

*Ricardo M. Debatin
da Silveira
rms@machado
associados.com.br*

*Gabriel Caldiron
Rezende
gcr@machado
associados.com.br*

Brazil



Brazil issues regulation to combat customs fraud

Brazil has always taken heavy measures against the non-compliance with tax and customs regulations, especially by applying heavy penalties. To this effect, the customs authorities, sometimes accompanied by the federal police, are known for carrying out rigorous inspections to check the compliance with all applicable rules.

In this context, the Brazilian Federal Revenue Service (RFB) issued Normative Instruction 1986/2020 to address the inspection procedures used to combat customs fraud. Although combatting customs fraud is nothing new, this important regulation updates procedures governed by the 2006 and 2011 rules.

Normative Instruction 1986/2020 provides for broad customs' audit powers, which may be carried out before the goods are subject to custom clearance, during such proceedings, and even afterwards, provided that the statute of limitations applicable is respected.

Based on this, the customs authority, among other measures deemed necessary, may:

- perform due diligence of inspected intervening parties or related third parties, including for the collection of documents and information;
- request a technical report to identify and quantify the imported goods, and their prices abroad;
- verify the veracity of the declaration and the authenticity of the certificate of origin of the goods, also by requesting that the importer or exporter present supporting documentation about the location, operational capacity and manufacturing process for the production of the imported goods;
- request the importer, exporter or other intervening party in the transaction presents information about the financial movement;
- require the importer, exporter or any other intervening party to present the accounting records;
- request that the company proves the origins, availability of the resources necessary for the practice of transactions; and
- propose the submission of a request for information to the customs administration of the country of any of the parties involved in the transaction if there is a treaty for that purpose.

Moreover, the RFB regulated procedures for the retention of goods for up to 120 days, as well as for the seizure of goods, when there is evidence of customs fraud.

Customs fraud in Brazil is strongly combated and subject to heavy penalties. Accordingly, based on the procedures established by Normative Instruction 1986/2020, if the customs fraud is confirmed, the liable parties may be subject to consequences such as: seizure of goods; tax assessments; administrative sanctions (for example, suspension or revocation of the right to engage in foreign trade); tax representation for criminal purposes; and representation for declaration of unfitness of registration in the National Register of Legal Entities (CPNJ).

Combatting customs fraud is to be taken seriously, and thus such procedures are considered to be good news. Nevertheless, investigations should aim at identifying and punishing actual customs fraud rather than punishing legal interpretation diversions or mistakes made by importers and exporters.