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BULLETIN

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TRADE FACILITATION IN MERCOSUR - THE MOST IMPORTANT REGULATORY ADVANCES

As mentioned in FAL Bulletin No 167, "trade facilitation" is still a relatively imprecise concept covering a wide variety of topics, such as: customs issues; technical norms relating to quality standards and control of plant and normal diseases; transport; commercial information interchange and a variety of trade-related services.

This broad scope means that an analysis of trade facilitation at the level of an individual country or trade agreement, entails obtaining data from a variety of public bodies, since they are not centralized. Studying trade facilitation in Mercosur is quite complex, given its considerable organizational decentralization and the geographic dispersal of the operations of its different bodies.¹

This edition of our Bulletin covers progress achieved on customs issues and on technical standards and quality control. For further information please contact Miguel Izam, email: mizam@eclac.cl.

I. CUSTOMS ISSUES

1. The Recife Agreement for coordinating border controls

This agreement was approved by the Mercosur Common Market Council (CMC) in 1993, as its Decision No 5, and was incorporated the following year as a protocol to the Latin American Integration Association (LAIA) as a limited scope trade facilitation agreement, the following year. Basically, it establishes technical and operational measures to regulate the functioning of integrated border controls between the four Mercosur member countries. The concept of integrated border control implies a single, shared physical infrastructure in which the neighbouring countries' customs services operate side by side. In principle this allows greater

efficiency, since all activities are concentrated in a single facility, and the time needed to complete border controls and procedures on transported merchandise can be substantially reduced.

The most important substantive elements of this Agreement relate to modes of collecting taxes and other levies; matters affecting staff performance, such as the materials, equipment and goods needed to enable them to discharge their functions, along with infringements or offences committed by them. The Agreement also states that countries will soon establish the facilities required for integrated border controls, and that these will function on a round-the-clock basis.

In 1994, the first Additional Protocol to the Recife Agreement was registered in LAIA, consisting of bylaws dealing mainly with operating procedures for regulating integrated customs controls. These include provisions for controlling merchandise export and import; the exit and entry of private cars and both passenger and merchandise transport vehicles; and migratory, phytosanitary and transport controls.

Both the Recife Agreement and its First Additional Protocol remained unchanged until June 2000, when they were revised and amended by CMC through Decisions No.4 and 5, respectively. These amendments improve the pre-existing regulations, by providing a clearer definitions on certain aspects of geographic jurisdiction between host and entry countries, while also extending thematic coverage to include the installation of communications systems for telephone, data transmission, satellite and radio.

Two additional regulations have been introduced on integrated customs controls at the border. The first of these, approved by the Common Market Group (CMG) in 1994², is mainly concerned with identifying the border posts where such controls will be established. There are 35 of these altogether on the following borders: Argentina-Brazil, Argentina-Paraguay, Argentina-Uruguay, Brazil-Paraguay and Brazil-Uruguay. By mid-2000, five of these integrated controls were functioning, although operational improvements remain to be made. The second regulations relate to the working hours of integrated control posts, limiting these to weekdays between 7 and 19 hrs.

2. Agreement on reciprocal cooperation and assistance between customs administrations for preventing and combating contraband.

This Agreement was approved in June 1997 by the Mercosur Trade Commission (CCM) as Decision No.1. It seeks to strengthen control structures in each of the four national customs administrations, with the aim of preventing illegalities on the field of, namely infringement or attempt to infringe any national customs legislation. It is regulation which can be invoked on matters of common interest involving one or more Member States. The Agreement is a reference framework that defines procedures for dealing with information requests from one customs administration to another, both of which should be Mercosur members.

The type of information to be exchanged between customs administrations concern the movement of people, goods and means of transport. The agreement also envisages the possibility of carrying out special controls during a defined period on any of the people or articles being moved, a control that can even be extended to stores of merchandise assumed to be destined for contraband traffic within or outside Mercosur. Reciprocal assistance on this issue can be granted not only for preventive reasons, but also with the aim of investigating and concerning customs violations. Mutual cooperation, as specified in the regulations, does not extend to requests for arrest, collection of duties, taxes, surcharges, fines or similar charges. Nonetheless, there is nothing to prevent the parties involved from engaging in wider ranging mutual cooperation than that specified in the regulations.

3. Asunción Programme on measures for simplifying foreign trade procedures and border procedures

Following a relatively long period of maturation, this Programme was finally approved by CCM in June 1999³ and reflects the need to streamline administrative procedures in reciprocal trade. This is a Working Programme that indicates general objectives and some specific tasks to be undertaken in covering six subject areas, it also sets precise deadlines and identifies the Mercosur organizational mechanisms that should comply with them. The first subject area covers administrative procedures carried out prior to the merchandise arriving in the primary zone. The aim here is to regulate the different foreign trade procedures relating to permits, certification and authorization from the different national bodies, and pre-shipment inspection in each of the Member States. The goal is to simplify them, ensure transparency and speed, and prevent them from being used as protectionist devices.

The second subject area deals with merchandise entering the importing country, covering aspects such as customs issues, sanitary certification, information systems and data transmission, operating procedures and working hours. The third area relates mainly to operating regulations, communications, physical installations, equipment and the human and financial resources destined for integrated controls. The next two subject areas relate to training for private-sector personnel participating in international trade operations, dealing also with the rates charged by each of the Member States for carrying out foreign trade processing and control services. The last area covers matters relating to Programme monitoring.

Lastly, in December 1999, through Decision No.11, CCM extended the deadline established in the Asunción Programme for implementing measures to simplify foreign trade and border procedures until 31 May 2000.

4. Model regulations for integrated cargo control areas

The Model Regulations for integrated cargo control areas were approved by CCM in June 2000 (Decision No.6). They derive from recommendations formulated in the Asunción

Programme on measures to simplify the functioning of foreign trade and border procedures. It amounts a generic model, and each of the integrated control areas will need to adapt it to its own particular requirements. Proposed regulations will have to be submitted for CCM approval.

The generic model deals mainly with administrative provisions relating to public officials and private-sector personnel; security issues, communications, installations, materials, goods and equipment; working hours in joint control areas; powers and responsibilities of the different national public bodies in charge of the various control phases; procedures for carrying out checks on persons and transport mode; and customs requirements relating to merchandise, particularly as regards the transmission of animal and plant diseases.

II. TECHNICAL AND QUALITY CONTROL STANDARDS

1. Mutual recognition and equivalence of control systems

This instrument as approved by GMC in December 1998 (Resolution No.77), is intended to speed up intra-Mercosur trade facilitation, with the eventual goal of adopting clear and transparent procedures for applying national technical regulations and standardized technical regulations at subregional level, including rules on sanitary and phytosanitary controls. All of this is intended to strengthen mutual confidence, in order to promote recognition of the different national systems involved, guarantee the quality of goods and services traded, and avoid costs generated by the duplication of procedures for compliance evaluation, particularly as regards product certification. The regulations envisage negotiations to reach equivalence agreements on sanitary and phytosanitary control systems, together with mutual recognition agreements on compliance evaluation procedures. For this purpose, Working Subgroup No.8 (Agriculture) and Working Subgroup No.3 (Technical Regulations), were instructed to draw up principles, guidelines, criteria and parameters for submission to GMC before July 1999.

Two points in these regulations need to be highlighted. The first changes and expands the brief of Working Subgroup No. 3 to Technical Regulations and Compliance Evaluation. The second explicitly raises the possibility that agreements signed under it can be made bilaterally, provided the other Mercosur Member States are afforded opportunities to objectively demonstrate that their control systems guarantee equivalent protection levels.

Two bilateral agreements of this type have been negotiated since the regulation came into force. The first, signed in 1998, is the Understanding between the Argentine Department of Agriculture, Livestock and Fisheries and the Brazilian Federal Ministry of Agriculture and Supplies, on simplifying inspection procedures for agriculture, livestock and fishery products. The second, signed in 1999, is the Protocol between Argentina and Brazil on compliance appraisal⁴. Although the first of these agreements does not expressly mention Resolution No.77, 1998, it does make references to Mercosur; the second expressly states that it is an

instrument based on that Resolution.

2. Principles, guidelines, criteria and parameters for recognition of equivalence in food control systems

This instrument was approved by GMC in 1999, and is based on Resolution No.77, 1998, and subsequent recommendations made by Working Subgroup No.3⁵. It states that the standardization process is basically intended as a regional trade facilitation tool, arising from the need to guarantee that food products produced and marketed in the Mercosur area receive equivalent treatment in the different Member States, in terms of approval and control procedures. Its main purpose is to safeguard public health and prevent fraud and unfair practices. The text of the instrument reiterates that any equivalence agreements signed have to be fully compatible with Mercosur regulations.

Within this legal framework, a Memorandum of Understanding was signed in November 1999 between Argentina and Brazil, covering the circulation of food products. This inter-ministerial instrument (Health Ministries) establishes commitments for simplifying sanitary control procedures at the border between the two countries for specified goods: 50 products will be subject to simplified procedures, and 25 will undergo to regular control procedures.

3. Principles, guidelines, criteria and parameters for equivalence agreements in sanitary and phytosanitary control systems

This instrument was also approved by GMC in 1999 and based on Resolution No. 77 of 1998 and subsequent recommendations made by Working Subgroup No.8⁶. Although is very similar to the previous regulation, apart from the obvious thematic differences, it is less exhaustive on detail.

4. Guidelines for drafting and revising Mercosur technical regulations

This instrument, approved by GMC in 1986, arose from the need to overcome technical barriers that obstruct regional trade, by harmonizing the technical regulations that exist between

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