

Consulate General of India
Sao Paulo

Advisory on trade disputes

A few instances of trade disputes have come to the notice of the Consulate wherein some Brazilian importers (e.g. Fegaro, Temperart, Comercial Paty, Anisinos etc), having imported products such as dehydrated onion/garlic, garlic powder, sesame seeds, raisins, Dyes, pigments etc. from Indian companies have shown reluctance in release of due payment to Indian exporters.

2. In most of these cases, terms of payment were Cash against Documents or Payment on receiving BOL through bank. The importers, after arrival of shipment to Brazil, delayed due payment indefinitely expressing its financial difficulties and taking recourse to `Judicial Reorganization (Recuperação Judicial)` owing to which the importer is apparently relieved from the liability of immediate release of due payment(s). In this context, the Consulate has received a number of complaints against the company – Fegaro, which, using different names, has reportedly delayed/denied payment due to Indian exporter.

3. In some cases, the Brazilian importer did not get the shipment cleared from customs. In such situations, as per our information, the customs authorities, after a particular period of time shifts the cargo to bonded warehouse for which demurrage charges are levied, and then after another particular period, the cargo is put on auction. Before putting cargo on auction, customs authorities seeks an NOC (no objection) from the importer, while the exporter is not involved or informed in this procedure and cannot even decide on bringing the cargo back to India, since the exporter has no control over cargo once it reaches the Brazilian port, where the shipping line company also has to follow local customs procedures.

4. In another case, the shipment was got cleared by Brazilian importer without the knowledge/authorization of the Indian exporter. In this context, Indian exporters may please note the following:

In the Brazilian customs system, it is possible to release goods upon presentation of a electronic copy (softcopy) of the original signed Bill of Lading and payment of local taxes.

As Brazilian system works by sampling, the presentation of the original physical documents (hardcopy) is no longer necessary, except in special situations and/or when required by the customs authority.

There is a legal guidance from COANA (General Coordination of Customs Administration - Coordenação-Geral de Administração Aduaneira) by number 17/2020 issued on March 24th , 2020, with the following content:

*"We clarify that the softcopy of the Bill of Lading that is scanned in accordance with the provisions of Decree nº 10.278, of March 18th, 2020 (*Nr), will have the same legal effects as the original document/hardcopy, and its presentation in electronic format to the customs office will be considered as fulfilled with the prevision sustained on subsection IV, article 54, of Normative Instruction SRF nº 680, of October 2nd, 2006.*

It is worth mentioning that the scanned document must contain all of the obligatory requirements of the original and hardcopy, according to the governing legislation in force."

*(*Nr): The forenamed Decree deals the rules for validating documents presented in electronic format in public or private transactions. There are legal issues to be brought to study regarding the validity of presenting a simple scanned copy of the Bill of Lading, however, we do not have information about any jurisprudence in this regard.*

5. As per our information, there are some alternatives for Indian exporters not to be subject to the flexibility of Brazilian legislation, which is detailed below:

To release the cargo, it is necessary to present a digital copy of the ORIGINAL Bill of Lading duly signed. Sending a digital copy written "COPY NON NEGOTIABLE" would prevent the release of the cargo at customs terminals.

Hence, it is suggested that in transactions involving CAD (Cash Against documents) payment, or with "payable" post-shipment installments only a non-negotiable copy of the Bill of Lading should be sent to the importer.

This simple procedure will prevent the removal of cargo from the bonded warehouse on which all extra storage costs will be incur if the exporter does not pay the exporter.

This same procedure should be adopted in bank charges when the exporter forwards the original documents via the bank.

6. In operations with more expressive amounts, the recommendation would be to use Letters of Credit that guarantee the exporter the payment upon presentation of the shipping documents.

7. It may, however, be noted that despite bilateral trade having doubled in last two-three years, the cases as mentioned above are comparatively few. At the same time, Indian exporters are advised to exercise due diligence and investigate thoroughly the importing company's financial status and its business credentials and enter into proper contract including clause on trade dispute resolution. Letter of Credit should also be a viable option.

8. Indian companies are further advised to direct any queries related to trade and business with Brazil by email to com.saopaulo@mea.gov.in
