

# Scientific Journal of Applied Social and Clinical Science

## THE PROCESS OF RESOLUTION OF TARIFF CLAIMS IN CUSTOMS MANAGEMENT: ANALYSIS OF CHALLENGES AND OPPORTUNITIES “EXPERIENCES AND LESSONS LEARNED IN THE RESOLUTION OF TARIFF CLAIMS IN CUSTOMS MANAGEMENT”

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**Abstract:** The Resolution of Tariff Claims is a relevant process in Customs Management with a certain degree of complexity, therefore, this research focuses on the analysis of challenges and opportunities faced by said process, with the purpose of developing continuous improvement and generating a significant impact on commercial operations through the experiences learned regarding tariff claims in customs management. Tariff complaints are a fundamental crucial facet within international trade, which presents challenges in terms of the interpretation of customs rules and regulations, the application of foreign trade policies. Understanding the importance of addressing these claims effectively ensures efficient customs management and compliance with trade regulations, therefore knowing how they are classified and how they help or how to better understand the challenges and implement appropriate solutions. It allows addressing the specific problems associated with each type of claim, which is why seeking different innovative solutions is of great interest in recent years, developing in order to improve the management of tariff claims in the customs field. This includes the use of advanced technologies such as artificial intelligence and machine learning to streamline tariff classification processes, reduce errors and facilitate decision-making. Electronic customs management systems have also been implemented to streamline the submission of claims and improve transparency in the process. We also want to project progress and perspectives of tariff claims management, engaging with the evolution of technological advances and changes in international trade agreements, envisioning a future where more efficient and automated solutions, such as blockchain, are implemented to guarantee greater transparency and reduce the incidence of tariff claims.

**Keywords:** tariff claims; tariff classification; customs management; problem resolution.

## INTRODUCTION

To resolve tariff complaints has become an issue of increasing importance for businesses and governments seeking to facilitate trade and ensure compliance with customs policies. As companies look to expand their reach globally, they need to understand the tariff complaint resolution process and how they can better prepare to meet future challenges.

According to (Boada Quishpe, 2020) “The correct application of customs and commercial regulations is essential for the resolution of these cases, and it is important that customs agents and authorities in charge of customs management are properly trained on this issue.”

Additionally, tariff complaints can have an impact on trade relationships between countries and companies, so it is important to take trade agreements and international rules into account when resolving these cases.

The experiences and lessons learned in resolving tariff complaints can be very valuable in improving customs management in the future and addressing challenges that may arise. Therefore, it is important to carefully analyze these experiences and lessons learned in order to implement best practices in the resolution of future tariff claims.

General objective: Analyze the challenges and opportunities in the process of resolving tariff claims in customs management, documenting the experiences and lessons learned.

## SPECIFIC GOALS

1. Identify the challenges in the process of resolving tariff claims in customs management.
2. Document the experiences and lessons learned during the current tariff complaint resolution process.
3. Propose recommendations for improvement both at the level of computer tools and the processes that are carried out to resolve the conflicts detailed in the tariff claims.

## THEORETICAL FRAMEWORK

The purpose of this theoretical framework is to provide information that allows supporting the research topic with respect to the process of resolving tariff claims in customs management: Analysis of Challenges and Opportunities “Experiences and Lessons Learned in the Resolution of Tariff Claims in the Customs Management”, because it is estimated to verify the resolution process that involves the various types of tariff claims, for which the following subtopics will be presented:

## CUSTOMS CLAIM IN ECUADOR

In Ecuador we can legally rely on the Organic Code of Production, Trade and Investment (COPCI, 2019), which explicitly details the following aspect:

“Article 124: Administrative Claims and Resources: Any person may file an administrative claim against the administrative acts dictated by the General Director or the District Directors of the National Customs Service of Ecuador that directly affect their rights, within a period of twenty days counted from the date on which it was notified with said act.” Indicating that anyone who feels harmed by the customs administration can file a claim in accordance with the legal basis.

## REQUEST TYPES

SENAE shows the drop-down list to select the corresponding type of request according to what was presented by the OCE:

- Administrative claims.
- Improper payments.
- Challenges.
- Definitive abandonments.
- Discrepancies with tariff classification.
- Settlements of taxes on foreign trade.
- Rectification of tariff taxes from customs controls.
- Customs assessments for the resolution of sanctioning procedures.
- Other issues.

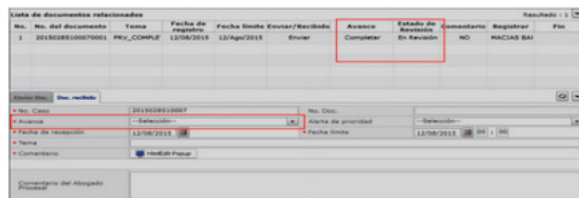


Figure 1. Screen of the claims processes in the System Ecuapass.

Source: Ecuapass.

In itself, this issue of administrative claims is addressed to any natural or legal person who may present some type of discrepancy or concern against the administrative acts dictated by the General Director or the District Directors of the National Customs Service of Ecuador that affect directly their rights as foreign trade operators.

# REQUIREMENTS PROVIDED BY ARTICLE 119 OF THE TAX CODE OF ECUADOR

## TITLE II COMPLAINTS, CONSULTATIONS AND ADMINISTRATIVE RESOURCES

### Chapter 1: Claims

**Article 119:** Content of the claim. The claim will be presented in writing and will contain:

1. The designation of the administrative authority before whom it is formulated;
2. The name and surname of the appearing party; the right by which he does it; the taxpayer registration number, or the identification card number, if applicable.
3. The indication of his permanent address, and for notifications, the one I will indicate;
4. Mention of the administrative act that is the subject of the claim and the expression of the factual and legal foundations on which it is based, clearly and succinctly stated;
5. The specific request or claim that is formulated; and,
6. The signature of the appearing party, representative or attorney and that of the lawyer who sponsors him.

The evidence available will be attached to the claim or the granting of a period for this purpose will be requested. (Tax Code, 2018)

Continuing with the procedure, it usually begins with the delivery of the request for the procedure through the service channels. Additionally, the administrative claim must be presented within a period of twenty days from the date on which it was notified with said act with the indicated requirements. Generally, this procedure has no cost, as the beneficiary

must take into consideration, the payment of logistics services such as transportation, storage and Customs Agent schedules.

## RESOLUTIONS AND CURRENT REGULATIONS

In this section, in accordance with (SENAE, 2022), the respective legal basis of the current resolutions and regulations is presented:

- Organic code of production, trade and investments COPCI 2022 - all articles
- Resolution number: 11-2011-r14 archive of various administrative files.
- Resolution number: 11-2011-r14 archive of various administrative files.
- Resolution number: 1602 Regulation on the Arrangement of Files and Administrative Actions in the Ecuadorian Customs Corporation - All articles.
- Resolution number: 1602 Regulation on the Arrangement of Files and Administrative Actions in the Ecuadorian Customs Corporation (2472)
- Resolution SENAE-DGN-2016-0969-re-complementary guidelines for the application of Resolution Number: CPT-RES-2016-04 of the Tax Policy Committee - all articles.
- Resolution SENAE-DGN-2016-0969-re-Complementary guidelines for the application of resolution Number: CPT-RES-2016-04 of the Tax Policy Committee (2477)
- Resolution SENAE-SENAE-2021-0001-RE provide for the lifting of the suspension of deadlines and terms ordered by resolution: SENAE-SENAE-2020-0062-RE of December 22, 2020 , all articles.

- Resolution SENAE-SENAE-2021-0001-re provide for the lifting of the suspension of deadlines and terms ordered by resolution Number: SENAE-SENAE-2020-0062-re of December 22, 2020 (2478)
- Resolution SENAE-SENAE-2021-0098-re-repeal of extension of state of emergency deadlines, all articles.
- Resolution SENAE-SENAE-2021-0098-RE-REPEAL of extension of state of emergency deadlines.

In accordance with the regulations of the (National Customs Service of Ecuador, 2022) this “has the objective of managing the technical, financial, operational and legal management processes through planning, coordination, execution and control, complying with the established policies by the General Directorate” and the number of tariff claims made during the period December 2021 to December 2022, therefore, the following graph is presented:

## TRIAL APPEARANCE

The General Organic Code of Processes provides:

**Article 271:** Caution and suspension of execution. The appellant may request, when filing the appeal, that the execution of the judgment or appealed author be suspended, providing sufficient security for the estimated damages that the delay in the execution of the judgment or order may cause to the counterparty. The corresponding Court will establish the amount of the bond at the time of issuing the order that qualifies the opportunity of the appeal, within a maximum period of three days from its presentation. If the bond is posted within a period of ten days following notification of the order qualifying the appeal, the suspension of the execution of the sentence or order will be ordered.

Otherwise, its execution will be ordered.

**Article 272:** Audience. Once the file is received, the cassation judge will call a hearing within thirty days, in accordance with the general rules of hearings provided for in this Code.

**Article 273:** Judgment. Once the debate is over, the cassation judge will pronounce the resolution in the terms provided in this Code.

Provide complete and comprehensive advice on legal matters to the highest customs authority of the corresponding district, which enables an agile and efficient customs operation, as well as institutional sponsorship that guarantees the interests of the state.

Any person may file a challenge in court against the administrative acts dictated by the General Director or the District Directors of the National Customs Service of Ecuador that directly affect his or her rights.

## STEP FOR DISCUSSION

- 1: First, the alleged contravention is defined
- 2: The owner does not have documents
- 3: Seizure of merchandise
- 4: Seventy-two hours to justify legality
- 5: It does not present documents
- 6: National Customs Service of Ecuador proceeds to value merchandise in accordance with Article 110 COPCI Regulation. private powers.
- 7: Do not exceed 10 SBU (Unified basic salary)
- 8: Contravention of smuggling, according to Article 190 literal o) of the COPCI, which refers to Article 301 Number: 2 of the COIP (Concordance with General Provision 4th COIP)
- 9: It determines that an administrative contravention will be sanctioned by the customs authority with 50% or 70% of

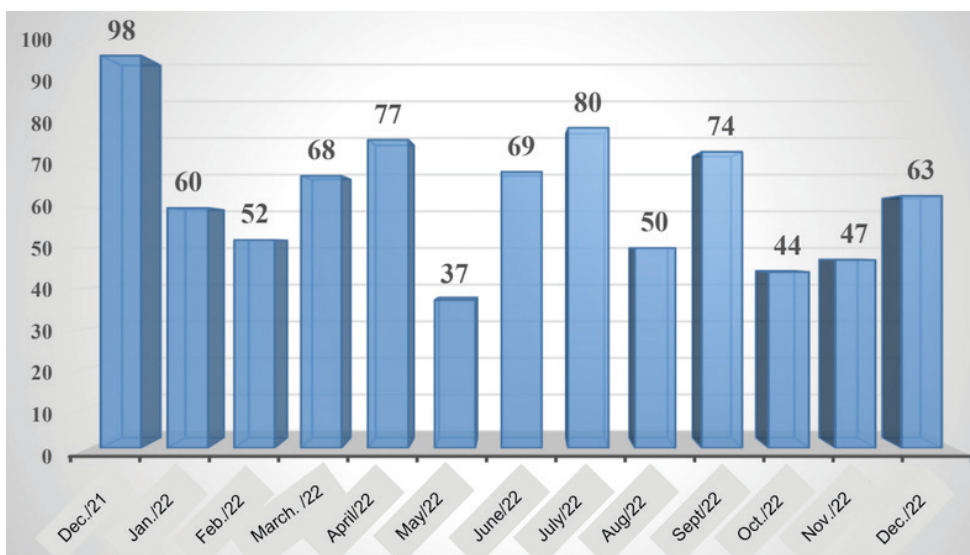


Figure 2. Number of tariff claims to the National Customs Service of Ecuador

Source: www.gob.ec – National Customs Service of Ecuador

the maximum fine established for each crime, this according to the old or new law depending on the case.

10: Article 241 COPCI Regulation, empowers the National Customs Service of Ecuador (SENAE) to initiate a sanctioning process.

11: A 5-day evidentiary period is granted for the person to present documentation regarding the legality of the merchandise. The customs administration has 10 business days to resolve in a reasoned manner, either sanction or file.

11.1: If the person presents documents within 5 days (invoices, guides, referral, settlement), a documentary analysis is carried out, the origin of the merchandise is justified, the merchandise is returned and the file is filed.

11.2: If the documentation presented is not sufficient, SENAE will proceed within 10 days to issue a sanctioning resolution for contravention due to smuggling, which corresponds to a

fine 3 times the customs value of the merchandise according to Article 301 Number: 2. 50% for being a contravention, in accordance with the 4th General provision.

## TESTING STAGE

Once the case of administrative claim or review appeal to be managed has been selected, the customs lawyer has the option of recording the start date of completion, which must be the same as the date of notification of the order to complete.

Sanctioning procedures (move resolution time to day 7 according to manual) evidentiary term:

- \* Before November 10, 2022 (5-day trial)
- \* After November 10, 2022 (10-day trial)

Sanction to be imposed:

- \* Before August 21, 2021 (50% fine for the crime)
- \* After August 21, 2021 (70% fine for the crime)

Administrative complaints (move resolution time to day 80 according to manual)

In the case of customs control fees, a risk management and customs technical report is no longer required.

- **Start Date Complete:** Default value is shown blank, the Claims/Resources Management customs attorney must record this date manually.
- **End Date Complete:** This date is automatically displayed 10 business days after the Complete Start Date, this date can also be changed manually.
- **Close the limit to resolve an issue:** This date is automatically displayed 60 business days after the Complete Start Date, this date can also be changed manually.

## JUDICIAL RESOURCES

**Article 124:** Administrative Claims and Resources: Any person may file an administrative claim against the administrative acts dictated by the General Director or the District Directors of the National Customs Service of Ecuador that directly affect their rights, within a period of twenty days from the date in which it had been notified with said act.

The claims that will be presented will be substantiated and resolved in accordance with the procedure established in the Tax Code, within a period of one hundred twenty (120) days from the date the claimant submitted said claim. The District Director is the competent authority to hear and resolve administrative claims of improper payment. Claimants may present an appeal for review before the Director General against the resolutions issued by the District Directors, in accordance with the rules of the Tax Code. Note: Article amended by article 3 paragraph 7 of Law published in Official Registry Supplement 150 of December 29, 2017.

## EXECUTIONS (JUDICIALIZED CASES)

Apply the instructions contained in Resolution SENAE-SENAE-2023-0012-RE of 03/16/2023 (procedure that regulates the execution of interlocutory orders and judicial sentences).

Sponsoring Address --> send legal report within 15 business days after the Judicial Sentence has been notified to the District Director. (Article 10)

Customs Lawyer --> verify that you meet the requirements (Article 8) if you do not meet the requirements within 5 days, you must request the correction of the same to the sponsoring address so that it can be completed within a period of 5 days. (Article 10)

GYEM District Director --> execute within 20 business days after being notified with the final and enforceable court ruling; or, from the legal report issued by the management that sponsored the process, as the case may be. (Article 7)

## PROCEDURAL NEWS

Once the trial period has expired, and within the following five days, the parties may make in writing the observations that the examination of the evidence suggests to them.

Comply with the execution act within 10 days, and the district director must inform the district director of compliance. (executing body) --> follow up on the execution act.

## METHODOLOGICAL FRAMEWORK

### RESEARCH LEVEL

This research uses the descriptive research design to gather quantifiable information that allows us to obtain a better and clearer perspective of the challenges and opportunities. Quantitative research is also used as a research method, since it

implements mathematical and statistical analysis tools to describe, explain and predict through numerical data, that is, the use of surveys to collect data directly from people, this way factors that influence the efficiency of administrative claims are analyzed.

In this case, the aim is to analyze the process of resolving tariff claims in customs management, identifying the challenges, opportunities and sharing experiences and lessons learned in the resolution of these claims. The analysis is based on the detailed description of the relevant aspects of the process and the identification of its strengths and weaknesses.

## **RANGE**

It is aimed at customs officials of the Directorate of Claims and Resources, Directorate of Claims and Operational Procedures, Air Cargo Zone Subdirectorate, Legal Counsel of the Districts and other customs lawyers who carry out the management of administrative claims in the Districts and describe in sequentially the tasks that are carried out to expedite the process of registering administrative claims or review resources through the computer system of the National Customs Service of Ecuador, called Ecuapass, option for receiving claims/resources.

## **POPULATION**

The population considered for carrying out this investigation are people involved in the management of this customs control system, specifically the staff of the operational procedures department of the National Customs Service of Ecuador (SENAE), who can provide us with their knowledge. especially everything that is handled on the subject of tariff claims and can give us the correct induction, also pointing out the advantages and disadvantages of these claims and their comparison.

## **TYPE OF SAMPLE**

The survey and interview technique are applied as an instrument for data collection, being quantitative and qualitative respectively. The interview is carried out with two foreign trade officials to understand the experience from an internal point of view. On the other hand, the survey carried out with 30 people is developed in order to know the challenges present in administrative claims, therefore, the same that will be used in the Google Forms platform, that platform helps us optimize the tabulation time of collected data and facilitates the verification of the investigative work, for these reasons it is considered one of the best information collection methods to use.

## **RESULTS AND DISCUSSION**

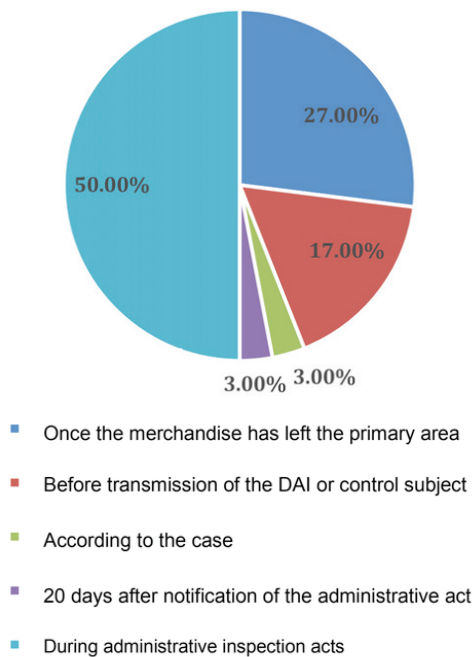
In general terms and according to the results of the survey directed at professionals in the area of foreign trade, the positions of lawyers, customs agents and public servants stand out, contributing with their opinion, considering the COPCI Regulation as the main legal regulation, they agree that The most common type of administrative claims are due to the lack of responses to requests made and inconsistencies in the information presented, but also claims for damage and loss of merchandise. They also point out that to address the challenges in the claims resolution process, the use of artificial intelligence with technological transformation is required; most of them agree that it will improve the efficiency and quality of the resolution of queries and claims by the Service. National Customs Office of Ecuador (SENAE) for external users, because it allows users to obtain an assertive response regarding their requests. Another aspect worth mentioning is that if a tariff claim cannot be resolved, depending on the valuation method used, the importer must pay the full tariff or in a complex case seek the assistance of a specialized lawyer. It was also



identified that the exact moment where an administrative claim can be presented in the capacity according to the subject of control that is going to be reviewed, finally, the majority of respondents agree that additional resources to improve the process of resolution of tariff claims in customs management is to show greater transparency in the resolution process so that importers and exporters can understand the reason for decision-making, although they require improvements in computer systems, additional training for customs officials in charge of resolving claims, these improvements allow streamlining the efficiency of the themselves.

The following data is highlighted below:

Taxes paid on tariff claims



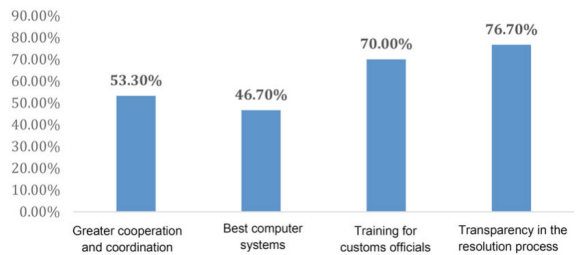
**Graphic 3.** *Approved tariff claim*

*Source: own elaboration.*

If a tariff claim is approved, what will happen to the excess taxes paid, according to the statistical analysis of the respondents' responses, will be to return it to the importer/exporter related to the claim. This response obtained a coincidence percentage of 43.3 %

by the voters, then equally with a percentage of 23.3% agree that they are used to cover customs and non-customs costs within the logistical process or in another way with 26.7% collected by the SENA and Remitidos to the Central Government, therefore 3.3% specifies that it is in a concurrent control. SENA issues the credit note before and finally 3.3% details that it could depend on certain factors.

Process to be carried out when tariff claims cannot be resolved

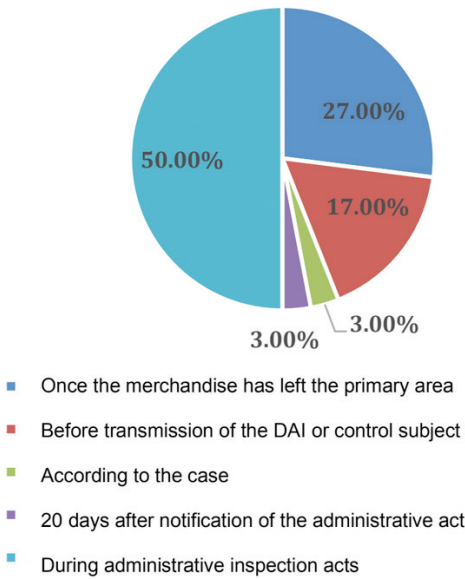


**Graphic 4.** *Handling of tariff claims cases*

*Source: own elaboration*

According to the statistical analysis of the responses of the respondents according to the handling of cases in which a tariff claim cannot be resolved, it can be interpreted that 86.7% consider that, if a tariff claim cannot be resolved, the importer will have to pay the full tariff, 76.7% determine that in some cases, it may be necessary to seek assistance from a lawyer specialized in customs matters, 73.3% consider that in extreme cases, it is necessary to appeal to the contentious courts to resolve a tariff discrepancy, and 13.3% consider that in such cases, those claims that cannot be resolved can be sent to a commission for their respective review. But it must be emphasized that in any case where there is an unresolved tariff claim, it must be attended to in order to resolve the mishap as such in an efficient and legal manner.

## Instances where a tariff claim can be filed

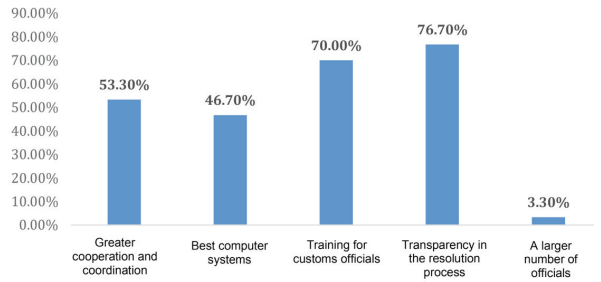


**Graphic 5.** Instances in which a tariff claim is presented

*Source: own elaboration*

According to the statistical analysis of the responses of the respondents, we can reach the conclusion that the instances in which a tariff claim can be created or presented may be before the transaction of the customs declaration or subject of Control depending on the control phase. or this is what 17% of those surveyed think, continuing with 27% which tells us that once the merchandise has left the primary zone and has complied with all customs formalities, 3% believe that this can be Depending on the case determined, the other 3% tells us that 20 days after notification of the administrative act, and the majority with 50% tells us that it can be presented during the administrative acts of inspection and assessment according to the control subject to be reviewed.

## Additional Resources to Improve the Tariff Claim Resolution Process



**Graphic 6.** Additional Resources

*Source: own elaboration*

According to the statistical analysis of the responses of the respondents about the additional resources that would be useful to improve the process of resolving tariff claims in customs management, the opinion of 53.5% of the respondents indicates what can be improved with greater cooperation and coordination between the customs offices of different countries so that cross-border tariff claims can be resolved more quickly and effectively, the other 46.7% indicate that for them it would be correct to improve the computer system for the management of tariff claims in a more efficient and effective way, with 70% being 76.7% percent, which can tell us what would be useful for greater capacity for Havana officials in charge of resolving claims, so that they can make informed and fair decisions. tells us that for this, greater transparency in the resolution process would be correct, either so that importers and exporters can better understand how decisions are made, the remaining 3.3% believe that the quality of personnel must be improved to that claims are substantiated more effectively and efficiently.

## EXPERIENCES

**Contact 1: Alfredo Villavicencio:** “As an official within the National Customs Service of Ecuador, specifically in the claims and operational procedures department, working as a legal assistant, I have stood out in opening sanctioning processes for customs crimes from the beginning to the end; in addition to addressing administrative claims of improper payment and overpayment. The most complicated thing is identifying the passive subject due to the fact that each case is different, but as an apprentice, I have improved in recognizing the alleged offenders and applying the law better.”

**Contact 12 Ab. Damián Sambrano:** “I have been part of the teams as a Lawyer and also as Director at the time, of the claims areas”, additionally, he was asked what resources he considers useful to improve the process of resolving administrative claims, answering that training with experts in International customs administrative and technical law are useful since the aforementioned area involves challenges in terms of innovation and technical aspects.

## CONCLUSIONS

Technological transformation can improve the efficiency and quality of consultations and complaint resolution. It proposes increasing the transparency of the complaint resolution process, improving computer systems and training customs officials responsible for responding to complaints. The experience of specialists demonstrates that the consideration of complaints and administrative sanctions for customs infractions is a complex task, which is why it is considered useful to improve training in matters of administrative law and international customs methods. Therefore, it is important to use technology, increase transparency, strengthen capacity and develop international cooperation to improve the resolution of financial claims and provide accurate responses to importers and exporters, also bearing in mind that the settlement of financial claims is an aspect It is important to guarantee fair and transparent international trade, and the appropriate management is essential to facilitate the flow of goods. Highlighted challenges include regulatory complexity and bureaucratic procedures that can delay the settlement of claims, however, promising opportunities have also been identified to improve the process, collaboration between customs, companies and other actors is key to facilitating a faster resolution and effective of tariff claims.

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