

Retos del comercio electrónico transfronterizo para la Dirección de Impuestos y Aduanas Nacionales en el año 2020 ¹

*Dirección de Impuestos y Aduanas Nacionales's
challenges of cross-border e-commerce in 2020's
year*

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¹ This text presents the results of the research: Challenges of cross-border e-commerce for the Dian, carried out in the year 2020 to obtain the professional degree in International Business at the Esumer University Institution.

Resumen

El comercio electrónico es una tendencia a nivel mundial que posibilita el crecimiento de las empresas y la economía de un país. Es por esto que este artículo tiene como objetivo identificar los retos del comercio electrónico transfronterizo para las entidades del Estado colombiano tales como la Dirección de Impuestos y Aduanas Nacionales (DIAN) y el Ministerio de Tecnologías de la Información y las Comunicaciones, también conocido como MinTIC principalmente, esto no quiere decir que estas sean las únicas entidades que deben intervenir en el desarrollo del comercio electrónico, sin embargo el objeto de esta investigación se enfoca en estas entidades porque son las que representan mayor competencia en los retos que presenta actualmente el comercio electrónico en el Estado Colombiano.

La metodología está enfocada en un tipo de investigación cualitativa y descriptiva lo que permitió determinar que en Colombia se requiere de la consolidación reglamentaria que abarque el tema aduanero, cambiario y tributario, así como mejorar la promoción digital de las Mipymes y el marketing digital, con el fin de que sea claro para aquellos que quieran adoptar este tipo de negocio y abrir nuevos horizontes.

Palabras clave

Colombia; Comercio electrónico; Dian; E-commerce; Trasfronterizo.

Abstract

E-commerce is a global trend that enables the growth of companies and a country's economy. This is why this article aims to identify the challenges of cross-border e-commerce for Colombian State entities such as the Dirección de Impuestos y Aduanas Nacionales (DIAN) and the Ministerio de Tecnologías de la Información y las Comunicaciones, also known as MinTIC mainly, this does not mean that these are the only entities that should intervene in the development of e-commerce, however the object of this research is focused on these entities because they are the ones that represent the greatest competition in the challenges that e-commerce currently presents in the Colombian State. The methodology is focused on a type of qualitative and descriptive research which allowed to determine that in Colombia there is a need for regulatory consolidation that covers customs, exchange and tax issues, as well as to improve the digital promotion of Mipymes and digital marketing, in order to be clear for those who want to adopt this type of business and open new horizons.

Keywords

Colombia; Cross-border; Dian; E-commerce; Electronic commerce.

Introduction

The Internet fostered the development of e-commerce, a few years after the Internet emerged, e-commerce also began evolving in a very quick way year after year becoming in a multi-million-dollar business, which millions of people are involved. The first online transaction took place in 1981 when Thompson Holidays published its product catalogue online. Since then, important events have taken place for the growth of e-commerce, such as the lifting of restrictions by the National Science Foundation (NSF), allowing the use of the internet for commercial purposes. In 1994 the Secure Sockets Layer (SSL) is implemented allowing to send and share personal data in a safe way, between 1995 and the year 2000 important advances taking place like the beginning of search engines like Yahoo and Google, also PayPal begins its operations as a company in charge of the processing of payments of online operations, also it is not properly leave aside the companies Amazon and EBay who marked in 1995 a before and after in the way to buy, these organizations were among the first ones in making commercial transactions with the final consumer. Another important milestone in this history is the mobile revolution; Coca Cola appears as a pioneer in allowing the purchase of its products through the cell phone via Short Message Service (SMS), Pure Marketing (2014).

From the year 2000, concepts such as group shopping sites, social networks, shopping carts, flash shopping, Cyber Monday, new payment platforms, mobile card readers, among others, began to appear; all of this, together with the evolution of mobile devices and the increase in connectivity, has allowed online shopping to increase in an ever greater proportion.

More than a decade after e-commerce appeared in Colombia as an initiative of large national companies, it is possible see how it has evolved significantly. The author Peciña (2017), points out that the emergence of new information technologies, mainly the Internet, has generated that the way of doing business is in constant evolution, at first this change took the name of e-Business, but finally it was assigned the name of e-commerce or electronic commerce, which allows to handle the sales by electronic means and that every time takes more force in the economy and the society. The e-commerce appears thanks

to the emergence of the Internet, which continues to be its main driver, contributing to the progress of this type of trade. The emergence of e-commerce has allowed a drastic reduction in the time and cost of exchanging and processing information by changing the processes of organizations. In the beginning, companies had great barriers if they wanted to implement this type of commerce due to the high investment; which prevented it from growing in a massive way, reducing it to only being used in a few sectors and a few large companies. Its great impulse is given by the popularization of the access to Internet for the population, facilitating its connection with the rest of the world, making possible that people or organizations buy and sell goods and services anywhere in the world and in real time. As a result, competition among industries is increasingly high.

The objective of this article is to identify the challenges faced by the DIAN and the Ministerio de Tecnologías de la Información y las Comunicaciones (MinTIC) with respect to cross-border e-commerce, which are preventing Colombian companies and the country from benefiting from the opportunities that this type of business generates, in terms of economic growth and expansion into new markets.

1. Theoretical framework

Regarding to cross-border e-commerce, some research was found that states to the opportunities generated by the implementation of this business model in companies and the challenges or barriers that currently exist.

Taking into account the above, Sanchez and Montoya (2016) carried out research in order to analyze the factors that affect consumer confidence when buying on the Internet and the impact generated, since this alternative is currently of great value for companies to be competitive globally. For the development of the research, they used secondary information related to marketing, internet, e-commerce and confidence. They found that the most important aspects are the security of the operation, the reputation of the seller, the privacy of the data and the perceived risk.

The study conducted by Gallego, Bueno and Terreño (2016) sought to identify by the Delphi method (questionnaire answered by experts in a particular subject) and with the help of experts in the field, the main barriers that are being imposed on e-commerce, and in turn, find ways

to reverse this phenomenon and position it increasingly in the country of study, Spain. The experts questioned consider the expansion of the market and the attraction of new clients as the main motivations of the companies. As barriers identified logistical problems, the security of payment methods and that some products are difficult to market on the web.

On the other hand, Figueroa (2015) raised that the commercial business environment is increasingly competitive and less profitable, and in search of achieving that differentiation, they find the e-commerce as a tool and proposal of differentiation of the companies. That is why they decided to study in a descriptive and quantitative way the relationship between the use of e-commerce and the increase of profitability in the commercial sector. This study shows that the use of e-commerce influences the increase in profitability of companies and becomes a competitive advantage, allowing greater ease of access to other markets.

Finally, Cabrera (2017) states that the businesses carried out through electronic commerce increase more and more, hence the importance of publicizing the tax challenges that exist in Colombia on the subject; through the study of secondary sources such as: the tax law, doctrine and reports from international organizations, found that the tax issue is a cross-border challenge and that especially in Colombia it was detected that the tax regulations are in crisis, due to the fact that non-presential trade is not clearly contemplated, requiring an update of the regulations.

The previous research shows that there are shortcomings in tax regulations, but the reality is that not only there are in this area, but also in aspects of customs, exchange, strengthening of marketing and digital presence, therefore and based on the research of Cabrera and taking into account the importance of electronic commerce today, this article identifies the challenges or barriers specifically to the Dian and MinTIC.

2. Conceptualization

For the development of this article, it is important to clarify what e-commerce is by providing some definitions and how it is typified. The main definition to take into account is the one provided by the Instituto

de Estudios de las Finanzas Públicas Americanas (2017) who defines cross-border e-commerce as "all transactions for the sale of goods carried out by electronic means between a trader and a consumer or between consumers, residing in different customs territories, with the products being transported by postal order or courier". This type of trade is characterized by increasing the sales channels of companies since it allows access to global markets, expanding business opportunities, which becomes a competitive advantage for a company.

Other definitions to consider about e-commerce, in terms that are more general are the following:

Author	Concept
(Organización Mundial del Comercio, s.f.)	"Electronic commerce" means the production, distribution, marketing, sale or delivery of goods and services by electronic means".
(BLITA International, s.f.)	"Cross-border digital trade refers to all those transactions abroad carried out electronically, enabled by virtual platforms or with digital delivery of the product or service".
(Organización Mundial de Aduanas, 2018)	"The use of information and communication technologies and the Internet as a means of communication, opening of transactions, cross-border movement from one economy to another and electronic payment".
Martín (2018)	It consists of the purchase and sale by electronic means such as the Internet, not only of products, but also of services or information. In this type of transaction, the presence of the buyer and seller is not necessary; this definition covers the process from online marketing to after-sales service. A short definition can be "doing business electronically".
Quoted in (Comisión de Regulación de Comunicaciones, 2017)	The OCDE (2019) "Any transaction for the sale of goods or services effected over computer networks by methods specifically designed for the purpose of receiving or processing orders".

Source: Author's own elaboration.

There are different ways of trading through e-commerce around the world and depending on who is involved in the transition; the classification can be as follows according to Peciña (2017):

Business to Business (B2B) refers to businesses agreed upon between companies where relationships are long-term. This helps to get more customers and suppliers being this a faster search tool; which makes the company more and more competitive.

There is also Business to Consumer (B2C) in which it is the company that has the business directly with the consumer without an intermediary. It is also applied when a company offers its services through the network. The only disadvantage that this type of trade would have is that it requires a high transaction value in order to generate a return.

Consumer to Consumer, (C2C) is one of the most informal types of commerce used in the Colombian market, since it allows anyone to sell; it is characterized by the fact that the manufacturers of the products do not intervene in the sales transaction.

It is also found that the Business to Business to Consumer (B2B2C) known as diagonal markets refers to trade between companies in order to reach the final consumer. It is characterized because it is in the same place where products are bought and sold.

Transactions between friends are known as Peer-to-Peer (P2P) and it's also called collaborative economics.

The authors Castaño y Jurado (2016) define another type of e-commerce as well:

Business to Government (B2G) refers to the contact or transaction that takes place between businesses and governments.

These types of e-commerce seen above, B2B is the most widely used worldwide, but as a result of people's access to technology, the Internet, smart phones, etc., B2C is growing in an unexpected way

3. Methodology

This research seeks through the collection of data and its interpretation, to determine the challenges that electronic commerce brings to entities such as the DIAN and the MinTIC, in order that interested people have a base of how the country is on the subject, therefore, the focus of research will be qualitative because as indicated in the book of (Hernandez Samperi, 2018, pág. 690) "research from the qualitative route focuses on understanding the phenomena, exploring them from the perspective of the participants in their natural environment and in relation to the context".

The type of study is descriptive since the objective is to determine the challenges that cross-border e-commerce brings to the DIAN and the MinTIC, it will seek to collect information, interpret it and shape it, but not to go into it in depth; which will finally allow it to identify the challenges, make them known and leave them as an information base for those who want to implement this type of business or for those who want to go into the subject in depth.

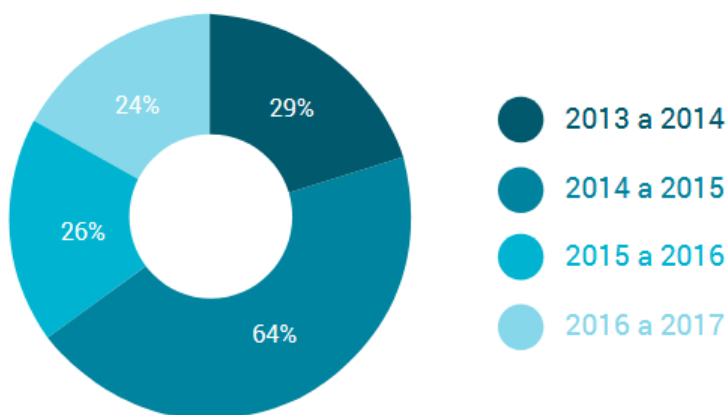
For the development of this research, data was taken from secondary sources which are "all those that offer information on the subject to be investigated, but which are not the original source of the facts or situations, but only reference them". (Bernal Torres, 2010, pág. 192). Books were used for this article, and also magazines and research previously carried out, on which information was collected oriented to experiences and/or perceptions of third parties when adopting the concept of e-commerce within their businesses and where barriers were found that entities such as the DIAN have regarding the subject. Data was also taken from studies conducted by entities in charge of monitoring such as the e-commerce observatory, where e-commerce is analyzed from an economic and trend perspective.

4. Results and/or findings

According to the Cámara Colombiana de Comercio Electrónico (2019) local e-commerce represents 1.5% of Colombia's GDP, and thanks to the fact that the current consumer is changing their behavior regarding the way of buying, growth is expected to be constant; the main trends of consumers today are consulting product information and making purchases on the Internet. The study on digital transactions in 2018 shows how between the years 2016 and 2017 there was a growth of

around 20% and year after year from 2014 to 2017 the rates have improved constantly, these figures lead to think that Colombia can be positioned as the fourth country with the highest rate of the best e-commerce markets in Latin America. Below is a graph that better reflects these percentages:

Growth of e-commerce in Colombia



Source: Industry Report: e-commerce in Colombia 2018/2019 (BlackSip, 2018)

According to the report published by (BlackSip, 2018) reflects that "The accelerated growth of apps and web portals shows that Colombian consumers are increasingly willing to buy all kinds of products through different digital platforms, especially if it is e-commerce. In Colombia this type of commerce through mobile devices has a very high penetration since it has 25.7 million active smartphones in the country ending 2017, almost round numbers knowing that the country's Internet population is 31 million".

Some of the trends for 2019 in terms of e-commerce are greater data protection, implementation of artificial intelligence, joint work between large and small companies, companies undergoing greater revisions, greater spending on online advertising, ads designed by the companies themselves and use of voice technology, Ballesteros (2019). In the trends mentioned above, it is important to highlight that data

protection plays a very important role in the growth of e-commerce in Colombia, since this allows the consumer to feel more secure when making purchases online.

At the local level there are still challenges to be overcome as mentioned by the Cámara Colombiana de Comercio Electrónico (2019) first of all they have to work towards making the customer feel more secure when buying, creating and improving public policies. On the other hand, another important aspect is to improve logistics, in other words, more efficient delivery times.

In terms of cross-border e-commerce there is a very different picture, according to Rodríguez (2020) exports in the country in 2019 had a drop, this was attributed to the trade war between China and the United States, in search of an alternative to increase exports of goods and services one of the alternatives has been the e-commerce excellent tool to increase sales of companies, as the number of Internet users in the world increases. However, for this, the rules must be clear to business people in terms of regulation and the entity in charge of the issue. Javier Díaz, president of the Asociación Nacional de Comercio Exterior, talk about the need for a public policy because the exports made in Colombia through digital channels only represent 2% of the total. In fact, according to an article published by the Cámara de Comercio de Bogotá (2018) this percentage is very low compared to a country like China where the figure is over 13%. Other reasons why it has not taken greater strength is because this type of e-commerce is still unknown by many companies, has not been investigated in depth and mainly there are shortcomings in the entities involved in the process, as they are not at the forefront of this new way of doing business.

The proper execution of cross-border e-commerce involves several entities, public and private, but the main challenge has it the DIAN, the entity in charge of compliance with customs, exchange and tax obligations, DIAN (2020) this entity has a big importance in Colombia because it is in charge of controlling the fulfillment of obligations not only at the level of taxes but also customs and everything related to the exchange regime in matters of import and export of goods and services; processes that are part of the transactions of cross-border electronic commerce, therefore, has the following challenges:

- Improve the effectiveness in the customs operation since there is an excessive control in the operations and problems like: fractionation of shipments, valuation, tariff classification, origin of goods, piracy,

among others, the processes are solved slowly; it is also important that they have technical assistance for a better administration of the e-commerce, Rengifo (2019).

In this regard, Rengifo (2019) also mentions these two other challenges:

- As for the tax part, they should unify and generate an only tax that gives clarity since there are several taxes that affect digital operations such as, for example, the 4 x 1000, the VAT and the withholding tax of industry and commerce, this in his opinion would allow greater mobility to e-commerce and cheaper transactions cost.
- As for the exchange system, the Banco de la República must be established clear rules on the flow of electronic money through payment gateways, currently if someone is channeling payments through this payment methods is doing so outside the law, should therefore incorporate the possibility of payment gateways and digital mechanisms to facilitate e-commerce quoted in Suárez (2019).

The Dian in tax matters is based on the law 2010 of 2019 and in customs matters the decree 1165 of 2019, in which there is no specific chapter or article that establishes clear rules for electronic commerce, therefore, the same rules of traditional trade would apply.

In other side, it has the MinTIC, an entity in charge of designing, adopting and promoting policies, plans, programs and projects in the Information and Communication Technologies sector, in order to increase and facilitate the access of Colombians to information and communication technologies and their benefits MinTIC (2020), the challenges that this entity has to face are the following:

- Promote the digital presence of Mipymes and if they do not have an Internet page, they can have access to Marketplace through "Mipymes vive digital", which consists of the transformation of the business models of Colombian Mipymes from the strategic use of technology, making them move to the Internet of productivity and undertake the digital route following 5 lines of action: Training program, Business Development Centers, TIC solutions (e-commerce), Incentives, Development of customized Apps and mentality and culture, Ministerio de Tecnologías de la Información y las Comunicaciones (2018).

- Promote to the competent State entities the existence of the necessary regulation to guarantee electronic commerce environments, such as invoicing and electronic use. According to the analysis carried out by the Comisión de Regulación de Comunicaciones (2017). Although the legal regime for electronic commerce is usually associated with Law 527 of 1999, which was the first law in Latin America about e-commerce and "which defines and regulates access to and use of data messages, electronic commerce and digital signatures, and establishes certification entities and other provisions" (Ministerio de Comercio, Industria y Turismo, 1999), There is no separate and autonomous legal regime as such, but rather a series of legal rules governing aspects of the act of electronic commerce or related aspects.
- To strengthen Mipymes in digital marketing issues. According to the article published by Meléndez (2018) through this, companies can monitor their actions, measuring the results on the demand side and adjusting their strategies in real time.

However, there are entities such as Procolombia whose objective is to energize the economy in Colombia and make more and more countries interested in investing in the country. In alliance with Amazon, in 2019 they had an initiative that consisted of a platform called "Colombia a un Clic" designed to promote Colombian exports and increase the competitiveness of companies, this program began with 50 companies being trained in e-commerce and accompanying them throughout the export process, Ministerio de Comercio, Industria y Turismo (2019), In this process, priority was given to sectors such as agrifood, 4.0 industries, metalworking, chemicals and fashion. One year after the launch these are the results according to Procolombia (2020), this entity has trained 1,381 people in 10 departments of the country in order to start exporting through electronic platforms, has achieved that 44 companies have a seller's account on eBay and Amazon and of these companies 29 already sell through these platforms, this entity expects that by the end of 2020 this number will increase; this entity emphasizes that entering the world of electronic commerce more than a trend is a necessity for entrepreneurs if they want the growth of their businesses.

5. Conclusions

Cross-border e-commerce is a worldwide trend and has become fundamental for the economic growth of the countries since it allows for an increase in exports. For this reason, Colombia should not be indifferent to these advances since, as mentioned above, exports have been decreasing and therefore efforts should be increased to promote this type of business in companies, with technological development and updating of regulations by the entities in charge.

Colombia has made progress in training and support to entrepreneurs who want to start in e-business, but it is not enough that a single entity takes this type of initiative, in Colombia there are several entities involved in the process and it is important that all join efforts to establish clear rules to facilitate e-commerce and work towards simplification of processes and security which are the main challenges.

Initiatives are required to improve the implementation of e-commerce, through the consolidation of customs, exchange and tax regulations, this information must be clear, separate from the standards used for traditional trade, for a better understanding by stakeholders, this is an issue that benefits not only companies, but also the country.

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