



**UNIVERSIDAD  
DEL AZUAY**

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FACULTY OF LAW  
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**Analysis of customs control actions, through risk management.**

**Thesis project prior to obtaining a Bachelor's Degree in  
International Studies with a bilingual minor in Foreign Trade**

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## DEDICATION

This thesis is dedicated in the first place to God, for being the compass that guides our path and the light in our life. We also want to dedicate this project in a very special way to our family, who have given us their unconditional support, who have been the clearest example of improvement and effort. To our colleagues at the university who have dedicated their time to helping us to complete this important stage in our lives.

Elisa Peña; Gabriela Vivar.

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## ABSTRACT

The purpose of this thesis is to provide recommendations based on the analysis of risk management, which may be useful for the parties involved in foreign trade operations to optimize their participation, as well as to accelerate and to improve the risk management system within the customs controls with regard to goods and cargo units.

In addition, the tools that can help redirect controls to higher risk operations are identified. The requirements needed to apply risk management is determined, as well as tool efficiency applied to risk management and above all, the participation of the Foreign Trade Operators within risk management.

It has been imperative to analyze and recognize all the concepts and terms that are involved in this topic, as well as its applicable regulations to give suggestions and recommendations that are feasible and to improve the current risk management process within the customs controls. Along with the information gathered from official sources, it was necessary to carry out interviews with different people who have been able to contribute with valuable data for the preparation of this project.

Keywords: risk management, foreign trade operator, authorized economic operator, customs control, goods and cargo units.





# **CHAPTER I**

## INTRODUCTORY CONCEPTS

## INTRODUCTION

In the first chapter of this thesis project, all generalities of the topics to be discussed will be addressed to ensure the understanding of the relevance and functioning of the risk management process within the customs controls. In order to clarify any doubts, the following basic concepts will be defined: National Customs Service of Ecuador, National Direction of Risk Management and Customs Technique, Risk Management, Customs Controls, Foreign Trade Operator, Authorized Economic Operator, Merchandise and Cargo Units.

All the concepts presented in this chapter have been obtained from reliable sources and from the respective official web pages of each subject. Moreover, the Regulation to the Title of the Customs Facilitation for Trade, Book V of the Organic Code of Production, Commerce and Investments (COPCI) is used as a legal basis.

## **1.1 Reference to the National Customs Service of Ecuador (SENAE).**

Taking into account that risk management within customs controls involves the National Customs Service of Ecuador (SENAE), it was essential to determine its history, background, operation and structure. All the information gathered for the development of this subchapter was obtained from the SENAE official website. (SENAE, 2019)

According to the dictionary of the Royal Spanish Academy (RAE), customs can be defined as a public department in which the movement of goods is controlled both at entry and exit. It is also in charge of controlling the payment of taxes of the respective merchandise. (RAE, 2019)

To truly understand the procedures and the work carried out by SENAE, it is important to know about its beginnings and its history in Ecuador, thus, it will be understood why the changes that this institution underwent over the years were inevitable, in order to ensure the proper operation of risk management within customs controls. (SENAE, 2019)

### **a) Organic structure and process map.**

To understand how SENAE is constituted, it is necessary to present both its organic structure and the SENAE process map. The following figures have been obtained from the official SENAE website. (SENAE, 2019)

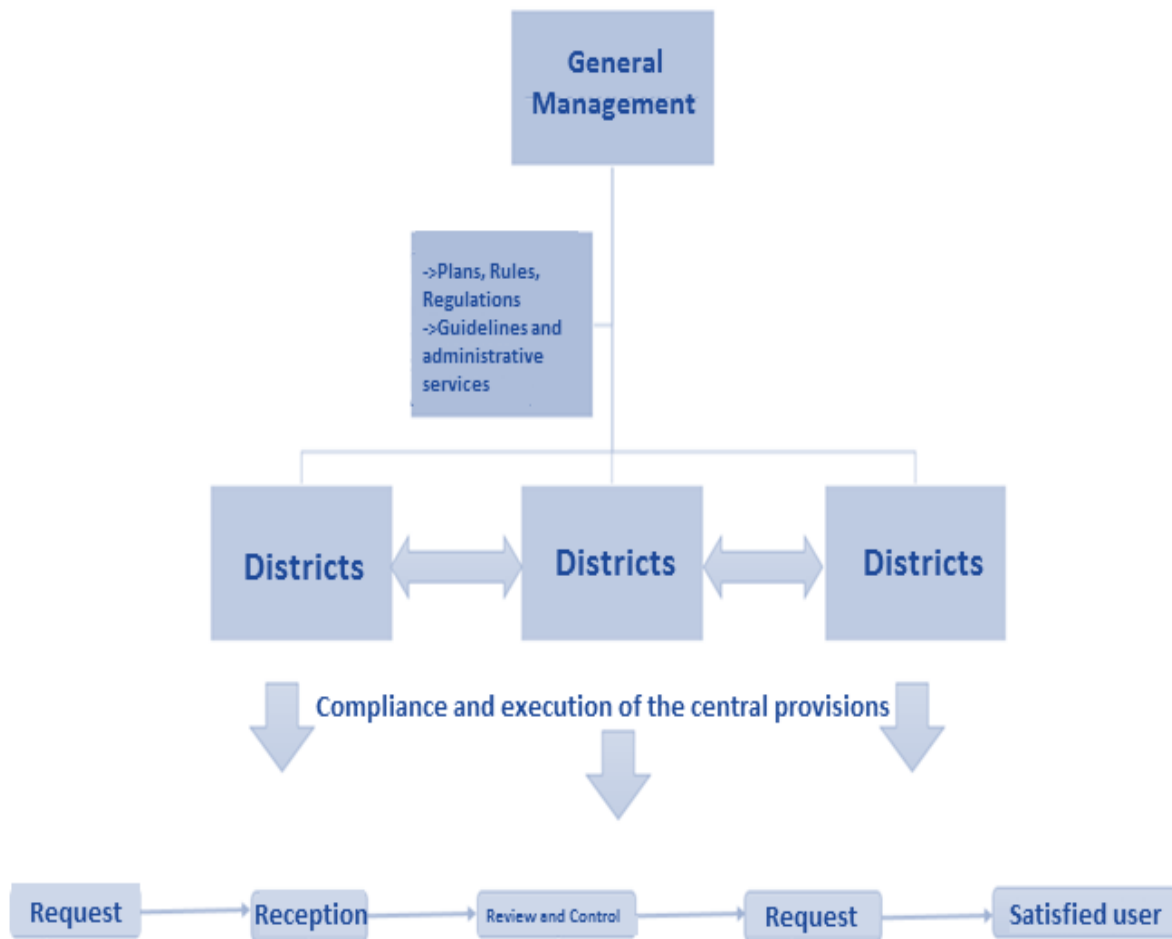


Figure 1: Process Map

Source: SENAE.website (SENAE, 2018)

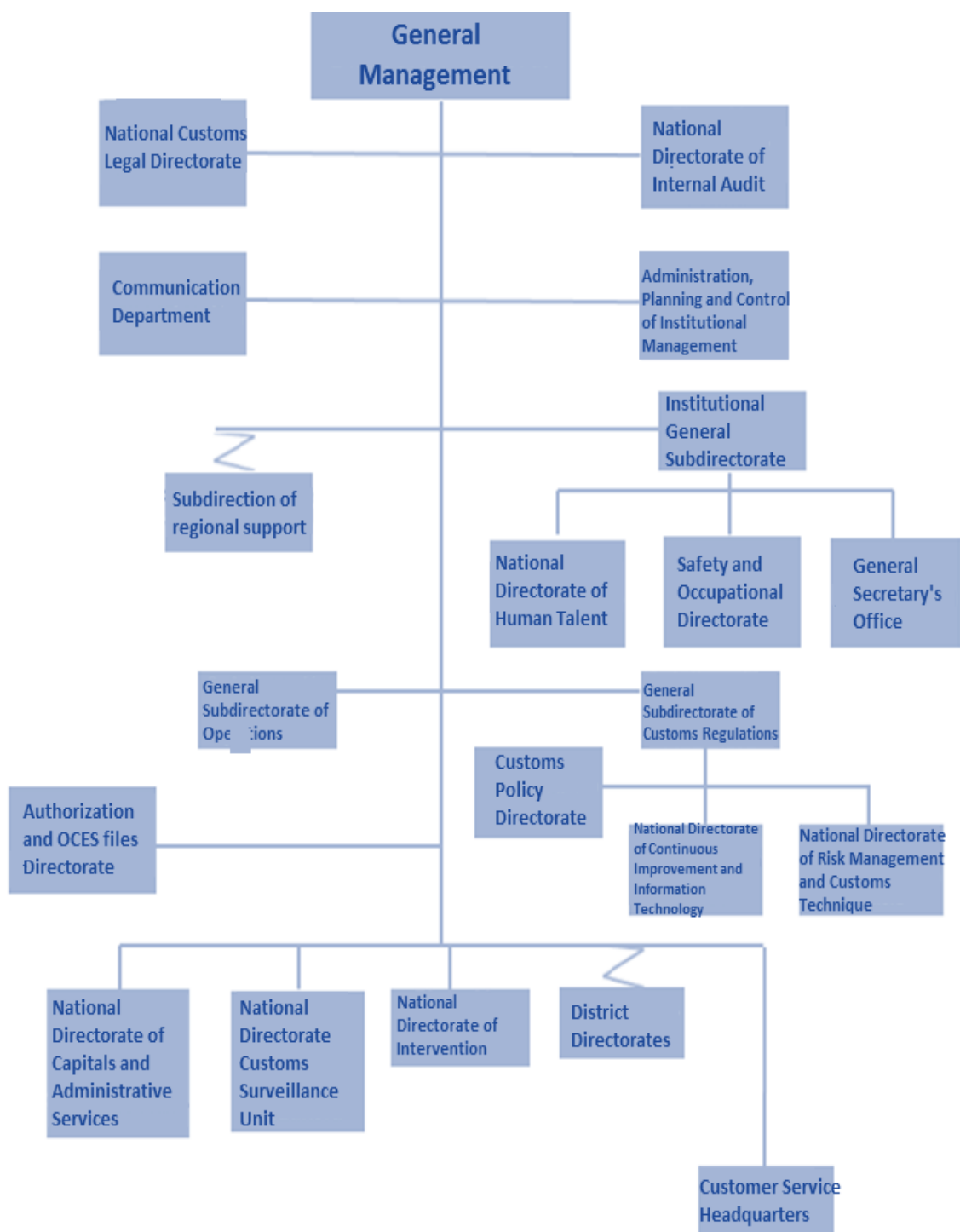


Figure 2: Organic structure

Source: SENAE website. (SENAE, 2018)

## b) History.

The official website of SENA E provides valuable information on the history and evolution of customs in Ecuador. This information has been taken as a basis for the study of this topic. (SENAE, 2019).

It is necessary to point out that the first customs movements in America were of Spanish origin. These movements began during the colonial era, where Christopher Columbus prevented the entry of merchandise that were destined to be traded in the American continent. (SENAE, 2019)

In 1778, Lord José García de León and Pizarro, who at that time was the president of the Audiencia de Quito, established the Administration of the Royal Customs and Excises of Guayaquil. The Republic of Ecuador was established on August 14, 1830, and with its creation customs regulations were implemented, as well as the control of the Ecuadorian borders, demanding transport documents to those who entered from abroad. (SENAE, 2019).

By 1833, the first measures against the entry of clandestine merchandise into Ecuadorian territory were enforced. This is because the payment exemptions of duties permitted for manufacturing companies for the "El Cisne" fair in Loja was no longer valid. During that year, an important measure was taken against smuggling and corruption, since the sanctions for workers who know of such activity, do not report it or who are participants of it are determined. (SENAE, 2019).

In 1845, the Ecuadorian Customs Law enters into force. For the year 1896, Vicente Carbo Briones is appointed Secretary of the Customs Administration in Guayaquil. (SENAE, 2019). On December 2, 1932, Ecuador became a part of the Convention on the Repression of Contraband, which was signed in Buenos Aires, Argentina. In 1936, the fines to be imposed on people who enter contraband goods into the country were announced and rewards were established for those who would condemn these acts. (SENAE, 2019).

In 1937, the Chacras border police was founded and those who would work in this body was determined. However, after just two weeks, this police entity was dissolved. (SENAE, 2019). In 1995, the Undersecretary of Customs was created, three years later it was eliminated and the Ecuadorian Customs Corporation (CAE) emerged. This same year on July 13 the Organic Customs Law was enforced, which lasted until 2010. (SENAE, 2019).

On December 29, 2010, the Organic Code of Production, Trade and Investment (COPCI) entered into force, the same date on which the National Customs Service of Ecuador (SENAE) was created, which replaced the previous Ecuadorian Customs Corporation. (CAE). (SENAE, 2019).

c) **Relevant aspects.**

SENAE can be defined as an autonomous, state-owned company that engages in both national and international commercial interaction. It is also considered as a trade facilitator, and at the same time it attempts to meet the needs of all users of their services and to facilitate business processes. It also plays an important role in controlling imports and exports prohibited or that are against the law. (SENAE, 2019).

The SENAE fulfills an important mission, since it is a trade facilitator, that promotes fair and transparent trade as well as contributes and is one of the main pillars in the development of the Ecuadorian economy. As a part of its vision, the National Customs Service of Ecuador, has planned for 2021 to be known for its flawless ethics and excellent service. It is important for this entity to achieve this vision as it could contribute to trade and the economy in a more efficient and effective way. (SENAE, 2019).

The SENAE, is regulated by several policies, which include the Law of Productive Development, COPCI and its regulations. With regard to the subject of customs control through risk management, the applicable regulations are the Regulation on the Title of the Customs Facilitation for Trade, Book V of COPCI. (SENAE, 2019).

d) *The Customs Surveillance Unit (UVA).*

The Customs Surveillance Unit (UVA) is an administrative unit of SENAE, which develops crime prevention and investigation operations. These operations are carried out in the primary and secondary zones. (SENAE, 2019).

The primary zone can be defined as part of the Ecuadorian territory where the customs activity takes place. This part of the territory includes ports, airports, land terminals, as well as offices and centers, where it loads, unloads or moves merchandise. On the other hand, the secondary zone refers to all the territory that is not within the primary zone, this includes the airspace and the territorial waters. (SENAE, 2008).

The Customs Surveillance Unit (UVA), develops different tasks, such as:

- Patrols.
- Investigations.
- Apprehensions.
- Provisional withholdings.

The Customs Surveillance Unit (UVA), is in charge of the risk management, since after determining the level of risk within the customs controls, said unit proceeds to execute their respective operations. It also seeks to send the necessary amounts of surveillance units to those operatives that need it. (SENAE, 2008)

*History.*

The customs guard, has its beginnings in 1837, during the period of President Vicente Rocafuerte, who established in the city of Guayaquil a Customs Guard. Years later, in 1938, the Customs Reserves were entrusted with police functions. By 1953, the Customs Reservoir was known as the Security Body, constituted in a military manner, they had the obligation to patrol the border and serve as backup for the Customs Police. (SENAE, 2008).

After 10 years, for the first time the Customs Police graduates of Quito began their functions in the Eplicachima barracks, who, in addition to assigning them specific tasks, they were



provided with weapons and equipment necessary to carry out their duties. In 1972, the Customs Police was reestablished to centralize and unify its powers, in order to ensure the stability of its workers. (SENAE, 2008).

In 1985, the Troop Training and Improvement School in Cayambe opened its doors for the first time. In addition, it was established that those who applied as Inspectors had to complete a three-year training program, where are those who applied as Troop Personnel had to train for one year. In 1994, the military attributions given to the Customs Military Police were eliminated and those who made up this entity, in turn, became part of the Customs Surveillance Service. (SENAE, 2008).

On December 29, 2010, the Organic Code of Production, Trade and Investment enters into force, and as a result, the functions of the Customs Surveillance were to be determined by the Director or the National Director of SENAE. Also, the name of the Customs Surveillance Service was changed to the Customs Surveillance Unit. Moreover, along with its previous functions and attributions, it was determined that it was necessary that this body carry arms, which is why it came to be known as an administrative, operative and armed unit of the National Customs Service of Ecuador. (SENAE, 2008).

## **1.2 Powers and competences of the National Directorate of Risk Management and Customs Technique.**

As demonstrated in Figure 2, it can be seen that the National Directorate of Risk Management and Customs Technique is under the disposition of the General Subdirectorate of Customs Regulations, which in turn, responds to the mandate of the General Directorate. (SENAE, 2019). This is key in order to properly address this subchapter.

For a further comprehension of this thesis project, it is necessary to establish that the National Direction of Risk Management and Customs Technique fulfills a very important role in risk management, since it is in charge of determining the possible risks that may be found in customs controls and is also responsible for regulating which Foreign Trade Operators, also known as OCEs (for its acronym in Spanish), are going to be subject to control. (SENAE, 2015).

The National Directorate of Risk Management and Customs Technique, having to ensure the proper functioning of risk management, is responsible for periodically training Customs Laboratories<sup>1</sup>, in addition to acquiring the necessary equipment with the best available technology to maintain an optimal state of risk management. (SENAE, 2015).

In addition, it directs the resources towards the cases considered to be the riskiest, that is, it ensures that the distribution of resources is equitable, but not equal, always depending on the degree of risk of each customs operation, which ensures the prompt dispatch of the goods. (SENAE, 2015).

It also ensures that customs controls are effectively carried out in its three stages (prior, concurrent and subsequent), in order to enforce the law and deal with illegal acts, such as the smuggling of goods. The National Directorate of Risk Management and Customs Technique is responsible for establishing the risk that may exist in customs operations, involving the OCEs. (SENAE, 2015).

It is important to mention that the National Directorate of Risk Management and Customs Technique carries out sectoral studies that will be used for the preparation of manuals, which will help each sector to identify each possible risk more efficiently. (Narváez, 2015).

### **1.3 General aspects of risk management in the National Customs Service of Ecuador (SENAE).**

In the first place, it is important to define risk management which, in general terms, can be defined as the process of identifying certain dangerous factors that may affect a specific project or activity. Identifying these factors in time helps avoid or mitigate the risk. In addition, in case the risk is imminent, risk management can help to detect its possible impact on the project or activity.

To establish an adequate risk management, organization is important to classify the level of risk incidence, since it must be taken into account that some events are more likely to occur than others, and some have a greater impact than others.

To effectively control the possible risks that may arise at any given time, it is necessary to have preventive measures to deal with the unexpected and for all those who are part of the team of the project or activity to know exactly how to deal with the risk.

---

<sup>1</sup> Person specialized in customs technique.

#### a) Example of risk management in banking entities

To further understand what a risk management process is, it is necessary to use an example, such as banking institutions. This example has been chosen as a model to demonstrate how they use risk management to not only protect themselves, but also to protect its customers. The details of this example are based on the information provided by the Department of Financial Economics and Accounting of the University of Granada (Rubio, 2010).

Banking entities are a clear example of the application of risk management since it takes money from its customers and loans it to third parties, and in turn the bank recovers that money with profit, through interest. The resources that the bank uses are, to a large extent, from third-party actors, which is why they must manage quality risk management, identifying each possible risk to which their clients are exposed when depositing the money in their entity.

In the event that the bank is pronounced bankrupt, it must be able to return the money to its customers, using its own resources and not the resources of its depositors. The bank must recognize this risk and have a contingency plan in the case this happens, and it must have a solvency level that can help it respond to any risk situation.

The bank must consider several types of risk. One is the uncollectibility, which means that the subject who takes out a loan with the bank, is unable to pay the debt. This can occur for several reasons, such as default, insolvency, change in the national currency, economic crises, etc. In the event of default or insolvency of the subject to whom the credit was granted, the bank has a contingency plan, which is called guarantor, a solvent person chosen by the person requesting the loan, capable of paying said loan.

The bank analyzes all possible risks and uses measures to cope with them. It must be able to analyze the internal factors (insolvency, default) which the company can control, and external factors (recession, economic crisis, currency exchange) which the bank does not control. To face these contingencies, it is necessary to maintain a balance between the bank's credits and

the assets, so that it can respond to its obligations not only with depositors, but also with those entities that control their actions.

In the case of banks, they are subject to entities such as the Superintendency of Banks and the Central Bank, as well as the Basle Committee (Basel, Switzerland), which in addition to ensuring good banking practices, provides guidelines to reduce the likelihood of risk, and if applicable, establishes action measures to deal with possible impacts.

b) Risk Management in SENAE

In the case of risk management in SENAE, it functions very similarly to the case of banking entities presented previously. However, this type of risk management is adapted to their different needs. For the elaboration of this topic, the Directives of the general annex have been used as a basis (KYOTO CONVENTION, 2019).

It is necessary to observe figure 3 which is presented below and will help to better visualize the risk management process in Customs.



Figure 3: Customs risk management process

Source: (World Customs Organization (WCO))

As can be seen in Figure 3, the risk management process in Customs consists of five important stages, which are:

1. Definition of the Context.
2. Risk Assessment.
3. Risk Treatment.
4. Monitoring and Review.
5. Documentation, Communication and Consultation.

The stages to follow in the risk management process constitute the fundamental pillar to ensure accuracy in the establishment of the indicators to proceed to identify the probability that a certain risk will occur, and how often it may happen. In addition, by following these stages, it is easier to assess the degree of risk, be it high, medium or low. In the case of having a high degree risk, this means that there is a high probability that this risk will occur. In the case of a medium grade risk, this means that there is only some possibility that it could happen and when the risk is low, this means that there is a low probability of the risk occurring.

#### *1. Definition of the Context.*

In this first stage of the risk management process, how it will be managed must be determined. In order to manage the risk, it is necessary to know the work environment to establish the guidelines that will be applied in the future. All the guidelines that are managed in this step must be applied in all areas, divisions, addresses, etc.

After determining the means and guidelines to be used in risk management, it is important to know and identify the resources available for its execution, and if necessary, to establish additional controls. With what is established in this first stage, it will be possible to identify the scope and limits of risk management. Customs at this stage must consider who will be affected by the decisions to be made.

#### *2. Risk Assessment.*

The risk assessment stage, in turn, has three subdivisions, which are:

- a. Identification of the Risk.
- b. Risk Analysis

c. Risk Assessment and Prioritization.

a. Identification of the Risk.

This first subdivision is considered as a potential risk, and this information will be used to create a database.

b. Risk Analysis

In this second subdivision, the probability that a risk can happen as well as its frequency and effect is analyzed.

c. Risk Assessment and Prioritization.

In this third and last subdivision, the magnitude of the risk is determined. This magnitude is evaluated and the resources that are going to be used in the contingency plan are prioritized.

3. *Risk treatment.*

The third stage consists of specifying what actions will be taken when a possible risk must be faced. There are four possible actions to take when treating risks, which are:

- a. Treat.
- b. Tolerate.
- c. Transfer.
- d. Terminate.

a. Treat.

In the first probability, the tactics or action to mitigate the possible risk will be determined.

b. Tolerate.

The main goal of the second probability is to supervise and, at the same time, control the risk. When the risk is tolerated, it is because it is considered a low priority risk and it is not necessary to allocate the resources of a high priority risk to that of one that is of low priority.

c. Transfer.

In the third probability, the risk is mitigated by transferring it internally or externally. This probability is based on transferring the risk to third parties. It is important to mention that even if the risk is transferred, the owner is still responsible for it.

#### **d. Terminate.**

In the fourth and last probability, the action that may cause a risk is abandoned. In this probability, it should be noted that Customs cannot end the risk.

#### **4. *Monitoring and Review.***

To achieve optimal, efficient and effective operation of risk management, constant monitoring and review is necessary, since the risks within Customs are changing and volatile. To ensure the proper functioning of risk management, it is crucial to maintain a database that provides feedback for monitoring and review.

#### **5. *Documentation, Communication and Consultation.***

In this last phase, in order to successfully complete the risk management process, it is vital to maintain a line of communication with the interested parties, in order to be able to make any kind of consultation in a timely manner. Regarding the documentation processes, it is necessary to document and record each step of the process, which in the future can serve as feedback that can be used in the previous phases of the risk management process.

All of these phases that are a part of the risk management process, are of vital importance, since, besides helping to identify the probability of risk, they help to determine the resources an entity had to be able to face the risk. These steps serve to have a realistic view of the events that can occur in the customs controls. In turn, complying with the steps, means, have a support guide with parameters, which will serve to determine the activities they represent, or that may represent, a risk.

### **1.4 Analysis of customs controls.**

Specific controls should be applied in all foreign trade operations, ensuring compliance with the legal system and the tax interest. The main objective of customs control is to intervene, through constant surveillance, in the trade process of those goods entering or leaving Ecuadorian territory. These goods will be under observation and control by Customs during their entry, stay, transfer, circulation, storage and exit.

Customs control can be defined as the measures adopted by the customs authority to ensure compliance with the legislation. The National Customs Service of Ecuador (SENAE) has the power to carry out checks on Authorized Economic Operators (OEA), Foreign Trade Operators (OCE) and Bonded Customs Agent (AAA).

It is necessary to mention a short reference regarding the term Bonded Customs Agent (AAA), which can be defined as a natural or legal person, whose license, conferred by the General Director of the National Customs Service of Ecuador (SENAE), allows them to carry out the dispatch of the goods of those people that hire their services. In addition, the Bonded Customs Agent must include their signature on the customs declaration, when this requisite is established by the rules of procedure. This license has a duration of 5 years, and thanks to this, the customs agent can process the dispatch of the goods to third parties, considered as their customers, which is why they must provide a receipt for their services. (Importsol, 2016).

Customs controls are carried out on goods, cargo units and means of transport. Customs control aims to verify compliance with the obligations in relation to the activity, concession, authorization and audit of accounting or physical documents. Thus, customs control ensures compliance with the rules, which prevent the entry of forbidden import merchandise, as well as the entry of illicit merchandise and contraband.

It is important to mention that this control is carried out through different phases, which are:

- a) Previous Control.
- b) Concurrent Control.
- c) Subsequent Control.

SENAE may request information and assistance from other public institutions in Ecuador; and these have the obligation to provide the necessary and required assistance. The Armed Forces and the National Police collaborates with the Customs of Ecuador in the border control and customs districts. Likewise, this institution determines the personnel for the



customs operation, contraband in borders and subsequent control operations, and if the situation warrants it, the SENA will work together with the IRS.

### **1.5 Fundamental terms of the Foreign Trade Operator (OCE).**

The Foreign Trade Operator, better known by its acronym in Spanish as OCE, is the natural or legal person involved in the international traffic of goods, means of transport and people, which are subject to customs control. A Foreign Trade Operator can be the:

- Manufacturer.
- Importer.
- Exporter.
- Carrier.
- Port.
- Airport.
- Others

The following requirements are needed to become a Foreign Trade Operator (OCE):

- Own a RUC.
- Complete the corresponding forms.
- Obtain an electronic signature of the entities certified by ARCOTEL, which are the Central Bank of Ecuador, Security Data, Civil Registry, Council of the Judiciary, ANFAC (Certification Authority Ecuador C.A.). (ARCOTEL, 2017)
- Register in the ECUAPASS system:
  - Click on the OCE option.
  - Register the necessary data.
  - Complete the required fields.
  - Create a username and password.

It is important to mention that it is the obligation of the Foreign Trade Operator (OCE) to be accountable for the documents they are responsible for, since they are considered of utmost importance for the respective tax procedures.

In the case of physical documents, the law establishes specific parameters of how they must be stored, which means that they require a physical place with an area of at least four meters, where files of the last six months will be located. This place must be located within the address previously authorized by SENAE, but in an isolated manner, and it must be properly secured with a lock and have a plate with the identifying information. To help with the organization and maintenance of the archives, shelves, cabinets, filing cabinets and file boxes can be used.

In the case of electronic documents, the Foreign Trade Operator (OCE) has the duty and obligation to take care of them properly and they must be kept for as long as the law dictates, depending on the type of document. When it comes to warehousing by companies hired by the Foreign Trade Operator (OCE), it is the obligation of the OCE to present the contract with said company and include the validity period.

#### **1.6 Basic information of the Authorized Economic Operator (OEA).**

For the preparation of this subchapter regarding the subject of the Authorized Economic Operator, or OEA (for its acronym in Spanish), the information obtained from articles 267, 268, 269, corresponding to Chapter XV of the RG to Title II of Book V of COPCI, has been used as a basis. (RG to Title II of Book V of COPCI, 2010), as well as Resolution No. SENAE-SENAE-2017-0693-RE (SENAE, 2017). In addition, the information found on the official SENAE website is also applied (SENAE, 2019).

The World Customs Organization, in its search to establish unity among Customs all around the world, created the SAFE framework and within it established the program called: "Authorized Economic Operator (OEA)", which has been adopted by Ecuador as a strategic movement between the private and public sector, to facilitate foreign trade. The OEA qualification is granted to the OEAs, who are part of the international logistics chain. (SENAE, 2019).

These operators work with exporting companies that can comply with international standards, such as security from the production of the product to its export. It is of utmost

importance for companies to establish themselves as an OEA, since in this way they can gain international competitiveness, Customs gives them more agility in customs procedures, recognition at the national level, agreements with Customs of different countries, in addition, they can request personalized attention from the OEA Office. (SENAE, 2019).

The AOE can be defined as the natural or legal person, who is involved in the international movement of goods. An AOE, is a reliable economic operator for all customs procedures and can be manufacturers, importers, exporters, carriers, ports, airports, among others. (SENAE, 2019).

#### Requirements to be an OEA:

- Obtain the OEA qualification, which has no cost since its sole purpose is to convert Foreign Trade Operators (OCE) into safe and reliable operators.
- Must meet the requirements established by the Customs Administration, which are the following:
  - Have a clean customs behavior record.
  - They must have the financial capacity necessary to fulfill their obligations.
  - It is necessary to comply with certain safety parameters, to mitigate the possible risk.
- The corresponding qualification must be requested from the Customs Authority.

#### Procedure for qualification:

- The form and the corresponding application must be filled out properly, this step can also be applied in case of renewal of the qualification.
- The necessary documents are indicated in the application, which must be delivered.
- It is necessary to wait to obtain the ratification of compliance with the previously mentioned SENAE requirements.
- It will be necessary to properly fill out the requirements form for the OEA qualification.
- The SENAE will need to verify the information obtained by the applicant, which will be carried out physically and electronically.

- After carrying out the previous steps, the OEA will be subject to a final evaluation.
- If the applicant to the OEA has successfully complied with the procedure for qualification, SENAE will grant it the OEA qualification.

#### Renewing OEA status:

- The renewal of the respective qualification must be done within a period of three years. If this is the case, the OEA can request the withdrawal of its authorization.
- As long as the OEA complies with its obligations, it can maintain its qualification, without any problem.
- Review and Intervention:
- The OEA can be subject to random review to ensure that it is fulfilling all its obligations.
- Benefits of being an OEA:
- An OEA can be recognized as such inside and outside the country, who is known for applying security measures in order to mitigate the possible risk.
- The OEA will ensure that their respective customs controls are not intrusive.
- If necessary, an OEA can resort to the personalized attention from the work staff of the National Customs Service of Ecuador (SENAE), to discuss issues related to security in the logistics chain.
- When there is doubt and uncertainty regarding issues of tariff classification, they can obtain personalized assistance.
- They have the option to receive training, upon a previous request.
- With proper authorization, they will be able to use the OEA seal as advertising for the company.

#### Ineligible OEA candidates

- Those who are sanctioned for any customs offense.
- In the case in which the OEA cannot fulfill its obligations, the Director General will have the full power to suspend or cancel the authorization of the OEA.

## 1.7 Essential notions of merchandise.

According to Chapter XV of the RG to Title II of Book V of the COPCI, Article two, literal JJ, merchandise is considered as:

*"Any movable property that can be transferred and that can be classified in the National Import Tariff."* (RG to Title II of Book V of COPCI., 2010).

In the same way, Chapter XV of the RG to Title II of Book V of the COPCI, Article two, literal: kk, ll, mm, nn, oo, pp, qq; mentions the different types of merchandise that can be found. (RG to Title II of Book V of COPCI., 2010).

- a. Foreign Merchandise
- b. Missing Merchandise
- c. National Merchandise
- d. Nationalized Merchandise
- e. Shipwreck Merchandise
- f. Unmanifested Merchandise
- g. Lagging merchandise

### a. Foreign Merchandise.

It refers to all merchandise that in one way or another has been produced outside the Ecuadorian territory. The dispatch of this type of merchandise is not processed.

### b. Missing Merchandise

The merchandise is known as missing merchandise when it is not found when carrying out the physical inspection, even though it is on the Cargo Manifest.

### c. National Merchandise.

This type of merchandise is one that has been produced within the Ecuadorian territory, which has not been permanently exported, and for whatever reason, that was not the will of its respective exporter, has had the need to return to the Ecuadorian territory.

#### d. Nationalized Merchandise

Nationalized merchandise refers to the movable property that comes from abroad and whose process has been carried out successfully, complying with all the respective standards.

#### e. Shipwreck Merchandise

It refers to foreign merchandise that has been collected within the Ecuadorian territory, after being the subject of an accident, and that for any reason, finding its respective owner has not been possible.

#### f. Unmanifested Merchandise

Unmanifested merchandise is that which is not found in the Cargo Manifest of the transport in which it has been found.

#### g. Lagging merchandise

It is lagging merchandise when it does not have information about its owner and is also not within the primary or secondary zones.

### 1.8 General concepts of loading units.

According to Chapter XV of the RG to Title II of Book V of the COPCI, Article two, literal kkk, the cargo unit is considered as the:

*"Container used for the conditioning of goods in order make possible or facilitate their transport, which may be towed, but which has no traction or propulsion."* (RG to Title II of Book V of the COPCI., 2010).

In order to better understand this subchapter, it is necessary to understand the term cargo. According to Chapter XV of the RG to Title II of Book V of the COPCI, Article two, literal i, cargo can be defined as:

*"All good that can be transported"* (RG to Title II of Book V of COPCI., 2010).

Likewise, it is necessary to indicate that there are several types of cargo, which are mentioned in Article 2, literals k, l, m, n, from Chapter XV of the RG to Title II of Book V of the COPCI. (RG to Title II of Book V of COPCI., 2010).

These include:

- a. Containerized cargo.
- b. Special cargo
- c. Bulk cargo
- d. Consolidated cargo.
- e. Dangerous cargo.
- f. Loose cargo.

**a. Containerized Cargo.**

This type of cargo can be found in one or several shippers and consists of one or several transport documents.

**b. Special Cargo.**

This type of cargo is composed of goods that due to their nature or volume, cannot be mobilized in a cargo unit

**c. Bulk Cargo.**

Due to its amount or status, bulk cargo must be transported in cargo units, created specifically for its needs.

**d. Consolidated Cargo.**

Consolidated cargo is one that belongs to one or several consignees. This type of cargo must have the same transport document.

**e. Dangerous Cargo.**

It refers to any merchandise that may pose a risk to health or the environment.

**f. Loose Cargo.**

Loose cargo refers to that which, due to its size, is not transported in cargo units, and must be moved separately.



## **CHAPTER II**

LEGAL BASE



## 2.1. Technical definitions.

The regulations to be analyzed are a set of instruments through which an order is established to control certain activities, in this case those of commerce. For the development of this project it is imperative to establish the technical definitions that will be used and mentioned in the analysis of the regulations in order to fully comprehend them.

The definition of Foreign Trade Operator (OCE), according to the Regulation on the Title of the Customs Facilitation for Trade, Book V of the Organic Code of Production, Trade and Investment is *"(...) any natural or juridical person, national or foreign that intervenes in the traffic of merchandise, means of transport and persons subject to customs control"* (Regulation to the Title of the Customs Facilitation for Trade, Book V of the Organic Code of Production, Trade and Investment, 2011).

In turn, the OEA is defined in article 11 of Executive Decree No. 312 of February 2, 2018 as a:

*"(...) natural or legal person involved in the international movement of merchandise, whatever the function that has assumed, that complies with the equivalent security standards of the logistics chain established by the National Customs Service of Ecuador, to access the facilities in the customs procedures"* (Decree No. 312, 2018).

Similarly, it is relevant for the investigation to determine the definitions of the terms that are used and referred to in Decision 778 of the Andean Community of Nations (CAN, for its acronym is Spanish), using the article 3 of said decision. The main terms will be explained below.

### i. Risk analysis.

It is carried out in order to determine the frequency of the defined risk and the scope of the possible consequences, the type and extent of control that must be carried out in the different phases of customs control. Risk analysis makes systematic use of the information available to reach such determinations. (Decision 778, 2012).

ii. Customs control.

The customs administration adopts a set of measures in order to comply with the customs legislation and any other provision that is within the customs' competence. (Decision 778, 2012).

iii. Customs control based on the audit.

The controls or audits must be carried out after the release of the goods by the Customs Administration. These controls are carried out through specific customs declarations or customs regimes that cover the entry or exit of goods, executed during a specific period. The audit can be performed at the offices of the Customs Administration as well as at the facilities of each audited entity. (Decision 778, 2012).

iv. Customs debt.

In agreement with the provisions contained in this Decision and those indicated in the national legislation of each Member Country, the customs debt is the total amount of the customs duties and other taxes imposed applied to a certain merchandise. (Decision 778, 2012).

v. Risk evaluation.

It is a general process that identifies, analyzes and evaluates risks and establishes priorities. (Decision 778, 2012).

vi. Risk assessment and priority setting.

It is carried out in order to determine if the risk is acceptable or tolerable, for which a process of comparing the results of the risk analysis with the risk criteria is carried out. (Decision 778, 2012).

vii. Risk management.

In order to channel and control risk, administrations coordinate these activities. (Decision 778, 2012).

viii. Risk indicators.

These are the specific criteria that, when taken together, serve to select and control movements that could represent a potential risk of non-compliance with customs laws. (Decision 778, 2012).

ix. Sensitive goods.

These goods have a high profile of customs risk. (Decision 778, 2012).

x. Risk profile.

In accordance with Article 146 of the Organic Code of Production, Trade and Investment and with Article 105 of the Regulations to the COPCI, a risk profile is defined as the description of a set of risks with a predetermined combination of indicators.

Based on the information that has been collected, analyzed and categorized, the criteria for ranking the information of the risk management system will be reserved. The National Customs Service will be responsible for establishing the control levels of all customs declarations and transport documents. The functionality and administration of the IT tool will be regulated by the General Directorate of the National Customs Service of Ecuador. (Decision 778, 2012).

xi. Risk.

It is the probability that an event may constitute a breach of customs regulations or other provisions that are the responsibility of Customs, in relation to the entry, exit, transit, storage, delivery and destination of the goods. (Decision 778, 2012).

xii. National customs territory.

It is the territory defined by each Member Country in its National Legislation. (Decision 778, 2012).

xiii. Customs taxes.

This refers to all taxes, contributions and customs duties. These include all anti-dumping or countervailing duties; taxes on added value sales that are collected on the occasion of foreign trade operations. (Decision 778, 2012).

In the same way, article 7 of this decision has been used with the purpose of defining the following terms:

**i. Previous control.**

It is carried out by the Customs Administration before the admission of the customs declaration of merchandise. (Decision 778, 2012).

**ii. Control during the dispatch**

This control is exercised from the moment in which the admission of the customs declaration is handed in and ends at the time of shipment and departure of the goods. (Decision 778, 2012).

**iii. Subsequent control.**

This control is carried out from the release and shipment of merchandise. (Decision 778, 2012).

## **2.2 Framework and normative analysis.**

### **2.2.1 Ecuadorian Constitution, Article 226.**

As specified in article 226 of the Constitution of the Republic of Ecuador, the powers and faculties that state institutions, as well as their agencies, dependencies, public servants and all persons intervening in state authority, will only be those that are attributed by the Constitution and the law. (Constitution of the Republic of Ecuador, 2008).

They will have the duty to coordinate actions for the fulfillment of their purposes and make effective the exercise of all the rights that are recognized in the Constitution of the Republic. (Constitution of the Republic of Ecuador, 2008).

In the article described above, it indicates that all the people who intervene in the name of the state can only perform the competences explicitly written in article 226 of the Constitution of Ecuador, therefore, they cannot be involved in decisions and actions outside of its competition. The duty of these public entities that represent the state authority is to coordinate, comply with and make effective all the rights established in the Constitution.

### **2.2.2 Organic Code of Production, Trade and Investment (COPCI)**

According to Article 104 of the Organic Code of Production, Trade and Investment, hereinafter referred to as COPCI (for its acronym in Spanish), the Fundamental Principles are established in addition to those already established in the Constitution:

Referring to the facilitation of foreign trade, the processes must be fast, simplified, expeditious and electronic in order to encourage national competitiveness and productivity, ensuring the effectiveness of the logistics chain. This is important in order to streamline the procedures and benefit all people who are involved in the logistics chain. (Organic Code of Production, Trade and Investment, 2010).

Cooperation and the exchange of information should be managed to involve both public and private entities and thus achieve integration at the national and international level through this exchange. (Organic Code of Production, Trade and Investment, 2010).

The fundamental principle of good faith specifies that any process or customs procedure will be presumed to be carried out in good faith, that is, that it will be carried out with honesty and integrity. (Organic Code of Production, Trade and Investment, 2010).

Another principle is advertising, which states that all general decrees that are issued by the National Customs Service of Ecuador must be made public. That is to say, that every decree must be available to the public in general so that they have the needed information to know how the National Customs Service of Ecuador is working. (Organic Code of Production, Trade and Investment, 2010).

Finally, there is the principle of application of good international practices, which indicates that, in order to reach international standards of service quality, the best customs practices must be applied in order to achieve an integration with the other customs in the region. (Organic Code of Production, Trade and Investment, 2010).

In Article 144 of the COPCI, in accordance with Decision 778 of the Andean Community of Nations (CAN), it defines Customs Control as the control applied to all revenues, transfers, circulations, warehousing and exits of goods, cargo units and means of transport to and from the national territory, including merchandise that enters and leaves the Special Zones of Economic Development. (Organic Code of Production, Trade and Investment, 2010).

Similarly, Customs Control will be exercised on the people who intervene in foreign trade operations and on those who enter and leave the customs territory. (Organic Code of Production, Trade and Investment, 2010).

This control will be carried out in accordance with international regulations in the following phases: previous control, concurrent control and subsequent control. In order to ensure the carrying out of this control, the National Customs Service of Ecuador may request from other public sector institutions, as well as from private companies, information regarding the persons that operate in international merchandise traffic. There will be no reservation or stealth that opposes to obtain the information required by the National Customs Service of Ecuador. (Organic Code of Production, Trade and Investment, 2010).

If in the results of the concurrent control, errors are determined in an accepted customs declaration, a complementary liquidation will be issued when the differences are given in favor of the active subject. The complementary liquidations may be made before the payment of taxes and, if they do not do so, the procedure shall be subject to subsequent control under the same conditions, as long as there is no founded presumption of crime. (Organic Code of Production, Trade and Investment, 2010).

After the corrections are made to the customs declaration, the support documents may be admitted, except in the cases established by the customs regulations issued for this purpose. (Organic Code of Production, Trade and Investment, 2010).

The SENAE will keep a record of the information initially transmitted or presented, of all the changes that are made and the public officials who intervene in this process. (Organic Code of Production, Trade and Investment, 2010).

The subsequent control may be carried out through coordinated actions between SENAE and the Internal Revenue Service upon the request of either of the two entities. (Organic Code of Production, Trade and Investment, 2010).

### **2.2.3 Decision 778 of the Andean Community of Nations (CAN).**

The decision 778 of the Andean Community of Nations, published on December 6, 2012, which replaces decision 574 of December 12, 2003, in its Article 1, constitutes the rules that the Customs Administrations of each of the Member Countries of the Andean Community must apply for the customs control of goods, transport units and cargo, and persons.

This means that all Member Countries have to rely on this decision to carry out each of their national legislations. This acts as a framework that helps the unified system of the CAN.

The customs authorities of each Member Country, independently of those already established in each National Legislation, will have the following investigative and control powers as established in article 4 of this decision:

1. First, the customs authorities will have the faculty to carry out all the investigations that are necessary to ensure that the Customs Legislation and all other provisions are being fulfilled, being this responsibility of customs. (Decision 778, 2012).
2. Second, any natural or legal person, whether public or private, as well as importers, exporters, declarants, transporters and other assistants of the customs function may request any information necessary to guarantee the control of customs operations,

as well as information on economic operations, foreign trade and their residence information. (Decision 778, 2012).

Likewise, the information of interest for the investigation and control processes of the Customs Administration must be reported by public, financial or private entities. (Decision 778, 2012).

3. Third, the persons or entities that do not provide the information based on the foregoing terms, do so extemporaneously or inaccurately or incompletely, must be sanctioned in accordance with their internal legislation. (Decision 778, 2012).
4. Fourth, through the administrative act, it will be possible to order the inspection, visit or registration of offices, commercial establishments, industrial or service and other premises, vehicles and means of transport of the importer, exporter, owner, holder of the goods, transporter, depositary, intermediary, declarant or user, or third parties involved in the customs operation, provided that this does not coincide with the residence, in the case of natural persons. (Decision 778, 2012).

To prevent the obtained evidence or merchandise from being altered, destroyed or hidden, the Customs Administration may take the necessary preventive measures. In such cases, upon request from the Customs Administration, the public force shall collaborate in order to guarantee the execution of the respective proceedings. (Decision 778, 2012).

The jurisdiction to order the administrative act will be determined by each Member Country according to its internal control and supervision regulations of the Customs Administrations. (Decision 778, 2012).

Finally, customs authorities may adopt preventive measures on merchandise and transport and cargo units, in accordance with the provisions of the legislation of each Member Country. (Decision 778, 2012).



This article is very important because it establishes the guidelines and important aspects for the control and inspection of any task that involves customs for the compliance of the legislation of each country.

Moreover, Article 5 specifies that all control and investigation actions that are carried out by the Administrations of each Member Country are intended to verify:

1. First, that the declared data about the destinations presented during a certain time are accurate. (Decision 778, 2012).
2. Second, that all the requisites demanded in relation to the merchandise entering a Member Country be complied with, in the time that it remains under a regime of active improvement, temporary importation, or importation with suspension of taxes or different treatment or preference. (Decision 778, 2012).
3. Third, it must be verified that the merchandise entered into a Member Country is under the protection of another of the customs destinations or exemption of taxes. (Decision 778, 2012).

And, finally, each Member Country must know the legal circulation of the merchandise in each of the customs territories. (Decision 778, 2012).

It is of vital importance to know the information mentioned in this article regarding the control of each customs administration, because internally each country must be able to have knowledge of the origin and possible use of the merchandise that enters each national territory.

The verification of the information that was presented with entry of the merchandise guarantees that it is of legal circulation and that it meets all the requirements to be protected under any customs destination or exemption of taxes.

In order to prepare a strategic and objective plan for the review and analysis of the activities related to the control and research tasks, article 6 of this decision establishes that all these tasks must be carried out in an established place. This plan will have the declarations selected independently of the type of capacity without taking into consideration the requested customs regime. (Decision 778, 2012).

Customs control must be carried out in all of its phases, previous control, concurrent control and subsequent control as established in article 7.

If the national legislation of a Member Country considers it possible, the two phases of prior control and dispatch stage may be carried out in the same phase. (Decision 778, 2012).

As explained in article 8:

The previous control must be carried out on certain risk groups and sensitive economic sectors, certain trade operators, classes of goods or merchandise from certain countries. (Decision 778, 2012).

Direct investigation actions must be carried out on the consignee, the importer or exporter of the merchandise, the persons who intervene, intermediaries or representatives and all other persons possessing merchandise and information that may be of interest to the Customs Administration, as well as the information contained in declarations, transport documents and other supporting documents, means of transport, cargo units and unloaded goods. (Decision 778, 2012).

The actions of checking, monitoring and control must be applied on the means of transport and loading units as well as the goods while they are on the edge of the means of transport, during and after the unloading and also, during their transfer and permanence in the authorized warehouse or temporary warehouse. (Decision 778, 2012).

The control during the dispatch at the point of entry is carried out by the Customs Administration from the moment in which the declaration is admitted, until the moment in which the release of the merchandise is authorized. (Decision 778, 2012).

On the contrary, at the exit, the control during the dispatch is exercised by the Customs Administration from the admission of the declaration until the shipment and exit of the merchandise and of the means of transport of the national customs territory of the respective Member Country, as established in the Article 9 of this decision. (Decision 778, 2012).

For the completion of the concurrent control, the Customs Administration will act on the merchandise, the declaration and, if it is the case, on the demandable documentation, including all the practices of recognition, verification and capacity. (Decision 778, 2012).

The Customs Authorities have the power to apply the Unique Customs Documents (DUA), which are presented for the clearance of goods that are covered by the different customs regimes; they also apply to selective control based on risk management criteria in accordance with the provisions of Articles 22 and 23 of this Decision. (Decision 778, 2012).

The inspection and direct lifting of the goods without being subjected to documentary verification and physical examination may be authorized when the customs authorities use risk analysis criteria in the choice of the control actions that must be exercised, as established in article 10. (Decision 778, 2012).

Article 11 specifies that the customs authorities may adopt control practices, during the dispatch or the performance of other customs operations in places other than the customs premises, in the case of goods whose characteristics do not allow the termination of recognition and capacity actions in the areas of customs clearance, simplified clearance procedures, enabling the declarant to directly withdraw the goods to their facilities in temporary storage, statements selected by the national customs system for determining the control actions, goods entered in the national customs territory in favor of customs regimes suspending the payment of import duties and taxes and surcharges for which another

customs regime has been requested, the goods remaining outside the customs clearance areas and other cases provided for by the community or national rules (Decision 778, 2012).

#### Article 12.

The customs authorities of the Member Countries may entrust the exercise of customs control actions during dispatch to control units established in the same customs office in which the corresponding declaration was presented or in units of a centralized, national or regional area. (Decision 778, 2012).

#### Article 13.

It is the duty of the customs authorities of the Member Countries to coordinate the practice of the control actions during the dispatch with the actions of recognition of the goods in charge of other authorities, with the outline of the competences attributed to them. (Decision 778, 2012).

#### Article 14.

When the release or the shipment of the merchandise has been authorized, the customs authorities may proceed to the subsequent control, in order to guarantee the accuracy and veracity of the data contained in the declaration. (Decision 778, 2012).

#### **Application of Articles 12, 13 and 14.**

- Goods, documents and other information related to the import, export or customs transit operations of the merchandise; documents and data related to subsequent or previous commercial transactions related to the import, export or customs transit of the goods, including the Single Customs Document (SAD) and the Andean Value Declaration (DAV). (Decision 778, 2012).

- Transformation, processing, assembly, repair and other operations to which the imported goods are subject under an active processing regime, as well as the products obtained from these operations; or the fulfillment of the requisites demanded to the goods in temporary import and other suspensive regimes of the payment of the rights and taxes to the import and surcharges, or subject to preferential treatments and to the merchandise imported to the cover of the other customs destinies. (Decision 778, 2012).
- The actions of subsequent control on the declarations, cargo manifest and other commercial, accounting and banking documents related to a certain commercial operation, will include the recognition of the goods in the place in which they are located. (Decision 778, 2012).
- Any declarant, importer or exporter of the goods are subject to these controls, carried out by the Customs Administrations; any person directly or indirectly linked to customs operations, any other person who is in possession of or has information, documents or data relating to operations subject to customs control or any person in whose possession the goods subject to customs control are located (Decision 778, 2012).
- The subsequent control unit may examine and require the transfer of books, documents, files, magnetic media, computer data and any other information related to foreign trade operations (Decision 778, 2012).
- Subsequent control units constituted by the Customs Administrations must be integrated by officials with knowledge and experience in customs, tax, foreign trade, accounting, auditing and any other area of specialization that is required. Subsequent control units may be structured in each Member Country according to the scope of its territorial action, granting them the necessary powers and competencies so that they can fulfill their function (Decision 778, 2012).

#### 2.2.4 Cartagena Agreement, Article 3, Article 22.

The Cartagena Agreement is an international legal instrument with which the process of integration of the Andean countries began, giving rise to the Andean Group. It was signed on May 26, 1969 in Quito, Ecuador. On March 10, 1996, it was institutionally restructured and took the name of the Andean Community of Nations.

The Cartagena Agreement seeks to achieve regional integration among the member countries, which is why in its article 3 it specifies the objectives that must be developed to achieve this goal.

In the following paragraph only the literals that are of interest for the development of this research will be indicated.

- a. Deepening the integration with the other regional economic blocs and relations with extra-regional schemes in the political, social and economic-commercial spheres;
- b. The gradual harmonization of economic and social policies and the approximation of national legislations in the pertinent matters.
- d. A Program of liberation of commercial exchange more advanced than the commitments derived from the Treaty of Montevideo 1980.
- e. A Common External Tariff.
- j. Preferential treatment in favor of Bolivia and Ecuador (Andean Sub regional Integration Agreement, 1969).

The objectives established in the previous article serve as a guide for member countries of the agreement to reach an integration where, by harmonizing policies on specific issues, it

is easier to carry out trade, cooperation and exchange transactions between member countries.

With regard to Article 3 mentioned above, Article 22 of the present convention mentions that it corresponds to the Commission of the Andean Community:

- a. Formulate, execute and evaluate the Andean sub regional integration policy regarding trade and investment and, when appropriate, in coordination with the Andean Council of Foreign Ministers.
- b. Adopt the measures that are necessary for the achievement of the objectives of the Cartagena Agreement.
- c. Coordinate the joint position of the Member Countries in international forums and negotiations, within the scope of their competence.
- d. Ensure the harmonious fulfillment of the obligations derived from this Agreement and the Treaty of Montevideo of 1980.
- e. Approve and modify its own regulations.
- f. Approve, not approve or amend the proposals submitted by the Member Countries, individually or collectively, or send to the General Secretariat for their consideration.

Maintain a permanent link with the bodies and institutions that make up the Andean Integration System, with the aim of promoting the coordination of programs and actions aimed at achieving their common objectives. (Andean Sub regional Integration Agreement, 1969).

It is the duty of the Andean Community Commission to ensure compliance with all the established objectives, as well as to develop or execute the necessary policies for the proper functioning of the Convention, this also includes the approval or non-approval of its regulations or any amendment or recommendation given by member countries. It is also their duty to coordinate all negotiations that occur as a result of this convention.

#### **2.2.7 Resolution RE-0581-2017 of the General Directorate of the National Customs Service of Ecuador.**

##### **General considerations for the assignment of customs control actions, through the risk profiler.**

###### **Article 1.**

The scope of application of this resolution indicates that all the actions applied to the control phases will be carried out by means of the risk profiler, related to the merchandise, cargo units or natural or legal persons that operate in international merchandise traffic, including to the beneficiaries that are governed by the Law of Immunities, Privileges and Diplomatic Franchises (Bulletin Nro.371-2017, 2017).

###### **Article 2.**

In relation to the risk management models and the control subjects, all the analyzes carried out by the risk profilers will lead to the assignment of customs control actions (Bulletin Nro.371-2017, 2017).

###### **Article 3.**

They will not be subject to compliance with previous admissibility requirements regarding the assignment of customs clearance procedures for customs declarations by natural or legal persons operating in international merchandise traffic. The analysis of the customs declaration of the risk profiler will be the only criterion that will be applied for the assignment of the type of inspection (Bulletin Nro.371-2017, 2017).



#### Article 4.

The servers that have access to the information used to determine the risk profile must keep absolute confidentiality since such information is private. The servers will be governed according to the Internal Obligatory Compliance Regulations (Bulletin Nr.371-2017, 2017).

### **2.2.8 Resolution RE-0282-2011 of the General Directorate of the Customs Service of Ecuador.**

#### **Organic Statute of Organizational Management by Processes of the National Customs Service of Ecuador.**

#### **Resolution 0282 of May 25, 2011 indicates:**

#### Article 1.

*"The organizational structure by processes of the National Customs Service of Ecuador, is aligned with its mission, and is based on the philosophy and focus of products, services and processes, with the purpose of ensuring its organic ordering" (Resolution 0282-2011, 2011).*

#### Article 2.

*"The processes that manage the products and services of the National Customs Service of Ecuador, are sorted and classified according to their degree of contribution or added value to the fulfillment of the institutional mission.*

*The governing processes guide the institutional management through the formulation and issuance of policies, rules, procedures and instruments that allow the organization to operate. All these processes that add value generate, manage and control the products and services destined to external users and allow to fulfill the institutional mission"*

*(Resolution 0282-2011, 2011).*

*"The enabling processes are aimed at generating products and services of advice and logistical support to generate the portfolio of institutional products demanded by the governing processes, which add value and for themselves, making the institutional management viable" (Resolution 0282-2011, 2011).*

#### Article 3.

*"The management positions are in charge of leading and managing the organization and are established in the organizational structure of the National Customs Service of Ecuador" (Resolution 0282-2011, 2011).*

*"The executive positions of the organization are constituted by the following positions: General Director, Deputy General Director of Operations, General Deputy Director of Institutional Management, Deputy General Director of Regulations, Deputy Director of Regional Support, National Directors, District Directors and Area Technical Directors" (Resolution 0282-2011, 2011).*

#### Article 4.

*The National Customs Service of Ecuador institutionalizes the Institutional Development Management Committee, made up of the General Director, Deputy Director General of Operations, Deputy Director General of Institutional Management, Deputy Director General of Regulation, Deputy Director of Regional Support and National Directors" (Resolution 0282-2011, 2011).*

Only the articles that are directly related to the development of this thesis were used, in which the operation and structure of the National Customs Service are explained by the Organizational Management processes.

The background of the page features several abstract, flowing blue lines. One prominent line curves from the bottom left towards the top right, while another line forms a large loop on the left side. The lines have a slight gradient and a soft shadow effect, giving them a three-dimensional appearance. The overall color palette is various shades of blue, from light sky blue to deep navy blue.

# **CHAPTER III**

## *ANALYSIS*

## ANALYSIS

The customs administrations that manage the modern global economy face a complicated range of challenges. Its main commitments continue to be the protection of society and the collection of income, but these tasks require them to be carried out effectively and efficiently, while providing a flow of legitimate goods.

Risk management can be associated with any process, activity or function within an organization, allowing to take advantage of opportunities and minimize potential losses. In itself it is a logical and systematic method to identify, analyze and manage risks.

Risk management is a system based on customs intelligence and is composed of activities that are carried out in a coordinated manner to direct and control the risk. The process of selecting the procedures for the physical appraisal is based on probabilistic and deterministic models that are fed from the databases and other criteria that establish the risk of an operator, optimizing the customs resources upon the risky merchandise and facilitating the rest.

As it is understood, risk management is an orderly and practical work for the development and implementation of measures for the prevention and reduction of risks, evaluating the effectiveness of the control of the commission of customs operations, providing a continuous update, for the analysis and the review of the information that is available to the customs authorities. Therefore, to accelerate customs clearance and improve the quality of customs control, the system analysis and the risk management system are effective mechanisms.

The implementation of non-intrusive inspection equipment and the minimization of the human factor in customs control can be very useful, paying special attention to the benefits of customs risk management.

In conclusion, the effectiveness of the risk management system will have a direct impact on customs control.

### 3.1. Customs controls

To minimize the risks, SENA, through customs control, supervises the import and export of goods in accordance with the Customs Law. In turn, the Customs Directorate controls compliance with customs procedures and collection in each country.

*"Customs control is the set of measures adopted by the customs administration with the aim of ensuring compliance with Customs legislation, whose application or execution is within its competence or responsibility, to which the various foreign trade operators must submit."*

*(Regulation to the Title of the Customs Facilitation for Trade, Book V of the Organic Code of Production, Trade and Investment, 2011).*

In addition to charging fees and import charges, it is responsible for enforcing security measures, environmental protection, consumer protection, cultural protection, intellectual property and wildlife rights.

According to the World Customs Organization (WCO) in its Glossary of Terms, it defines customs control as: "(...) measures applied for the purpose of ensuring compliance with the laws and regulations for which Customs is responsible". (World Customs Organization, 2018)

That is to say, that besides controlling, customs controls consist in verifying the restricted or prohibited goods, and these controls will be carried out through the documents and / or in goods imported, exported or placed under another customs procedure.

Customs control will be applied to the entry, stay, transfer, circulation, storage and exit of goods, cargo units and means of transport to and from the national territory, including the merchandise that enters and leaves the Special Economic Development Zones, by any reason (...) The customs control will be carried out in the following phases in accordance with international regulations: prior control, concurrent control and subsequent control. (Specific Manual for the Entry and Departure of Imports of the Temporary Sea, Aerial and Terrestrial Deposits, 2017).

Likewise, customs authorities coordinate different controls on the same products, in close collaboration with other authorities.

### 3.2.1. Previous

As its name indicates, it is: "that which is exercised by the Customs administration, prior to its being subject to a customs regime" (Padilla, 2017). Therefore, it is exercised by the customs administration before the admission of the customs declaration of merchandise.

In other words, when foreign trade operators send a physical or electronic document, it allows customs officials to develop a risk analysis based on computer tools or other elements that guide them to detect possible fraud. It is important that the goods are checked and supervised in the means of transport and during their transfer to the authorized premises.

In addition, Customs must strengthen controls from this moment, also considering tax havens, countries that transgress intellectual property and goods that require prior permits, with examination or direct inquiry actions on foreign trade operators and select merchandise through of risk profiles, which must be carried out before the customs declaration.

### 3.2.2. Concurrent

The concurrent control is:

*"Exercised on the merchandise from its entry into the customs territory or from when it is presented for departure and until it is released."* (Padilla, 2017).

In this way, it comes into force from the date of authorization of the customs declaration until the time of dispatch or shipment of the goods. At this stage it should be expected that any activity that extends the shipping time will cause inconvenience to the user. Therefore, it is advisable to selectively control certain Declarations of Unique Customs, based on risk management criteria.

After the customs declaration, through the implementation of technological tools and trained personnel, the merchandise will be collated in documentary, physical, electronic and automatic inspections, which are later discussed in this chapter.

### 3.2.3. Subsequent

Padilla, (2017), comments that the subsequent control:

*"is carried out once the goods have been released in relation to customs operations, the acts derived from them, the customs declarations, the determinations of customs tax obligations and the payment of taxes and the actions of the assistants, officials and of the other persons, natural or juridical that intervene in foreign trade operations. "(pp. 2-3; Padilla, 2017)*

Therefore, it is the exercise of sending goods that have been released for a particular customs system. It is recommended that these controls be followed by an annual plan that establishes whether a Deferred Documentary Control will be carried out, which consists of verifying the customs declarations presented during the customs clearance of the merchandise, or carrying out an inspection involving the documentary controls and merchant operations to verify compliance with customs obligations, based on national tax laws and customs laws of each country.

At this stage, foreign trade taxes will be paid which involves the review of the declarations made by the importer, especially those goods that have not been subjected to physical or documentary assessment, that is, those submitted to electronic and automatic inspections. It is worth noting that the type of capacity will be according to the risk profiles, which have been prepared from the database of the OCEs. Finally, the information that can be collected from third parties is extremely important, which is why it works with institutions and others that provide information about the OCEs.

### 3.3. Merchandise

In the Regulation to the Title of the Customs Facilitation for Trade, it is detailed that: "(...) *merchandise is any movable property that can be subject to transfer and that is susceptible to be classified in the National Import Tariff*"; (REGULATION TO THE TITLE FACILITACION ADUANERA, 2011) that is to say, that the goods that wish to be imported from abroad must appear classified within those allowed by the Customs of Ecuador, to be

more precise, within the National Imports Tariff, which is nothing more than a list of the taxes that must be collected of goods or services once it crosses the border of a country.

In summary, it is indicated that merchandise is all that can be sold or bought, where the term commonly applies to economic goods. But also, the goods are subjected to customs and are distinguished by two very related aspects: the value of use and the value of changes; which refers to, what value of use will be the need to satisfy a human need, while the need satisfied by the merchandise can be in many ways.

However, in the same regulation mentioned above the goods are detailed in the following sections:

- Foreign merchandise
- Missing goods
- National merchandise
- Nationalized merchandise
- Shipwrecked merchandise
- Unmanifested Merchandise
- Lagging merchandise

### 3.3.1. Entry

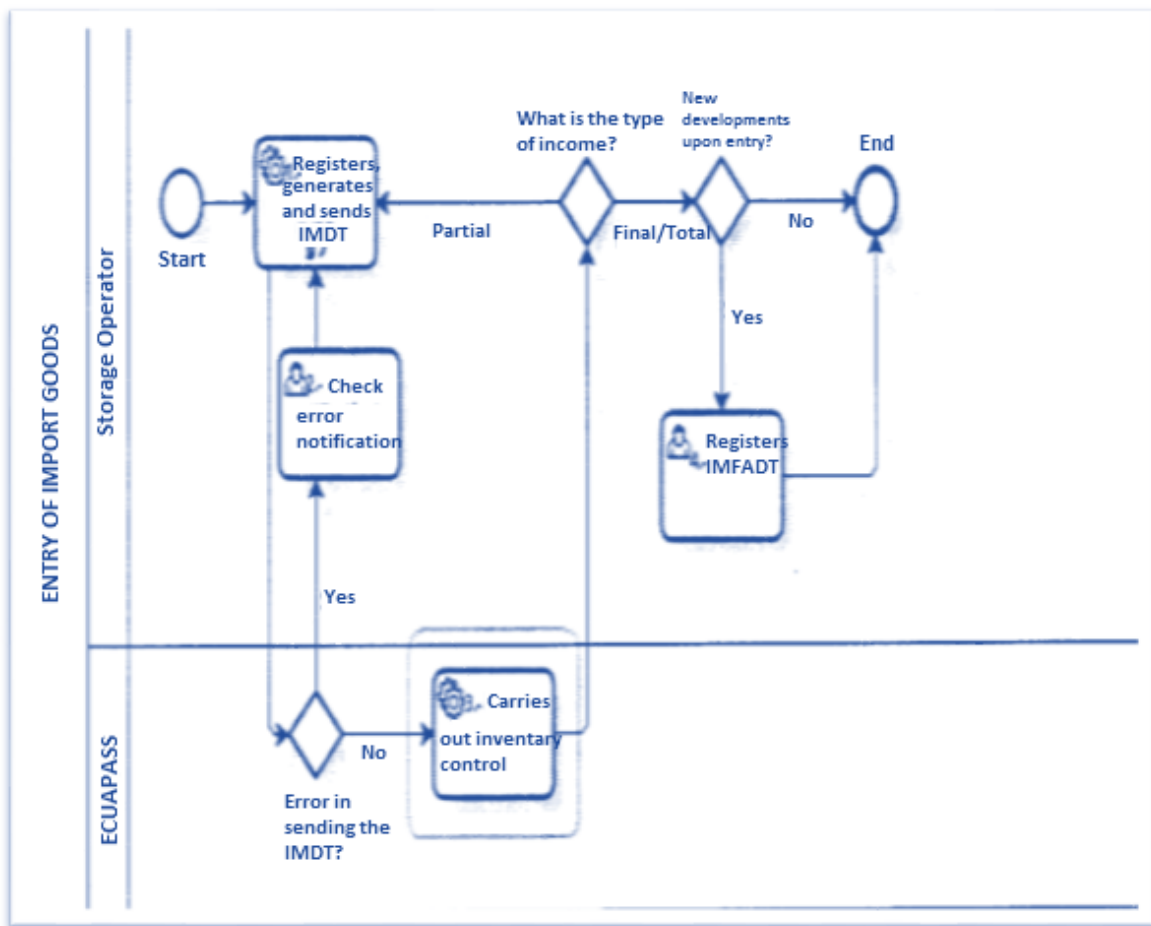
The goods will enter the temporary deposits according to:

- Entry from unloading
- Admission for transfer between primary zones
- Re-entry
- Empty container entry from secondary zone
- Post cargo entry
- Courier cargo entry
- Admission for apprehension
- Admission for administrative confiscation
- Income for judicial confiscation
- Admission of customs merchandise
- Admission for multimodal transfer
- Admission by ZEDE



- Empty containers
- Community customs transit revenue
- Income by transshipment
- Income of fractionation of transport document

Next, the process of entry of goods into temporary deposits is presented. See Figure 4.



*Figure 4: Entry of Import Goods*

Source: National Customs Service of Ecuador

### 3.3.2. Permanence

Similarly, the Customs Facilitation Title Regulation of the Production Code in Article 179 establishes that:

- The authorization for the permanence of goods that enter the country under the free warehouse regime, will be two years.

In the previously mentioned regulation, the following is detailed in article 185:

- The authorization for the permanence of merchandise entering the country under the special warehouse regime will be five years. (REGULATION TO THE TITLE FACILITACION ADUANERA, 2011)

### 3.3.3. Transfer

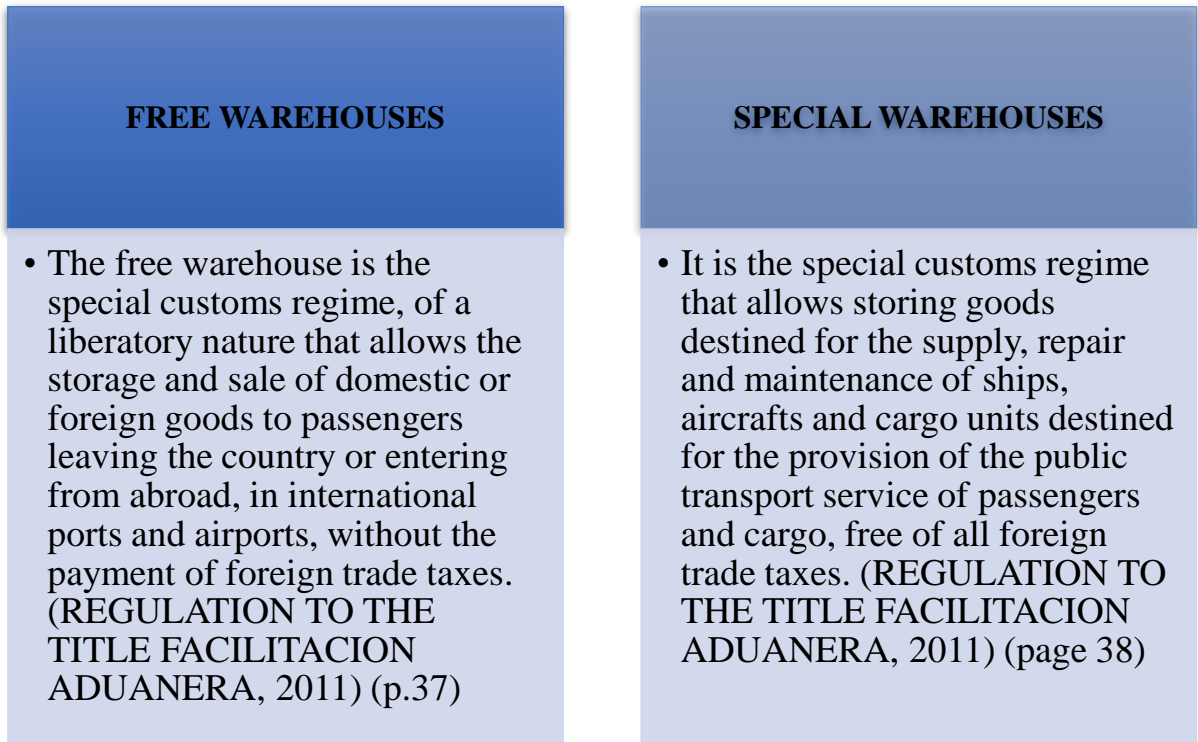
Under customs control, goods are transported from one place to another within the customs space of the National Customs Service of Ecuador. (Organic Code of Production, Trade and Investment, 2013).

### 3.3.4. Circulation

The COPCI provides that the goods circulate under a customs regime from a district office with destination abroad.

### 3.3.5. Storage

There are two types of storage, which are indicated in the Customs Facilitation Title Regulation of the Production Code and are explained below:



*Figure 5: Types of storage used for goods*

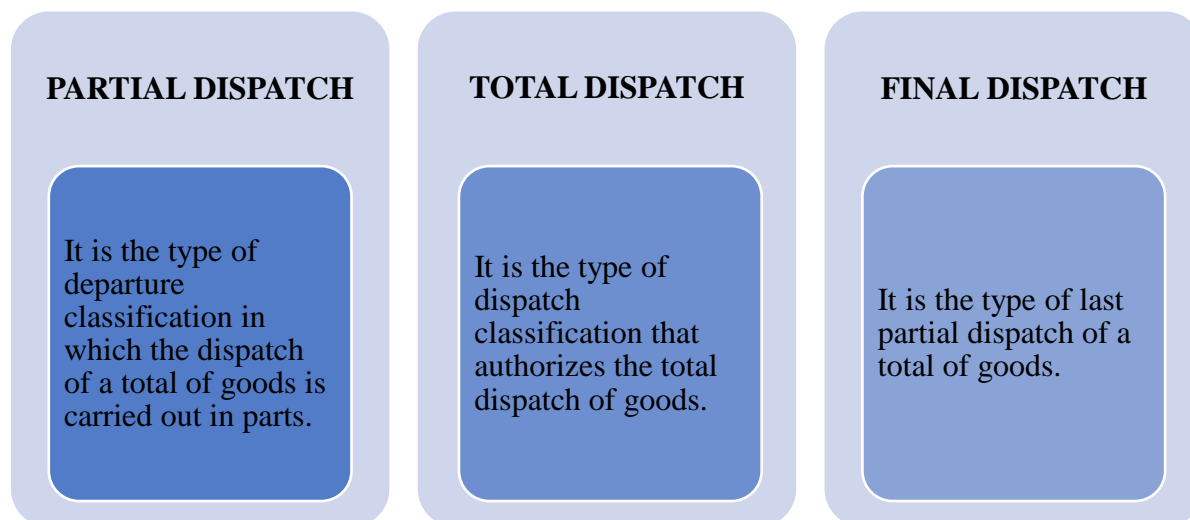
Created by: María Gabriela Vivar Abad, María Elisa Peña Serrano

In the cases established by SENAE, the unloaded goods will be delivered by the carrier to the warehouses for temporary storage, or to the corresponding port or airport operator.

SENAE has the power to authorize the operation of the warehouses for the temporary storage of goods, according to the foreign trade needs.

### 3.3.6. Dispatch

The dispatch of goods from warehouses can occur in three different ways according to SENAE. (2017)



*Figure 6: Dispatch of goods from temporary warehouses*

Created by: María Gabriela Vivar Abad, María Elisa Peña Serrano.

Another aspect dealt with in the Regulation on Customs Facilitation Title of the Production Code in its article 40, is the exit of goods. It states that: "for customs purposes it is understood that the date of departure of the goods is the date on which the transport leaves the customs territory" (REGULATION TO THE TITLE FACILITACION ADUANERA, 2011).

The causes of the dispatch of goods are the following:

- Dispatch by acceptance of import declaration
- Empty container dispatch
- Dispatch through direct customs clearance
- Dispatch to a control entity
- Dispatch of fractionation of transport document
- Dispatch by distribution guide
- Dispatch of merchandise from customs
- Dispatch of materials of emerging use
- Dispatch due to destruction
- Re-boarding dispatch
- Transshipment dispatch

- Community customs transit dispatch
- Dispatch by multimodal transfer
- Dispatch by transfer between primary zones
- Dispatch for apprehension
- Dispatch due to administrative confiscation

Figure 7 shows how the goods will be dispatched from the temporary storage.

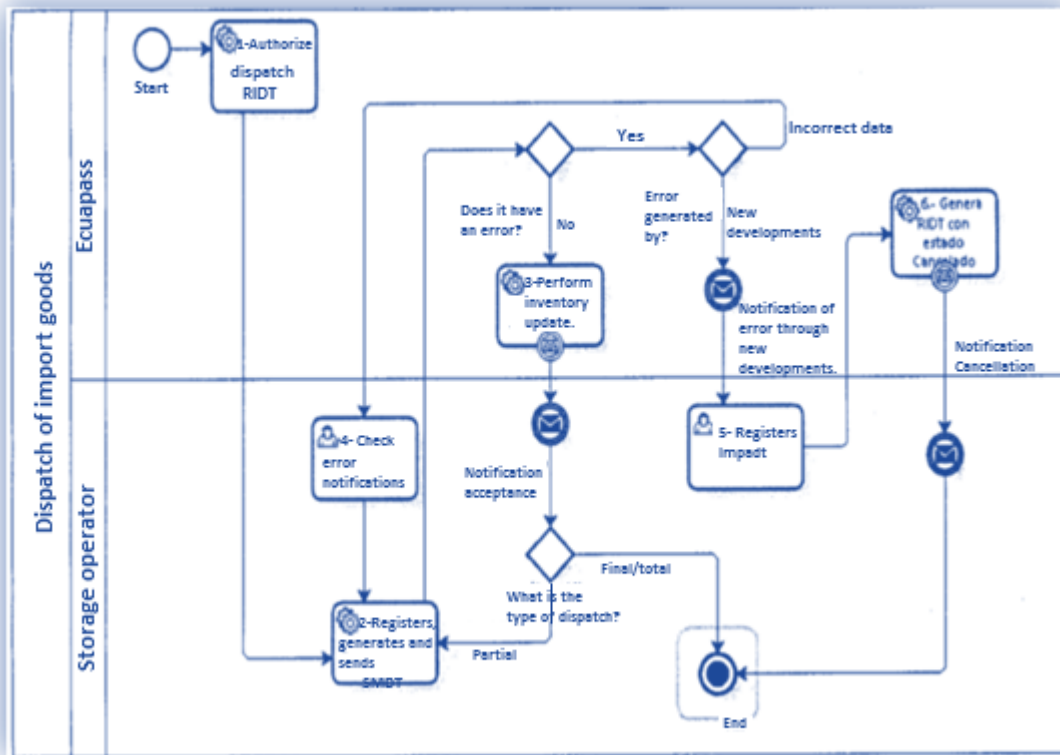


Figure 7: Goods dispatch flowchart

Source: National Customs Service of Ecuador

### 3.4. Loading units

In Article 134 of the COPCI, it decrees that:

The Cargo Units that arrive to a country that are used as part of the operation of international trade will be subject to customs control and authority, although they will not be considered merchandise in themselves. The entry or exit of these units will not result in the application

of the customs tax obligation (...) (Organic Code of Production, Trade and Investment, 2013, page 51).

The SENAE arranges the use of containers for the organization and storage of the merchandise, in order to transport it more quickly. It must be towed as it is not allowed to use its own means of mobility. These cargo units are of incalculable value for the transportation of goods on a global scale, whether by sea, land or air.

Now, in the Providence No. SENAE-DGN-2012-0443-PV states that:

(...) Cargo Units that are intended to be used for other purposes must be declared under a customs regime, if they are to be maintained indefinitely in the country they must be nationalized; for these purposes the supporting documents and the formalities to be fulfilled will be determined by the National Customs Service of Ecuador. (Bulletin Nro SENAE-DGN-2012-0443-PV, 2012).

#### 3.4.1. Entry

The Customs of Ecuador imposes that cargo units that come from abroad and enter the country with or without goods, will be detailed in the corresponding transport document and entered in the computer system of the Customs of Ecuador.

#### 3.4.2. Permanence

These cargo units have a permanence period of 120 days in the Ecuadorian territory within the secondary zone, counted from their departure from the primary zone. If the cargo unit is stopped by judicial order in the secondary zone, because of the merchandise it loads, the time elapsed from its departure from the primary zone to its detention will be counted, the time the unit is stalled is not included within the 120 days as provided by the Customs of Ecuador.

#### 3.4.3. Transfer

The Regulation on Customs Facilitation Title of the Production Code (2011) provides that the transport company that represents the cargo unit owner in the country is responsible for the transfer of cargo to the customs authority. Changes are allowed within the time of

permanence in the country provided that: the responsible company that entered the cargo unit informs Customs of the change made and provides the data of the new company in charge. This information will be registered by both transport companies.

#### 3.4.4. Circulation

Free circulation of cargo units within the national territory is permitted, provided they have been registered and allowed to be transferred to the secondary zone by the customs authorities, for a period of up to 120 days provided by the National Customs regulations. The units of national charges will have free circulation, as long as they have the necessary legalized documentation and the badge that indicates that it was manufactured in the country. (Bulletin Nro SENAE-DGN-2012-0443-PV, 2012).

#### 3.4.5. Storage

Alike the goods, the cargo units will remain in the temporary warehouses, within the term established by SENAE.

#### 3.4.6. Dispatch

The dispatch of these cargo units will comply with the provisions of the customs legislation, within the previously mentioned deadlines for the departure of the goods.

### 3.5. Inspection

It deals with the collection of taxes carried out by the customs administration, through electronic, physical or documentary verification of the origin, type, quantity, value, weight, measurement and tariff classification of the goods. Therefore, the clearance of the goods under customs declaration will be carried out under the following modalities:

#### 3.5.1. Automatic inspection

As established in the Regulation on Customs Facilitation Title (2011) in Article 80, automatic inspection: "is the mode of clearance that is made through the electronic validation of the Customs Declaration through the computer system with the application of risk profiles

established by the National Customs Service of Ecuador "(page 20, REGULATION TO THE TITLE FACILITACION ADUANERA, 2011).

Moreover, shipments of export and import goods that require a prior control of the documentation will not be subject to risk profiles, when they are issued electronically; similarly, the goods will be processed for examination by the State.

### 3.5.2. Automatic non-intrusive inspection

Automatic non-intrusive inspection refers to:

"The dispatch mode that is carried out through the electronic validation of the Customs Import Declaration through the computer system with the application of risk profiles and by verifying the nature of the goods through the exclusive use of non-intrusive technological systems, without the need to open the cargo unit or the means of transport that contains them. "(Regulation to the Title of the Customs Facilitation for Trade, Book V of the Organic Code of Production, Trade and Investment, 2011).

### 3.5.3. Documentary inspection

*In article 82 of this same regulation, it determines that the documentary inspection:*

*"Consists in the verification of the Customs Declaration and its accompanying and support documents, contrasted with the information recorded in the computer system of the National Customs Service of Ecuador, in order to determine the correct liquidation of taxes on foreign trade and / or compliance with the customs provisions required under the customs regime and goods declared. " (Regulation to the Title of the Customs Facilitation for Trade, Book V of the Organic Code of Production, Trade and Investment, 2011).*

Based on what is described in this article, inspection is in charge of ensuring that the customs administration verifies the documents and the support with the data registered in the computer system, to establish the proper cancellation of taxes by the OCEs, in accordance with customs regulations.



#### 3.5.4. Intrusive physical inspection

In order to better understand the intrusive physical inspection, it is necessary to first determine what the physical inspection is in itself.

This inspection means that a physical examination of the merchandise is carried out, which seeks to demonstrate its tariff classification, customs value, measure and nature among others:

*"corroborating the attachments in the Customs Declaration and also verifying the information that appears in the registry of the system computerization of the National Customs Service of Ecuador "(Regulation to the Title of the Customs Facilitation for Trade, Book V of the Organic Code of Production, Trade and Investment, 2011).*

Physical inspections will be made by the customs administration on the basis of risk profiles, in accordance with the provisions of the SENAE and the provisions of international standards. Therefore, "the intrusive physical inspection will be carried out in public, on the date set by the Customs Authority and in the presence of the declarant, his delegate, his customs agent or his assistants, duly authorized" (Regulation to the Title of the Customs Facilitation for Trade, Book V of the Organic Code of Production, Trade and Investment, 2011).

#### 3.5.5. Electronic inspection

Article 81 of the Regulation on Customs Facilitation Title of the Production Code (2011) defines that electronic inspection:

Refers to the verification of the Customs Declaration and / or its accompanying and support documents, contrasted with the information recorded in the SENAE computer system, in order to determine the correct liquidation of taxes on foreign trade and / or compliance with the customs provisions required under the customs regime and goods declared.

This style of dispatch is excluded for imports and exports of goods that require prior control documents, when they were not issued electronically and, thus, occurs with the goods for

export and import that are chosen to be reviewed by other entities of the State. Therefore, the verification will be carried out with the documentation issued by the Ecuapass computer system.

### **3.5. Risk Profiler**

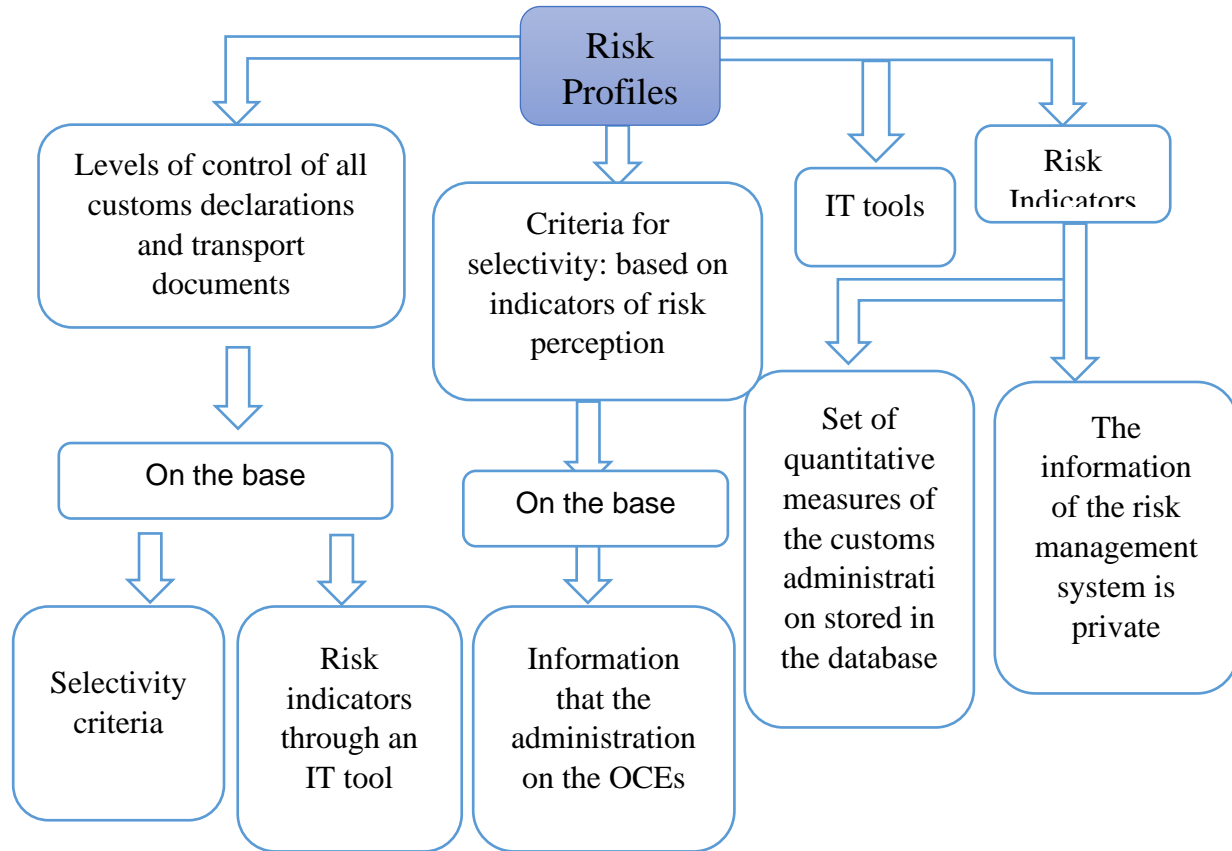
Article 3 of Resolution No. SENAE-DGN-2013-0340-RE states that:

The risk profiler of the SENAE computer system will determine the customs declarations that will be submitted to the automatic inspection through the use of non-intrusive technological systems, this selection may be partial or total of the goods that are included in the same declaration, which will be notified electronically to the consignee of the goods through the computer system. This notification will produce all the legal effects provided for in Article 219 of the Organic Code of Production, Trade and Investment (...) (National Customs Service of Ecuador, 2013).

Thanks to these technological tools, control levels are established for all customs declarations and transport documents based on selectivity criteria or risk indicators.

*"(...) The selectivity criteria will be based on indicators of perception of risk that the customs administration has, based on the information it has on the foreign trade operators.*

*The functionality and administration of the IT tool will be regulated by the General Directorate of the National Customs Service of Ecuador. "(National Customs Service of Ecuador, 2013).*



*Figure 8: Outline on the use of a computer tool to determine Risk Profiles.*

Created by: María Gabriela Vivar Abad, María Elisa Peña Serrano.

### 3.6.1. Ecuapass

The Ecuapass is the Ecuadorian customs computer system that facilitates the operations of foreign trade operators, reducing time associated with compliance with customs formalities.

The benefits of Ecuapass are:

- Use of electronic signature - zero use of paper.
- Integration of all foreign trade operations.
- High security in transactions.
- Ability to check the status of procedures.
- Greater functionality.

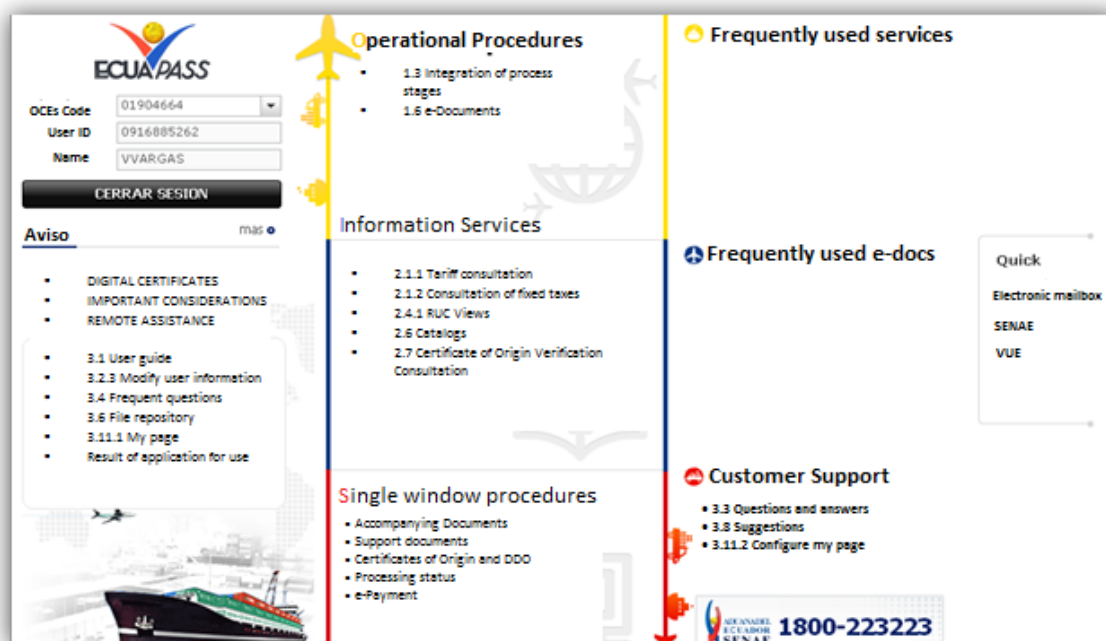
This computer system was born on October 22, 2012 with the purpose of replacing the SICE (Interactive System of Foreign Trade) and allows the OCEs to perform their customs activities of import, export and customs procedures in a fast, safe and efficient manner, using the Customs portal. It was developed by KCingle-Cupia as part of an agreement with the Customs of South Korea.

Some of the services offered by ECUAPASS are:

### *Operational Procedures*

- Customs declarations
- Manifests
- Entry of goods

Figure 9 demonstrates the options for the procedures to be performed by the OCEs offered by the Ecuapass system.



*Figure 9: Operative Procedures*

Source: National Customs Service of Ecuador

### *Information services*

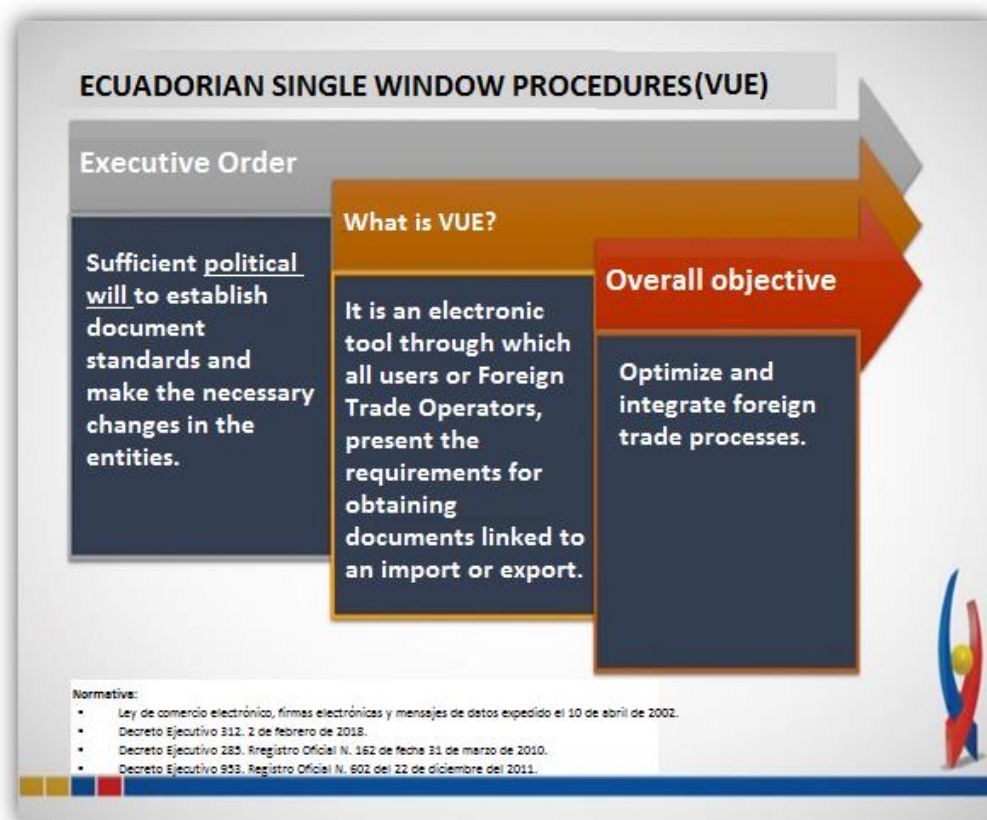
- Statistics
- Catalogs

### *Customer Support*

- User Guidelines
- Notices
- Frequently Asked Questions

### *Single Window Procedures*

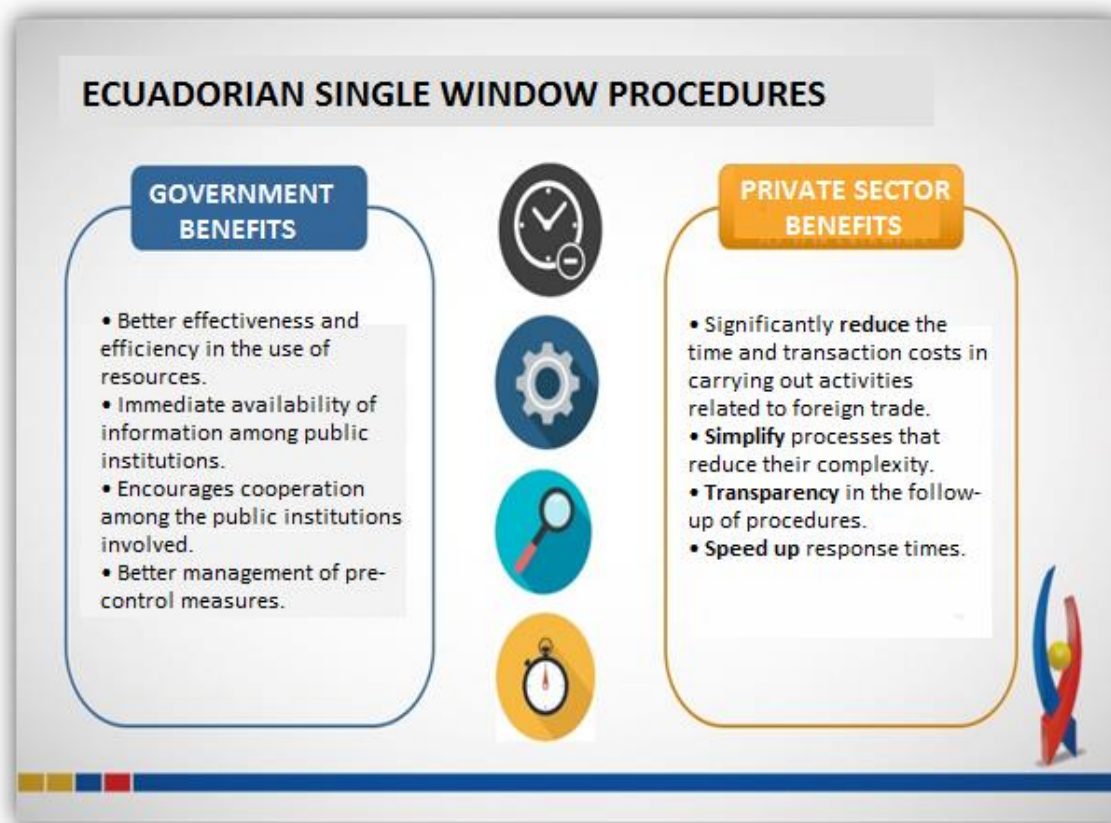
- Certificates of Origin
- Previous Control Documents



*Figure 10: Objectivity of the Ecuadorian Single Window Procedures*

Source: National Customs Service of Ecuador

The benefits offered by this IT tool for the government and the private sector can be seen in figure 11.



*Figure 11: Benefits for the government and the private sector*

Source: National Customs Service of Ecuador

As can be observed, the Ecuapass system seeks to implement efficient methods of security, time and money to help the OCEs, under a Foreign Trade portal and the Ecuadorian Single Window. This system also benefits twenty public institutions that carry out Ecuadorian Foreign Trade and that use this webpage.

The objectives pursued by the Ecuapass computer system are:

- Transparency and efficiency of customs operations. Minimize the use of paper.
- Simultaneously ensure customs control and facilitate trade
- Establish the customs operations system based on the model of the Korean electronic Dispatch system (UNI-PASS)
- Establish the Single Window procedure for Foreign Trade

### 3.6. Matrices or Zones

The SENA has the institutional task of controlling the entry and exit of goods, people and means of transport to and from the country focusing on facilitating foreign trade.

The General Directorate and its enforcement authorities are distributed in eleven districts, throughout the country and are an operational part of the customs administration.

The customs matrices or primary zones, receive the different goods in a determined territory on a border of the country, under the protection of the laws established by the government to safeguard the national industry.

Figure 12 shows how the Ecuadorian customs zones are distributed throughout the country.



*Figure 12: Map of the Ecuadorian Customs zones*

Source: National Customs Service of Ecuador

Next, the goods are subject to control, verification and certification by customs agents and other customs authorities. After fulfilling the requirements, they can proceed according to their purpose, whether they are export or import goods.





# **CHAPTER IV**

## **CONCLUSIONS AND RECOMMENDATIONS**



#### **4.1 Conclusions.**

After culminating with the development of this project, it can be said that risk management is not only important to perform customs controls effectively, but also for other companies and entities that face possible risks, so that, in the event that it happens, the entity can move forward despite the setbacks and so they can apply optimal damage control.

The Director of Risk Management of the Municipality of Cuenca, Santiago Peña, provided this investigation with a clear example of risk management. He mentioned how to manage risk in the city when there are holidays or events attended by many people. In these cases, it is known that the risk that there may be an incident is greater than what may happen on normal days; so the collaboration with the fire brigade, police, traffic agents, citizen guard, red cross, among others is increased; thus, if there are incidents with the population, it is controlled quickly and efficiently, which in turn mitigates and controls the risk.

In the case of customs controls, it is necessary for risk management to prioritize the risks, measuring the importance, identifying if the probability is high, medium or low and in which cases it may happen. It is necessary to document and classify when an Authorized Economic Operator (OAS) has committed an infraction and catalog it, so when the OAS enters again through customs, more resources will be used to verify if the commercial activity is in order or not. On the other hand, there are the AEOs that have not committed any infraction and have a clean record; as a result, they will not take up too many resources, but only the necessary ones needed for observing their commercial activity.

Customs control actions, through risk management, play a very important role in our country, as they ensure the safety not only of the people involved in the movement of goods, but also in the safety of people outside of these activities, since having an optimal risk management will prevent the entry of illicit goods, which can be harmful to both local trade, and the public's health.

Risk management, not only implies that importers or exporters comply with the law, but it also plays a crucial role for domestic companies, since by implementing taxes on goods from abroad or by preventing pirate or illicit merchandise from entering to the country, the trade of small companies is protected, which is known as protectionism.

For a country like Ecuador, the national production has a very important role in the economy, which is why it is imperative that the government apply these types of measures. Since the dollar is the national currency, the government cannot devalue it, which makes Ecuador a country that is unattractive to international and multinational companies. Therefore, companies that produce within the country must be protected, preventing foreign products from competing against national products.

Risk management helps prevent and deal with various incidents that may happen, in addition to helping to catalog the dangers that exist, so that law enforcement can operate more efficiently, placing more emphasis on those activities where it is known that the risk will be greater, and even send more or less agents to the corresponding controls.

It has been observed that customs fulfills and develops a very important role, since it is in charge of guaranteeing the efficiency of its customs controls, so that in this way there is no bottleneck in the movement of goods, and that thus, it can increase the competitiveness of all those involved in customs activities.

It is highly important for SENAE to have not only support, but also cooperation and collaboration from other public institutions, so that they can help facilitate trade, exchanging information and knowledge. This is very important, since there is a number of issues that customs do not handle, so it is necessary that it can go to other institutions that can resolve doubts and intervene, if necessary, in customs operations.

When intervening in the primary and secondary zones, customs must ensure the security of trade. It is for this reason that operators must be divided according to their compliance

history, using the tools provided by risk management. By making use of risk management, customs can redirect resources from lower risk operations to higher risk operations.

It has also been observed that customs take certain steps not only to identify the risk, but also, to know the probability with which said risk may or may not occur. In this way, waste is avoided and the intelligent use of these resources is guaranteed.

The role of customs becomes complicated when identifying all those goods that are not declared, since they can be hidden. An example of these are the prohibited substances, such as: drugs, narcotics, piracy, among others. These substances are usually hidden within the products considered as licit, such as: food, textiles, personal property, etc. By hiding prohibited substances within or between licit products, it becomes even more difficult to detect them and stop them from entering the country.

Another of the most common risks that customs faces are the false declaration of goods. This risk consists of completing the declaration with false or incomplete information. There are also cases in which the merchandise is incorrectly described, so that it disguised as another and can easily pass non-intrusive inspections.

To deal with the risks mentioned in the previous paragraphs, customs uses the "best customs practices" risk indicators, which implies using the information gathered from previous imports. Based on this data, it is possible to detect the goods that are more likely to contain prohibited substances or that may be subject of a false statement or an incorrect description. By knowing their risk profile, much more emphasis will be placed on its inspection.

In conclusion, it is important to mention that building efficient risk management is important to detect high risk situations and to avoid them, for which it is necessary to collect both internal and external data, as well as, making sure that this data is reliable through the analysis of the information.

Finally, an analysis must be carried out in order to know its impact. After that, it is important to carry out simulations to determine the magnitude of the possible risk. After evaluating the impact, it is necessary to include the profile in the system so that any officer involved in a risk situation will only have to consult with the system, and in the same way, it is important for any new information to be uploaded in the system, as well as results.

## **4.2 Recommendations.**

It is important to recognize that all public institutions, in addition to private ones, need improvements to function in the most efficient manner and risk management within customs controls is not the exception, as it has flaws and gaps within its system of operations. Next, we will mention some recommendations that can be applied to improve risk management, which can also be used for within other institutions outside SENAE.

- It is important that risk management not be considered as a system to punish non-compliance, so that it is seen with a positive viewpoint. For customs users who have an impeccable record and duly comply with the law, it is necessary to provide rewards or favor voluntary compliance with customs regulations. For example, they can be helped with the prompt departure of merchandise or with more simplified procedures, etc.
- It must be ensured that there is always a feeling of risk, so that in this way, compliance with the law is voluntary. In this way, when users think about introducing products to the country, they should always think about doing it in the right way and not view customs as a window to include contraband or illicit merchandise.
- It is necessary that the information found in the database be much more extensive, since there is much more information available which can be used in different cases of risk management. The experiences and observations of the officers, operators and other persons involved in risk management, expert opinions and even historical information should be collected. All this information obtained will

create a quality database, which in turn will allow for an efficient and effective action plan for each of the possible risks.

- It is necessary to consider that trade is variable, and has changed and improved over the years, the same happens with risks, insecurities and problems related to the movement of merchandise. This is why it is of vital importance that risk management does not remain static, always maintaining the same risk protocol, but rather it needs to become a dynamic process that is constantly improving as the environment evolves, to have always the prompt response to the new risks that can occur in the future.
- It is important that risk management has a plan of objectives that contains the activities and actions to be carried out. For risk management, it is crucial to monitor the performance of customs, to control the activities performed by the customs authorities, monitoring compliance corresponding to the plan of objectives.
- There is a need for changes that occur within risk management to be made public in a more open manner, to encourage voluntary compliance. The interested parties must ensure that the objectives of risk management are being met in an optimal manner and that illicit acts related to trade do not remain unpunished. This system should be able to cope with any problems. A clear example would be to publicize the measures taken to reinforce security against the infringement of intellectual property.

In general, it can be said that what really needs to be improved in risk management is the compliance of operators with customs regulations, since they consider it as something voluntary. Risk management should be seen as a fragile system, but also as a stable and functional system that can hardly be broken.

All of the information recollected during this investigation leads to the realization that a significant number of users look for a way to enter illicit merchandise country. Many people

consider the entry of contraband to be easy, since these goods can enter in traveler's luggage or in a car for personal use or by any other means through the Ecuadorian borders. For example, there have been various cases in which people have entered with more than the permitted liters of liquor without having had any type of inconveniences. All these experiences and stories help to give a bad reputation to risk management and therefore to the SENAE itself.

Due to these situations mentioned above, a more strict and strong approach is needed, that can actually be visualized. It is necessary for customs to have the capacity to not only control but to sanction all, or a large part, of the illicit acts related to trade that can be observed through risk management. As a result, risk management is a measure applied by SENAE to mitigate smuggling and the illegal entry of merchandise.

## APPENDICES

### **Interview #1**

**Name:** Cristina Delgado Palacios, in representation of Patricia Oramas y Gustavo Delgado.

**Company:** Fabrica de Velas Herminio Delgado.

**Position / Functions performed:** Owner of the candle factory Herminio Delgado

### **What merchandise does the company import?**

Supplies for the manufacture of candles such as paraffin, wicks, dyes and aromas, as well as decorations such as vases, artificial flowers, crystals, among others.

### **What is the process that you follow to carry out the purchase and import of the merchandise?**

Raw materials such as paraffin are imported from China or Malaysia, crystals from Panama and China, wicks are imported from Brazil.

### **What facilitates the import process?**

The company has a customs agent in Guayaquil who facilitates all import procedures.

### **For how many years has the company imported goods?**

30 years.

### **How many years have you worked for that company?**

Since the company is a family company, I have always been involved in the processes due to my affinity with my career, but I have been working in the company for two years now.

### **What is the specific process that your company follows when importing?**

First, it is the manager who negotiates the price and the quantity and generally entire containers are purchased and therefore, it is not necessary to consolidate. Patricia Oramas is the person in charge of logistics and of communicating with the customs agent so that all the necessary procedures can be carried out.

### **Since Cuenca is not a port city, how does this affect the importation of goods?**

All procedures are carried out in customs in Guayaquil so there is no need to do anything in Cuenca. In our case, not having a port in Cuenca does not affect us because the goods come directly to the factory after having all the documents in order.

**Generally speaking, what kind of inspection is carried out on the merchandise imported by your company?**

Generally, in the case of paraffin, it is documented inspection, whereas in the case of crystals, it is always a physical inspection.

**Based on the characteristics of the products that your company imports, what is the level of risk?**

Since our company always imports the paraffin, it has a low risk profile but in the case of the potpourri, glassware or other new products, they are considered as a high-level risk which is why they usually carry out a physical inspection and open the container.

**When there is a setback in the import process, what is the process that you follow?**

Normally we do not have any setbacks. However, on one occasion, for being the first time that potpourri was imported, which are dried leaves, certificates had to be requested due to internal rules, which took a long time to clear customs.

**If the company decides to import a different product from the ones it usually does, what is the process that it follows? Does the type of inspection to which the products are generally subjected to change?**

A new process is applied, but it is when the goods arrive at port that they open the container. For example, with the paraffin, they almost never open the container, which means that they usually do not make a physical inspection, but when it comes to the crystals, they always check the container.

**Have you seen changes in the import process of the company since you work there?**

In the last 6 years, I have not seen any changes. Although I have not been working long in the company, I have always been involved in the processes.

**Based on your experience, where do you believe that risk management should be improved: Ports, airports or land terminals.**

Based on my experience, I believe that the controls that are in use are very effective.

**What do you think are the improvements necessary to facilitate the import of goods to Cuenca?**

In the case of our company the import is quick and easy once all the paperwork has been done in Guayaquil, we never have any mishap when bringing the goods to Cuenca.



## **Interview #2**

**Name:** Cristina Córdova

**Company:** Almacenes Juan Eljuri

**Position / Functions performed:** Brand manager

### **What merchandise does the company import?**

The company has seven divisions, at the moment I work in the Perfumery division.

### **What is the process that you follow to carry out the purchase and import of the merchandise?**

The analysis of sales and inventories of the product is carried out and an order is issued abroad, which is processed and shipped.

### **What facilitates the import process?**

We have an import department that takes care of the process.

### **For how many years has the company imported goods?**

Since its beginnings in 1925.

### **How many years have you worked for that company?**

Six months.

### **What is the specific process that your company follows when importing?**

The analysis of sales and inventories of the product is carried out and an order is issued abroad, which is processed and shipped.

### **Since Cuenca is not a port city, how does this affect the importation of goods?**

The main problem is the distance to the port for procedures, even when the process is electronic. Everything has been centralized in the District of Guayaquil, and although Cuenca has a Customs District, the necessary support has not been given.

### **Generally speaking, what kind of inspection is carried out on the merchandise imported by your company?**

Automatic.

### **Based on the characteristics of the products that your company imports, what is the level of risk?**

It is high because perfumes are highly desired products.

### **When there is a setback in the import process, what is the process that you follow?**

The department of imports is responsible for solving the problems presented.

**If the company decides to import a different product from the ones it usually does, what is the process that it follows? Does the type of inspection to which the products are generally subjected to change?**

We maintain the same process and also the type of inspection does not change because the risk profile is subject to the behavior of the declarant, not the product.

**Have you seen changes in the import process of the company since you work there?**

No, due to the short time I have been working for this company.

**Based on your experience, where do you believe that risk management should be improved: Ports, airports or land terminals.**

In all three because being since they are centralized procedures, is not possible to carry out the processes in a more efficient manner.

**What do you think are the improvements necessary to facilitate the import of goods to Cuenca?**

Implementing low-cost Primary Zones, since this generated inconveniences for importers. Also, the issue of primary zones was monopolized and operated with high costs due to the fact that the district of Cuenca is not being used, which at the time had large influx of containers generating movement within the importing area, additional agility was given to the procedures.

### **Interview #3**

**Name:** Cristina Córdova

**Company:** COLINEAL

**Position / Functions performed:** Decoration and Household Line Manager\

**What merchandise does the company import?**

Furniture and Decoration.

**What is the process that you follow to carry out the purchase and import of the merchandise?**

First, the products that are lacking in stores are identified. Then the products that need to be imported are selected and finally the order is sent abroad.

**What facilitates the import process?**

We have an import department that is responsible for the process.

**For how many years has the company imported goods?**

40 years.

**How many years have you worked for that company?**

3 years.

**What is the specific process that your company follows when importing?**

The lack of products in stores is identified and then the selection of the products to be imported and the issuance of the order abroad must be carried out.

**Since Cuenca is not a port city, how does this affect the importation of goods?**

The main problem is the distance to the port for procedures, even when the process is electronic, everything has been centralized in the District of Guayaquil when Cuenca has a Customs District, however, the necessary support has not been given.

**Generally speaking, what kind of inspection is carried out on the merchandise imported by your company?**

Document and physical.

**Based on the characteristics of the products that your company imports, what is the level of risk?**

It is high, since the products are decorative items that can be easily sold in the market.

**When there is a setback in the import process, what is the process that you follow?**

The import department is responsible for solving the problems presented.

**If the company decides to import a different product from the ones it usually does, what is the process that it follows? Does the type of inspection to which the products are generally subjected to change?**

The process is maintained, the type of capacity does not change because the risk profile is subject to the behavior of the declarant, not the product.

**Have you seen changes in the import process of the company since you work there?**

No.

**Based on your experience, where do you believe that risk management should be improved: Ports, airports or land terminals.**

In all three because since customs is centralized, is not possible to carry out the process in a more efficient way.

**What do you think are the improvements necessary to facilitate the import of goods to Cuenca?**

Implementing low-cost Primary Zones, since this generated inconveniences for importers. Also, the issue of primary zones was monopolized and operated with high costs due to the fact that the district of Cuenca is not being used, which at the time had large influx of containers generating movement within the importing area, additional agility was given to the procedures.

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