among the 177 members of the World Customs Organization.

UNI-PASS comes from the words:

- 1) UNI: Unified, Universal and Unique Service
- 2) PASS: Fast Clearance Service

This system handles the seven main customs models:

- Import Clearance
- Office of Export
- Collection of Tax Obligations
- Imported Cargo Management
- Exported Cargo Management
- Refund of Taxes
- Modules Single Window

This program was started in the year 1974, the first steps were simple surveys and statistics to determine the feasibility of it, and its implementation concluded in 2008; this allowed Korean customs to be fully constituted as ubiquitous type customs (u). One can access it from anywhere for all processes which the system allows, especially in the Customs office itself.

Currently, the UNI-PASS system comprises of: Delivery Management, Information Management, Single Window System Management, and Administrative Charges.



The management offices functions are:

- Import Office
- Office of Export
- Tax collection

Information Management includes:

- Risk Management
- Knowledge Management
- Research and Monitoring
- Audits
- Etc.

The Single Window processes are:

- Verification Certificates
- Single Window Delivery

Among the processes contained in the Load Management are:

- Cargo import
- Transit
- Export cargo
- Etc.

The Administrative System is comprised of:

- Human Resources
- Public Relations
- Etc.

Linked directly to the Single Window Office is a service called “One-Stop,” it allows the release of goods through direct liaison with agents, banks, and carriers; this allows verification of the information requirements, proceeded by the payment of taxes and the release of said goods; this is all done through the electronic system.

The Load Management window provides full traceability of goods at different stages such as the arrival, subsequent departure, port and transfer to primary zone to entry and output buffer.

One of the most significant attributes of the Korean Customs System is to eliminate the use of paper into the customs procedures considering that its System is one of the most competent in the world. The import proceeds with the import declaration, a subsequently appointed auditor and type of capacity if it is required by the system; after delivery of the approval the customs payments are handled via taxes; the import ends with an approval and later the withdraw of the goods from the stores. Throughout the above mentioned process not one single piece of paper is used.<sup>53</sup>

Although the Republic of Korea acceded to the Revised Kyoto Convention in 2003, research for its exemplary implementation of Customs System dates back several years ago; it is not surprising that when it became a contracting party to the Convention it implemented a good system in terms of risk management, and just two years later implemented the electronic Customs procedure, in conjunction with other processes. Therefore, taking into account their progress and advances, in addition to the responsibility and commitment of importers and exporters to the state and the customs, the intervention of the Customs Agents, as well as optional extensive knowledge, it is managed by exporters and importers allowing self-sufficiency in managing the UNI-PASS.

### **3.2.5 Comparison of Various Customs Agents worldwide**

#### **3.2.5.1 Ecuador**

The Customs Agency of Ecuador is called SENA E or the National Customs Service of Ecuador. Ecuador's customs activity is regulated primarily by the Organic Code of Production, Trade and Investment or COPCI and several of the regulations of this Code. The representative of the importer to customs is called the Customs Agent.

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<sup>53</sup>Korea Customs Service. "About UNI-PASS." Website: [english.customs.go.kr](http://english.customs.go.kr) and Network Investment and Export. "UNI-PASS 2011." Website: [www.rediex.gov.py](http://www.rediex.gov.py)

### **3.2.5.2 Peru**

The Customs office of Peru is called the National Customs and Tax Administration or SUNAT. Customs activity in Peru is regulated by the General Customs Law and, as in Ecuador, the representative of the importer to customs is called the Customs Agent.

### **3.2.5.3 Colombia**

The Customs office is called the Colombian National Tax and Customs Office of Colombia, or DIAN; it is regulated by Colombia's Customs Statute. As before, the presence of the customs agent as an intermediary between the exporter and importer or customs is mandatory.

### **3.2.5.4 Venezuela**

The Customs office of Venezuela is known as the National Integrated Customs and Tax Administration or SENIAT, regulated by the Customs Law, which was implemented to Partial Amendment of the Customs Act years later. The business process in Venezuela includes the figure of a customs agent, known by the same term as in neighboring countries.

### **3.2.5.5 Argentina**

Customs in Argentina is called the Directorate General of Customs, which integrates the Federal Public Revenue Administration or AFIP, the Customs Code is the regulatory framework of the activity within Customs and Customs Agents are used like in Ecuador, Venezuela, and Colombia.

### **3.2.5.6 Chile**

The National Customs Service is the official name of the Customs of Chile; it regulates their activities within the framework imposed by the Customs Law; the Customs Agent is present in their current system.

### **3.2.6 The Case of Ecuador**

#### **3.2.6.1 General Considerations**

The Republic of Ecuador has been constantly renewing their customs regulations, proof of this is their new status; the Organic Code of Production, Trade and Investment, or COPCI, one to which reference has been made in previous chapters, which entered into effect in 2010, repealing the previous Customs Law.

Ecuador is not a contracting party of the Kyoto Convention, nor have they acceded to the revised version of it. However, with the implementation of the new law regulating customs in 2010, they have put into consideration several points contained in the Convention; therefore, it could be said that although Ecuador has not been subject to the Kyoto Convention directly, i their customs regulations have referred to several points of said treaty.

The main focus of the Customs of Ecuador is, “. . .promoting the *Good Life* of Ecuadorian society through efficient control of Trade that promotes fair competition in economic sectors, having a foundation upon Human Resource, honesty and productivity, appropriate technology and a focus on continuous improvement of services.”

By 2016, the Customs of Ecuador will be seen as, “. . . a technological reference in controls and customs with all automated and integrated processes, supported by a highly productive human resources, with a user-oriented management and a fast and secure trade.”<sup>54</sup>

The Customs of Ecuador has required major innovations and implementations, not only in technology or regulation but also in the area of human resources, by investing in ongoing training for customs officials; as well as importers, exporters, and others involved in the trade.

Ecuador mainly looks for a greater commitment on the part of the actors involved in trade and current customs modernizations are provided for importers and exporters to acquire an even more active, above average participation. Customs through the

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<sup>54</sup> Aduana del Ecuador – SENAE. “*Misión y Visión.*” Website: [www.aduana.gob.ec](http://www.aduana.gob.ec)

“ECUAPASS System” allows the hiring of customs agent as something optional and promotes greater future participation by importers and exporters by offering the opportunity to qualify to Customs and acquire the status of “qualified,” i.e. the realization of different customs without third parties.

### **3.2.6.2 ECUAPASS**

ECUAPASS is the new digital system implemented by the SENAE to provide better service for customs, this program is an investment of more than \$ 21 million, in collaboration with experts from the Republic of South Korea, and is based on the most successful customs models systems in the world such as the UNI-PASS of Korea.

The objectives in implementing ECUAPASS are:

- To minimize the use of paper, and provide transparent and efficient customs operations
- To facilitate trade and ensure customs control
- To establish the Single Window

Among the modules contained within ECUAPASS are:

- Foreign Trade Portal and Ecuadorian single window
- Export and Import Process
- Rechecking
- Customs Litigation Management
- Data warehouse
- Refund of taxes
- Early Warning System
- Risk Management
- Knowledge Management
- Management systems of audit trails

The SENAE has been concerned in establishing itself during 2012, prior to the implementation of the ECUAPASS System, a pilot or test site, in addition to training

courses available for both customs officials, importers, exporters, and foreign trade operators in general.<sup>55</sup>

To access the information required at the ECUAPASS, one of three options can be used:

- Sign In directly to the ECUAPASS Portal and upload the information to be transmitted
- Adapt the software to forward requested information
- Download the software available at the office for the transmission of required information.<sup>56</sup>

The ECUAPASS System officially entered into circulation on 15 October 2012, and in just five days of operation had driven nearly 45 million dollars in taxes, according to a statement in the newspaper *El Universo*.<sup>57</sup> It's worth noting that between processes and upgrades to be implemented by the various participants of foreign trade, the acquisition or implementation of an electronic signature plays a vital role because, through one can access and sign in all processes within the ECUAPASS; applying it to everyday living, the electronic signature is similar to the card required in all types of process including access to ECUAPASS.<sup>58</sup>

Ecuador is currently experiencing a transition from the use of SICE to the new system ECUAPASS; it is clear that this is a disadvantage because of the impact that is being generated in society. However, one must consider the future benefits will be much greater, and that customs modernization in the XXI century is not an option, but an obligation of States to better respond to the needs of society; no one should question any aspect regarding ECUAPASS as it is a necessary step for the improvement of the entire country.

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<sup>55</sup>E-Com Ex-Plus. “*Conoce más acerca del ECUAPASS.*” Website: [www.e-comex-plus.com](http://www.e-comex-plus.com)

<sup>56</sup>Comunidad de Comercio Exterior en Ecuador. “*Ventanilla Única y ECUAPASS.*” Website: [comunidad.todocomercioexterior.com.ec](http://comunidad.todocomercioexterior.com.ec)

<sup>57</sup>El Universo. “*\$45,6 millones deja Ecuapass en 5 días.*” Website: [www.eluniverso.com](http://www.eluniverso.com)

<sup>58</sup>Comercio Exterior. “*El ECUAPASS Y Los Certificados De Firma Electrónica.*” Website: [www.comercioexterior.com.ec](http://www.comercioexterior.com.ec) y Aduana del Ecuador – SENA. “*Preguntas Frecuentes.*” Website: [www.aduana.gob.ec](http://www.aduana.gob.ec)

### **3.2.6.3 Ecuadorian Single Window System**

The International Trade Single Window or ITSW was created with the objective of integrating the various procedures delegated to various public institutions such as the NIE, MIPRO, National Police, among others; in order to reduce costs and optimize time in obtaining paperwork, minimize the use of paper within the trade processes; increase availability of information, and improve controls that promote and improve risk management.

This project is being conducted by the South Korean company KCingle - Cupia, the expectations for this project are reductions in imports and exports times of about 60%, plus 280 standardizing and integrating processes around 26 companies comprising the ITSW.

Among the entities that will be contained within the ITSW are:

- The Ministry of Public Health
- The Ministry of Agriculture, Livestock and Fisheries
- The Ecuadorian Agency for Quality Assurance
- The Ministry of Foreign Affairs
- National Narcotics
- The Ecuadorian Standards Institute
- The Ministry of Environment
- The Ministry of Tourism
- The National Council on Disabilities
- The National Institute of Cultural Heritage

Additional links within the ITSW will be made, such as in the case of:

- FEDEXPOR
- The Guayaquil Chamber of Commerce
- The Chamber of Industries of Guayaquil
- The National Customs Service of Ecuador

The processes that will be implemented within the ITSW include:

- Standardization of forms based on international standards
- Process standardization
- Application of connection methods
- Document-sharing
- Real-time data

Besides representing advantages for the government, the private sector will also be considerably benefited.

The main benefits for both importers and exporters is the optimization of time in processing applications and the reduction in physical relocation costs for obtaining licenses.

Free access is another advantage because the portal is available 24 hours a day, 7 days a week, throughout the year.

The government will benefit in areas such as:

- Improving internal processes
- Removal of documents required as attachments to importers.
- Elimination of the use of paper
- More control over entrance procedures<sup>59</sup>

In short, the Single Window is just another phase of customs modernization being implemented, which not only can improve the work of Customs, but can benefit the entire chain; from importers, OCE's, to buyers who purchase imported goods under these new systems. If tariffs are lowered then that could have an effect on the price of goods imported. Therefore everyone benefits.

### **3.3 Conclusion**

The role of Customs and its mission has evolved greatly, especially by the changes in the environment and the new challenges that are imposed on society. Gone are times when the only function of the office was collecting taxes. The challenge now is to establish the office as a harmonious balance between its traditional and current

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<sup>59</sup> Comunidad de Comercio Exterior en Ecuador. "Ventanilla Única y ECUAPASS." Website: [comunidad.todocomercioexterior.com.ec](http://comunidad.todocomercioexterior.com.ec) and Comercio Exterior.com.ec "VENTANILLA ÚNICA DE COMERCIO EXTERIOR." Website: [comercioexterior.com.ec](http://comercioexterior.com.ec)



missions; balance between tax collection and control of incoming and outgoing goods, in harmonious balance with trade facilitation, protection of people's security, and the fight against threats such as terrorism.

To achieve all these purposes, efficient systems, and trained personnel, a regulatory framework is required to complement the contribution of the other elements, taking into account the World Customs Organization proposals in the Revised Kyoto Convention; reviewed and updated processes to suit the requirements and progress of modern day society.

Under this Convention, along with a series of instruments for achieving the required customs purposes, some principles are established in order to facilitate trade for all participants; simplifying customs processes to the maximum. Closer relations between all parties involved in the exchange, mainly including more power to importers and exporters should be established to the point that they are self-sufficient in the management of electronic systems; and may in the not too distant future eliminate the role of Customs Agents.

This last point, however, is entirely for the consideration of the importer or exporter; do they believe Customs other processes is a priority for their business, and will they commit and acquire the skills necessary to become self-sufficient in these areas? If not, whether they prioritize issues such as negotiation or will they choose to continue using Customs Agents instead. Whatever the decision of importers or exporters, when customs upgrades are implemented the beneficiaries will include customs officials, the OCE's, and even the average citizen; hence, the facilitation and simplification of the different processes result in better and more options when buying imported goods.

#### **4. Statistical Environment**

The figure of the Customs Agent, since the creation of the Customs tax collector as a means for the state, has acquired great importance mainly as a backup for the importer. However, given the advances in both technology areas of communication

and progress in areas such as integration, foreign trade has been greatly benefited; such benefit is reflected in the increase in the dynamism of trade worldwide.

Considering this, the customs area as one of the main points for the correct flow of foreign trade must be a government agency that in addition to fulfilling their traditional roles as collector and controller, should act as a facilitator of trade.

So, taking advantage of the facilities of the environment and levels of integration, legislative frameworks have been established such as the Revised Kyoto Convention that seeks to simplify and harmonize the different customs processes, but although this has not been adopted by all the states of the world, countries that currently manage more than 50% of world trade have signed on.

Ecuador has not signed its accession to the Convention, although much of its trading partners have done so. It is evident that reforms in the customs area are needed, so that the competitiveness of Ecuador on the world stage can increase, as well as facilitate further trade and benefit for all stakeholders; including importers, exporters, Customs agents, and the public in general.

The repeal of the Customs Act and the coming into force of the Organic Code of Production, Trade and Investment in 2010, has given way to executions in this area for the benefit of all involved. October 22, 2012, proceeded with the implementation of new electronic customs system, ECUAPASS, which aims to simplify the various customs processes and to eliminate the use of paper. This not only encourages greater participation of both importers and exporters but even the possibility of losing the services of a customs agent. But, how likely is this possibility actually in our midst? Throughout the implementation of this issue, we seek to answer this question and especially consider the need of customs agent in Ecuador, especially in the process of nationalization of goods.

In order to better development this Chapter, four main aspects shall be considered:

- Knowledge and advice by Customs Agents
- The knowledge and interest of the importer / exporter in different customs processes

- The importance of the Customs Agent in different customs processes, such as the nationalization of goods
- Applying ECUAPASS and the use thereof by importers / exporters

The relevance of these points is its contribution to the resolution of the main question proposed by this study: Could Ecuador do without the Customs Agent in the nationalization process?

All points raised previously have been considered within the surveys and interviews that will be analyzed and covered later on.

#### **4.1 Customs Agents**

Among the main questions raised in the various surveys and interviews, specific points were considered to be useful to determine the importance of Customs Agents currently.

Interviews with Customs Agents considered several aspects, such as the importance on their advice, the training they receive each year, in addition to the transition to the ECUAPASS from the SICE. However, among the most important questions are those that contribute to the analysis of the points made previously which focus on participation by importers and exporters in different customs processes.

Among those Customs agents questioned about the training they receive each year, although they receive on average 100 to 150 hours per year, the fact is that the vast majority agreed that there was not enough day by day training due to innovations and changes in the ECUAPASS system; because while the software has already been submitted and is operating within the country, it still has flaws that must be corrected.

The problems refer to the intermittency of the program, in addition to failures and setbacks in Excel sheets in mathematics terminals. It is important to note that the new customs system of SENAE entered into force on October 22, 2012; several flaws exist in the ECUAPASS system and the transition period that follows the implementation of the program has generated several setbacks until the medium that manages the program is familiarized with it and accepts it.

Other very relevant and important aspects in the study are the 5 points of knowledge Customs Agents and their auxiliaries believe the importer or exporter has about the current system. As noted in interviews responses, these stay within 3 levels of knowledge:

- 1) Many of the agents and assistants interviewed expressed that the importer has a very basic knowledge of foreign trade, almost zero in most cases.
- 2) While other importers have very limited knowledge, whether about the law, foreign trade or operability or merely in regards to its activity, i.e. importers of foreign trade who know or have partial or limited knowledge, depending on their area and requirements.
- 3) Finally, the ratio is lowest for importers and exporters who truly know about foreign trade and customs laws within Ecuador.

For questions about participation by importers and exporters within different customs procedures, the Customs Officers and their assistants had similar trends.

Officers and assistants were asked about the figures for importers and exporters that relegate performing procedures entirely to the Agent and conversely, those who in one way or another are involved in the different processes, either through licensing or other relevant activities.

Respondents remained within similar ranges; most agree that the number of companies that relegate conducting nationalization paperwork to Agents borders on 80%, while only 20% of importers are responsible for licensing and actively participate in the process of nationalization. That is, in 10 cases in which imports needed any license, only 2 of the 10 importers would be responsible for such processing, the remaining 8 were completely disinterested the process.

It is worth clarifying that while much of the importers do not participate “actively” in nationalization processes, it still remains a constant concern regarding the early release of the goods to avoid extra charges. So the term “disinterested” in the previous paragraph does not refer to disinterest regarding the merchandise itself, but

at the lack of interest from most importers who actively participate or take part in the process of nationalization.

As for exports, most are responsible for themselves in the areas in which they should participate, such as licensing. That is, the exporter is much more involved in the different customs processes than the importer.

Finally, the question was asked about using ECUAPASS, its reliability, and whether it could be classified as a user-friendly program. The opinions vary, some 70% of respondents are against the ECUAPASS in terms of reliability and almost all of the sample cataloged the ECUAPASS system as “friendly;” even though it still has flaws, as mentioned previously, the ECUAPASS is a much easier to use.

## **4.2 Customs officials**

Among the questions posed to customs officials of the main districts of the country, key aspects were considered such as: the annual training for individual staff area, considerations for ECUAPASS, and the importance of Customs Agents.

Concerning training for customs officers, the total sample collected has an average estimated 15 annual training sessions, yet the number of training sessions per year received by officials varies by area. The amount of training received by a universal gauge will never be the same, either in number or content, compared to receiving an official in the area of systems.

Customs officials were also asked about the importance they place on the customs agent; most admitted that the agent is a very important figure in the process of nationalization, as it acts mainly as a backup for the importer. However, a small percentage of the sample disagrees, as they believe that the figure of the agent is important but not vital, if the importer's knowledge is greater, that figure was not as substantial.

The importance of Customs Agents as a backup for customs through proper counseling to the importer, much of customs officials interviewed agree on the fact, although the agent is primarily a backup to the importer, through proper advice regarding imported goods, Customs also benefits. However, cases in which Customs

agents mistakenly advise importers frequently occur in our environment. Although the correct advice is provided to the importer within the Organic Code of Production, Trade and Investment, as one of the main functions of the agent, there are cases in which this character does not meet their duties properly.

Another question was, if you could dispense with the Customs Agent position in different processes. Opinions are divided on the matter, as 50% of interviewed officials said they could not do without the Agent within the nationalization process, while the other 50% said they could.

Concerning the ECUAPASS, the total sample interviewed agreed on the fact that the new system is very friendly, but still has a number of flaws. However, when they were questioned about the possibility that the importer or exporter use the computer system itself, they said that it was perfectly feasible but would still need to provide more training in this regard. So in the future, when the system is in perfect working order, it is feasible that the importer or exporter will be able to use it himself.

### **4.3 Importer/Exporter**

As for the questions posed to importers and exporters with respect to the customs agent, they were questioned about various points that allow us to determine the importance of this figure within different customs processes; however, it should be noted that the size and weight of the importers and exporters vary significantly so that responses need to be directed to their specific needs as entrepreneurs. That is, a larger company's needs may be completely different from the needs of a smaller importer, especially in areas such as the nationalization of their goods; this will be addressed later.

Among the questions asked in interviews, reference was made to the importance of the customs agent; in this case the interview was also conducted with officials of warehouses and depots. Importers and others referred to the customs agent as the person who is responsible for the nationalization and processing at Customs, in this respect they remained unanimous, i.e. they had a uniform understanding about the role of the agent in Ecuador.

In other aspects such as participation of importers, exporters, and other processes within the different customs, responses varied mainly with the degree of interest that the importer or exporter is to participate in the various processes, i.e. without paying much attention to detail the size and influence of the importer, consider how big is the interest of it to know the different processes and take action on them.

For example, a small importer can completely ignore the nationalization process or prioritize the negotiation of merchandise, so they might not want to get involved in the various processes related to the goods, such as licensing; they might delegate the proceedings in full to the Agent. For importers that follow similar patterns, the figure of a customs agent will certainly be more vital in customs processes.

This case could arise that an occasional importer is interested in learning and participating in customs processes, so that the size of a regular importer does not determine the level of participation; in fact, under personal conception, participation by an importer or exporter depends solely on how this issue is a priority for them. Whether to cut funds or other resources to optimize the priority that importers and exporters give customs aspects determines their participation in them.

The interest and participation of the importer or exporter in the different customs processes could detail their level of information and knowledge about the new electronic ECUAPASS; an importer whether small or large, constant or occasional, if so desired could participate and learn about the law and customs of different processes, as well as keep track of upgrades such as ECUAPASS and its functions.

Thus, considering the main points collected through surveys and interviews with the different participants of foreign trade and the nationalization process, we will analyze the four main points to resolve the question posed in the first instance.

### **1) Knowledge and counseling by the Customs Agent**

The Agent's functions include advising primary importers and exporters, the correct advice is only possible through an appropriate cognitive enrichment, besides the knowledge that should be about laws and regulations, the agent is currently in constant training mainly regarding ECUAPASS, since this system is subject to changes and corrections both agents and assistants must

stay ahead in order to maximize the benefits for both themselves and for importers and exporters.

Although, more than once the agents have been directly responsible for generating bad advice, one should be aware that the only logical and responsible remedy for a cessation of drawbacks in this regard is the constant training of both agents as auxiliaries. Training on topics of interest and relevance, without giving greater priority to such situations, focus on relevant issues and background as a trainer and expert staff of the different processes and failures within the customs system, to provide efficient training that allows for better service to the community.

**2) The knowledge and interest of the importer / exporter in different customs processes**

As previously stated, if the importer or exporter is interested in participating in the various customs procedures they will be free to do so, even though their participation is currently limited to licensing and other minor aspects. The implementation of the new Customs computer system offers the possibility of increasing its stake, to the point of dispensing altogether with a customs agent. However, as also noted above, the possibility of dispensing with an Agent depends entirely on the importer, if he wants its foreign trade department (in case the importer has any) will handle the issue of nationalization, invest, and perform the necessary adjustments, if it is a smaller importer, he will responsible for training in the customs area, but only if it is beneficial; otherwise, he will continue using the services of a Customs Agent.

**3) The importance of a Customs Agent in different customs processes, such as the nationalization of goods**

Considering both the conception of importers, exporters, customs officials, etc., currently Customs Agents in Ecuador play a position of great importance; not only because of the culture that was created by the importer and exporter, but Ecuador has developed dependency on the figure of a



Customs Agent. Both importers and exporters involved in the various processes by themselves need to develop a culture much more familiar with the new laws and systems to decide to enter freely or participate.

#### **4) Applying ECUAPASS and the use thereof by importers / exporters**

ECUAPASS implementation is still in a stage subject to change, both officials and agents cataloged it as very friendly, therefore importers and exporters could use the system according to their needs. But as has been stated previously, the level of participation in this system will be linked to the level of interest that the importer has about the Customs requirements in order to take action or actively participate in the different customs processes.

Customs officials involved in the development of ECUAPASS in Guayaquil did not look to completely eliminate Customs agents, only those who were involved in profiting irresponsibly which hindered the flow of goods.

The computer system ECUAPASS focuses on training importing and exporting in the customs area, while cutting costs in areas such as nationalization; just as agents prepared to act in support of importers and exporters who truly require advice and support from Customs.

So, to answer the question, could Ecuador do without the customs agent in the nationalization process? The truth is that thanks to the current customs modernization, it may require the services of agents as an optional measure. However, considering the reality of Ecuador, this will not be a viable option for many importers, making the role of Customs Agents something viable, be used by those who are truly unaware of how customs and Foreign Trade operates. Meanwhile, importers and exporters who deal with customs procedures internally represent more and better investment for their companies, thus such services may be dispensed.

#### **4.4 Conclusion**

In conclusion, while the figure of the customs agent was the most representative of the different customs processes, now thanks to advances in technology and the cooperation and integration in the world, tools that facilitate the participation of different actors within the trade have been introduced.

Thus, in the interaction between Customs and the importer, agent participation is projected to become an optional requirement through customs implementations and upgrades. However, there are several points to consider, including the fact that while there is the opening for the importer to increase his presence within the customs processes, much will depend on the interest and the priority with which importers consider that option. Because although there is a very low level of participation by importers now, these will decide the customs modernization if they feel it is an issue that can contribute to their profitability, will otherwise opt by utilizing the services of Customs Agents.

In any case, whatever the decision of the importer or exporter, it will certainly be the most beneficial, this added to the modernizations in customs, the correct advice for agents and staff trained in areas of interest, in addition to working together and compromise between customs and the private sector will allow foreign trade and customs functions to flow and increase its dynamism, which will benefit the public in general.

## **5. Conclusions and Recommendations**

### **5.1 Conclusions**

As final conclusions obtained after the completion of this study, first we must denote the evolution of the Customs in recent years, where in addition to raising funds now must promote and facilitate foreign trade facilities, so the customs modernization are the way to potentiate the work of the Customs and ensure the welfare of the population, in turn increasing the economic vitality of the nation.

Customs modernization involves changes and transitions, however in the case of foreign trade players, it is appropriate to increase the interest in participation within different customs processes, as in the case of importers and exporters. The most important point that is made throughout this study is the dependency ratio over the years that has grown by exporters and importers (mainly) on the Customs Agent; it is extremely complex to pretend that by eliminating Customs Agent, importers and exporters would not be affected. On the contrary, these changes should be implemented first in a culture of interest and involvement by both importers and exporters who can defend themselves on their own and later the Customs Agent Services won't be mandatory, but optional for users who are fit or not interested in performing different customs processes on their own.

Finally, the government has invested in technology and upgrades to facilitate the work of Customs and improve the flow of trade itself, but all these efforts are unsuccessful if there is no more participation and collaboration between customs and industry business. The ideal is to establish strategic alliances for better and greater flow of foreign trade and arouse the interest of both potential future entrepreneurs inviting them to get involved in different aspects of customs, constantly train both, customs officials and customs agents, whose role will be to provide their services for those importers and exporters who are not able to respond to the Customs on their own account. Thus, strengthening all participants in foreign trade, and promoting cooperation between them is a glimpse of progress that would benefit the general population.

## **5.2 Recommendations**

The development of this study has led to an understanding of the situation of foreign trade in Ecuador; this understanding has led to the formation of some conclusions, as well as the establishment of recommendations. This is done so that a more efficient environment for growth and economic dynamism in Ecuador can be fostered.

One of the main recommendations is a greater interaction between Customs and the private sector, either through regular meetings or through spaces where the Customs Service is provided to relate more with the business sector.

Besides this, it could be appropriate to promote student sector participation, especially at business schools, as a first approach to the dissemination of the future participation of entrepreneurs within different customs processes, i.e. re-educate future entrepreneurs who are interested in how to increase and improve their participation in Customs procedures.

As another mechanism for increase participation of other sectors within business processes and customs, one could consider the option that universities coordinate with Customs and other agencies, providing training for both Customs agents, as well as business in general.

Finally, further promotion of the modernizations and upgrades at national customs will encourage interest, and this should not be limited to communications or newsletters on the SENA website, but through other means that stimulates the attention of small and medium enterprises on the work and new implementations, which might awaken the attention of users, and which will benefit the people of Ecuador in general.

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