

Dear Member Exporters,

We would like to inform members exporting or interested to export to Brazil to exercise caution while exporting to Brazil and to take note of the following communication received Consulate General of India, Sao Paulo, Brazil.

**Quote**

**This is in continuation of this Post's email dated 02.07.2021 trailing below. In view of some recent complaints from Indian exporters about non-payment of post-shipment dues by the Brazilian importers and its effort to release the shipment with a scanned copy of Bill of Lading, the Post had requested India Brazil Chamber of Commerce to advise us on the intricacies of relevant Brazilian customs rules and practices.**

**The Chamber had shared detailed advice from its associate experts with experience in the field of Foreign Trade and International Logistics of around three decades, which was shared vide the aforementioned email. Now, the Post has posed further queries on related scenarios in the matter relating to return of cargo and loss of cargo and its financial implications for the exporter. The latest guidance received from the Chamber is reproduced below, which is self-explanatory, and may also kindly be shared with your members:**

**[PART 1]**

*"In our experience of some decades, we understand that it does not make much sense for a company to acquire goods by import and simply abandon it after its arrival in their country. It seems clear to us that unforeseen events can happen, preventing both the payment from being made to the exporter and the **customs** fees, causing the goods to be lost.*

*In the same way, eventually, it will always be possible for a company to act in bad faith if it has in hand the necessary documentation for **customs** clearance. However, these situations seem to us to be very atypical and represent a very small portion of the operations.*

*We understand that by not having the necessary documentation for the release of the goods, the vast majority of companies will have to honor payments in order to be able to remove the cargo. The problem of lack of guarantee will always exist when the payment is "in installments". Regardless of the country of destination, commercial transactions with payment made after shipment without presentation of any type of guarantee will always involve a risk of default, whether intentional or not.*

*The main alternative that occurs to us is the search for the insurance mechanisms for export credit and/or credit certification (reputability) of the importing company.*

*Among the main certifiers is Dun and Bradstreet, whose certificate is widely used by exporters before granting credit to the importer.*

*We would like to have a simple answer or formula, but unfortunately the answer to the main question, regardless of the country to which the export is destined, is that unfortunately there are no 100% safe mechanisms to ensure the receipt of installment sales in international trade.*

*The two best alternatives to mitigate risks really come down to Letter of Credit and credit insurance.*

*Just as an illustration, we explain that it would be possible from a legal point of view for the exporter to try to recover the cargo, but there is a reasonable complexity in the procedures and costs that will only increase the loss to the extent that the exporter would be responsible for the payment of all storage costs, return shipping and fines that can reach 100% of the value of the merchandise."*

**[PART 2]**

*"The legal flow for the loss to be declared follows the following steps regulated by Decree 6759/99 (Customs Regulation), Decree-law 1455/76, Ordinance MF 159/10 ('Portaria MF'), and Normative Instruction SRF 69/99, among others.*

*Summarizing:*

*1. From the moment the cargo arrives in Brazil and enters a customs terminal, the legal responsibility and all costs fall on the importer;*

*2. The cargo shall be under the legal custody of the Customs Warehouse which shall be liable for its physical integrity before the customs authority;*

*3. Article 642, Line I, Item a. and Lines I and IV of Art. 1 of Normative Instruction 69/99 determines that the cargo will be considered "abandoned" after 90 days of unloading in the primary zone (port or airport) and/or 120 days of entry into the secondary zone (bonded warehouses/dry ports);*

*4. The Warehouse must notify the customs authority "via system" of the abandonment, generating the FMA (Abandoned Goods Form for Sea Cargo - ficha de mercadoria abandonada para carga marítima) or the DMCA (Documentation of Movement of Abandoned Cargo for Air Cargo - Documentação de movimentação de carga abandonada para cargas aéreas);*

*5. In an average period of 15 days, the Federal Revenue will notify the importer and establish a deadline (usually 30 days) for the importer to manifest itself;*

*6. If the importer decides to revert the abandonment, a 1% fine will be applied on the customs value and will have a period of up to 30 days to enter the customs clearance process.*

*a. In addition to the fine, the importer must pay all taxes and other expenses levied on the cargo;*

*7. In case there is no manifestation by the importer, or the same does not comply with the deadline for starting customs clearance, the Federal Revenue Service may declare the loss of the cargo.*

*From the loss, the cargo becomes in the possession of the Internal Revenue Service, which shall have its destination, which may be:*

- Donation;*
- Destruction;*
- Sale through auction for reimbursement of expenses incurred in the process.*

*The "Sentence of Loss" in Brazil, as per Line II of Art. 23 of Decree Law N° 1.455 of April 7th, 1976 defines an infraction as "Damage to the Treasury" whose punishment reflects on the loss of the cargo that can be reversed by applying a fine equivalent to 100% of the customs value.*

*There is no penalty imposed directly on the Brazilian importer for having left, voluntarily or involuntarily, the cargo to be lost.*

*As we begin with the explanation below, there is a legal possibility for the exporter to recover the cargo, however, all official communication with the Customs Authority in Brazil must be carried out by a legal representative constituted in Brazil.*

*In this case, the exporter must assume the logistics costs incurred on the cargo, handling, port fees, storage, etc., as well as the penalties and fines levied in the process.*

*In more than 3 decades working directly in the area, we have no recollection of any case of reversal and return of cargo that could serve as a basis."*

**Unquote**

With Kind Regards,

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