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TEMPORARY ADMISSION IN BRAZIL: A TIPPING POINT FOR SIMPLIFICATION

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Abstract

This study performs a historical analysis of one of the oldest special customs regimes in Brazil: temporary admission. This regime has been applied in Brazil for more than two centuries, and it has been gradually expanded, especially in the last thirty years. In terms of special customs regimes, it is one of the most widely used in the country when considering the taxes calculated and the statements recorded, what justifies the focus.

The focus of the analysis is the evaluation of the current existing regulation in Brazil in the light of the historical evolution of its legislation, and this is a comparative study that evaluates the international scenario and the perception of operators on the latest procedural standard edited about the regime in Brazil.

Such a perception was obtained from a qualitative and quantitative research with operators who use the regime, and it sought to identify possible improvements of the new procedure in terms of simplification and adaptation to the best international practices. The collaboration between the public sector and the private sector in the construction of new procedures and the positive results obtained demonstrates that it is possible to contribute to reduce time and costs, while increasing the efficiency of the Customs in the control of the regime.

As results, this article identified that the new procedures concerning the regime reduce the bureaucracy of the temporary admission, reduce costs and save labor.

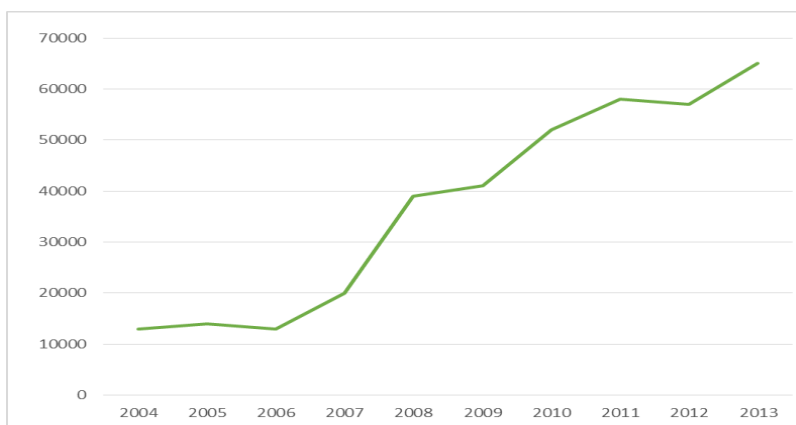
Keywords: temporary admission, customs regimes, international trade.

Introduction

In Brazil, the regime today is defined in article 353 of the Customs Regulation (Decree No. 6,759/2009), “The special customs regime of temporary admission is what allows the importation of goods that are to remain in Brazil during a set period, with total suspension of payment of taxes, or partial suspension in the case of economic use”.

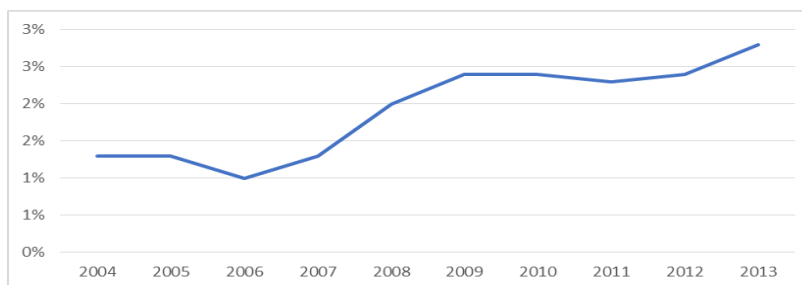
It is true that the temporary admission, in different times and places, represents an important instrument so that the temporary entry of goods is not encumbered with taxes, as, for example, for sports competitions (such as the World Cup and the Olympics), fairs and events, shows and concerts (Sosa 1996; Veliz 2001).

In Brazil, the regime of temporary admission (combining the operations with full suspension with those with economic use) accounts for a significant and growing volume of import statements (Bernardes 1999). In the last decade, the phenomenon is noticeable from the number of statements of temporary admission recorded (singly and in relation to the total of import statements) (Charts 1 and 2).



Source: RFB, 2015

Chart 1. Temporary Admission - Recorded Statements



Source: RFB, 2015

Chart 2. Temporary Admission Statements Recorded x Total Import Statements (in percentage)

In this study, in Section 1 the aim is to present the regulation in Brazil. In Section 2.1, we present the way in which the regime was modernized in Brazil, in partnership to the private sector. In Section 2.2, we aim to capture through a qualitative and quantitative research the perception of operators in relation to the treatment of the temporary admission in Brazil, especially in relation to the new procedures adopted. Ultimately, the final remarks are written in order to identify the challenges to be faced as a contribution for the evolution of the legislation and procedures on the temporary admission in Brazil.

1. The current regulation of temporary admission in Brazil

In Brazil, there are the temporary admission with total suspension of the payment of taxes on imports (in cases such as fairs and events, sports competitions, surveys and operation tests, and the temporary entry of goods of a tourist, including vehicles), and with partial suspension (for economic use). There is also the temporary admission for inward processing (in the cases of industrialization or simple fixing, repair or restoration), which is a different regime and which, as we will inform, can be partially confused with the temporary admission in IN RFB No. 1,361/2013. The debate on suspensive regimes of taxation can be seen in some studies (Berr & Trémeau 2006; Aleixo et al. 2007; Rohde Ponce 2008; Basaldúa 2011).

The Temporary admission, in Brazil, is still based on two legal provisions: Decree-Law No. 37/1966 (articles 75 to 77) and Law No. 9,430/1996 (article 79). Brazil is also part of the Istanbul Convention.

By the Istanbul Convention it is intended that the Temporary Admission regime be applied in a simplified way, but without compromising customs supervision and tax credits. Temporary imports are permitted to be supported by an international document, known as the Temporary Admission Certificate, which authorizes the movement of goods by the signatory countries of the convention, serving to control the regime and also setting up support for the collection of tax credits due in case of noncompliance with the conditions of Temporary Admission (Meira & Trevisan 2012).

The infralegal discipline of temporary admission is commanded by the Customs Regulation (Decree No. 6,759/2009) in its articles 353 to 379. The main procedural standard on the subject is the recent normative instruction (IN) RFB No. 1,361, of 21/May/2013, to which we dedicate this Section, which focuses primarily on the legal aspects.

The IN RFB No. 1,361/2013 was already born with an undeniable merit: the consolidation of the standards of its hierarchal structure on temporary admission into a single regulatory text, which results in a "legislative asepsis", with the repeal of virtually half a hundred of standards on the subject. From this, it is hoped that the measure will be extended to several other customs issues. In 2015, the IN RFB 1,600 was published. The IN RFB 1,361 was repealed, but several of the observations made in the study, by their consistency, were taken into account in the IN 1,600.

It is true that, by consolidating the various standards on the topic (and also on temporary export), the IN RFB No. 1,361/2013 ended with a complex structure, covering: (a) a Chapter on the Temporary Admission (in fact, general rules on temporary admission), dismembered into 12 Sections (containing preliminary provisions, provisions on temporary admission with total suspension of payment of taxes, on temporary admission for economic use, on temporary admission for replacement or substitution, on Statement of Responsibility, warranties, conditions and terms, granting, extension, movement of goods, extinction of the application and noncompliance with the regime); (b) a Chapter on Temporary Exportation (in fact, general rules on temporary exportation), dismembered into 5 Sections (containing preliminary provisions, provisions on the statement of responsibility, conditions and deadlines, granting and extinction of the implementation of the regime); (c) a Chapter with Special Provisions, dismembered into Sections designed to address temporary admission and exportation in specific situations (such as visits from foreign dignitaries, satellite launches, cultural goods, goods for scientific research, goods part of a luggage, ground vehicles, boats, aircraft, cargo units and packages); and (d) a brief Chapter with Final Provisions (addressing basically replacement and beneficiary, hierarchical resource, application to ongoing processes and duration).

Regarding comprehensiveness, it was important the initiative to also bring the temporary exportation to the standard, because there were several Normative Statements that addressed both subjects, and their division would mean their repeal only partially and

duplication of its provisions in distinct INs. However, the legislator was precipitated by not bringing to the text (or in some cases bringing without a correct classification) the temporary admission regimes for inward processing and temporary exportation for outward processing (Trevisan 2007, 2008a, 2008b; Meira 2002).

As the focus of this study is the temporary admission, seen in a general way, the deepening of the first chapter of the Normative Instruction is a priority, and we leave the analysis of temporary export or specific procedures for a timely occasion.

And it is important to highlight from the beginning some of the main changes made in Chapter I (temporary admission, in general) in relation to the previous standard. The Statement of Responsibility (TR) is now filled in the import statement (article 10, Paragraph 1), and not in an annexed form, which certainly provides speed and less bureaucracy to the procedure.

The period of duration of the regime, in general (article 13), is now “six months, automatically extendable for six more months,” instead of “up to three months,” extendable only once. There is no doubt that this is a measure that will significantly impact more the application of the regime. That is because, for the inspection, it is eliminated the need for an individualized period control, since all now have an equal period of 12 months, and, for the beneficiary, the maximum term previously granted is quadruplicated without the need to request an extension (the term, in practice, becomes 12 months, since the extension is automatic).

The granting is also simpler/less bureaucratic (articles 14 to 17), and the analysis is carried out during the order and the actual granting is done in the clearance.

Regarding security (article 11), which continues to be required only in rare cases, the limit for exemption on the temporary admission for economic use went from R\$ 20,000.00 to R\$ 100,000.00 (roughly US\$ 6,250 to US\$ 31,250) and there is still a provision for a global value security in the event of regular beneficiaries.

The new procedures concerning the regime simplified and reduced the bureaucracy of the temporary admission, reduced costs and saved manpower aimed to activities such as individualized controls of time limits and analyses of extensions.

In relation to the temporary admission for economic use, it seems that the legislator has not yet found a solid discipline for the subject (either in the Decree or in the Normative Instruction), as changes are constant in the definition itself of what is understood as economic use, in the calculation methodology, in the procedures for licensing, or even in the concession deadline (even if linked to a contract). Such type of regime of temporary admission, in our view, should be prioritized (and preceded by a detailed scientific/legal study) in a regulatory review.

If Brazil wants to effectively adhere to the various customs tools taken as the “best international practices,” thus better positioning itself in the scenario of international trade, it must begin by standardizing the existing regimes in the country in relation to the classification adopted worldwide, this way facilitating trade negotiations and generating predictability (which cannot be achieved only with normative instructions).

The IN No. 1,361/2013 (and the ones that may amend or replace it), always in the context of the role assigned by the standards of higher hierarchy, must operationalize a fluid and simplified regime, thus enabling the Customs to exercise more effectively its task of control and the operators to save costs and time in the customs procedures. And the legislator seems to have achieved success in this task, even in the face of the problems mentioned herein (mainly terminological confusion and systematization).

2. The vision of operators on the current regulation

The perception of operators on the new procedures regarding the Temporary Admission in Brazil was obtained from a qualitative and quantitative research. However, the participation and the contribution of operators in relation to such proceedings go back to the alliance that was born over a decade ago. The partnership, which was important to contemplate the pillar 'Customs-WCO's Vision Company' for the modern Customs of the 21st century, was even more significant specifically in relation to the Temporary Admission, and the new procedures had a strong influence from the work carried out by PROCOMEX (the private sector alliance to push the reforms), often with the joint participation of RFB (Federal Revenue Service in Brazil).

2.1 PROCOMEX Alliance to Modernization of Brazilian Foreign Trade and Brazilian Federal Revenue Service (RFB): Partnership History (a brief)

In 2003, in the UNCTAD regional conference held in Rio de Janeiro, the idea of a Pro-Modernization of the Foreign Trade Alliance (PROCOMEX) was seeded. The PROCOMEX Alliance's vision was that Brazil could be more competitive if it presented more efficient customs processes, without neglecting the protection of national interests. This Alliance would seek a public-private partnership so that proposals for improvements would be formulated together considering the Customs and the private sector (Mein 2003).

In 2004, the PROCOMEX Alliance was officially launched as a civil, apolitical and non-partisan initiative, which would bring together business entities, such as exporters, importers, cargo agents, cargo transporters and customs brokers (at that time, 54 business entities), with the mission of striving to improve the competitiveness of Brazil through the implementation of a modern and efficient customs system, seeking to develop solutions for different customs issues existing in Brazil and with the proposal of working together with the public authorities.

In 2005, the PROCOMEX Alliance Institute, headquartered in the city of São Paulo, was created to be the operational arm of the Alliance. Up to that moment, the business entities as a whole saw the Brazilian Federal Revenue Office as a link that did not facilitate the processes related to foreign trade. Thus, the Institute focused its efforts on working initially with the RFB, with the purpose of establishing a partnership to achieve competitiveness gains for the country.

As a result of these partnership and collaboration efforts, the PROCOMEX Alliance Institute and the Government, through the RFB, signed in 2006 an agreement to implement joint actions in the area of foreign trade, making PROCOMEX the representative of the private sector on matters related to customs flows.

The working groups were delivering their products as of 2008, and many of these results had ideas and models mirrored in foreign best practices. These results showed just what was desired, without explaining the steps which should be developed and implemented in order to achieve the environment aimed by the private sector.

At the beginning of 2011, the Office of the RFB received representatives of the PROCOMEX Alliance for an alignment meeting, in which the results of the work so far developed by the groups were presented. With the support of the RFB for the implementation of the proposals for improvements in the customs flow, the "Temporary Admission" was identified as the first subject to be mapped.

The mapping process was done using the Kaizen methodology, in which a map of the processes is done 'as is' and later 'to be', with the wide participation of persons effectively involved in the day-to-day operations of foreign trade (Stefanic, Tosanovic & Hegedic 2012).

The maps "as is" and "to be" were presented to RFB and other governmental authorities, who appointed a high-level technical team to join the work team, achieving new

maps that represent the proposals elaborated jointly and ratified by the private sector and the public sector, and which aimed at the efficiency of the customs procedures and the protection of national interests with simplified customs procedures, more modern legislation and in line with international best practice and agreements, mainly derived from the WCO.

In 2012, a report on the modernization of the process of temporary admission was elaborated, which heavily impacted on the publication of the Normative Instruction No. 1,361, of 21/May/2013 (analyzed in Section 3 of this study).

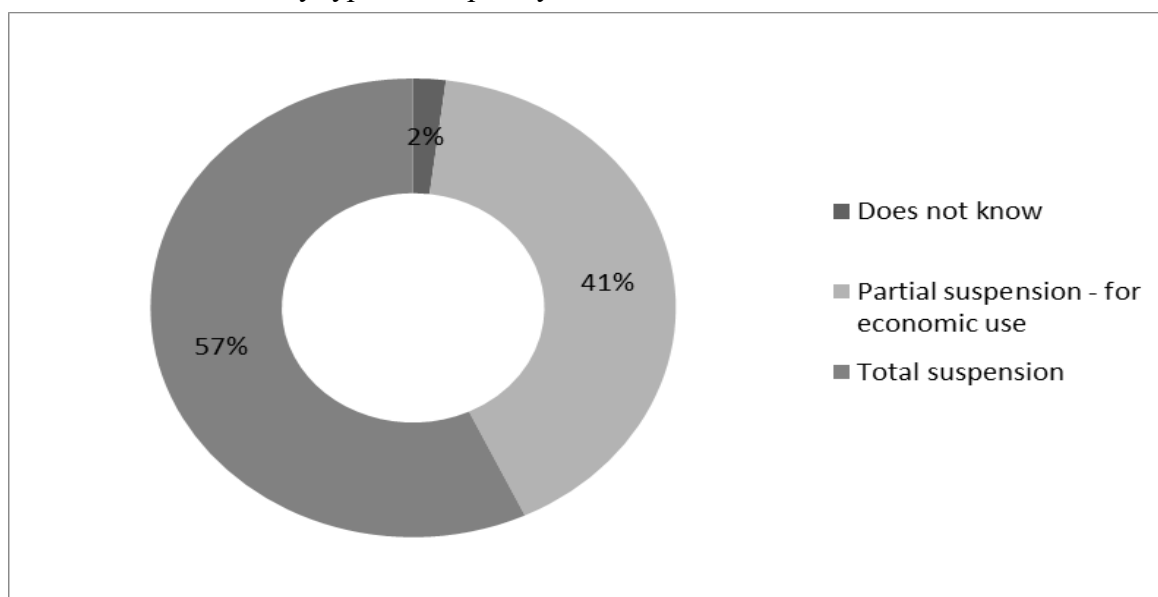
2.2 Field Research considering users of the Regime

To obtain data from the perspective of the economic operators, users of the regime of temporary admission, we carried out a field survey. The method of data collection was a structured questionnaire with open and closed questions and the results are shown below.

The main objective of this research was to evaluate the perception of the economic operator on the changes brought by IN RFB No 1,361/2013. The first version of the questionnaire was validated in a group of companies in the automotive sector on a random basis. The revised questionnaire was sent digitally to the economic operators (importers, exporters, customs brokers and trading companies) who participated, from 2004 to 2014, in the meetings for the mapping process conducted by PROCOMEX. The questionnaire was forwarded and tabulated in the months of August and September, 2014.

The universe of the research considered 342 participants, such as importers, exporters, customs brokers and trading companies, which use the regime of temporary admission. Of these 342, forty-two (42) answered the questionnaire, which makes a return rate of 12.2%.

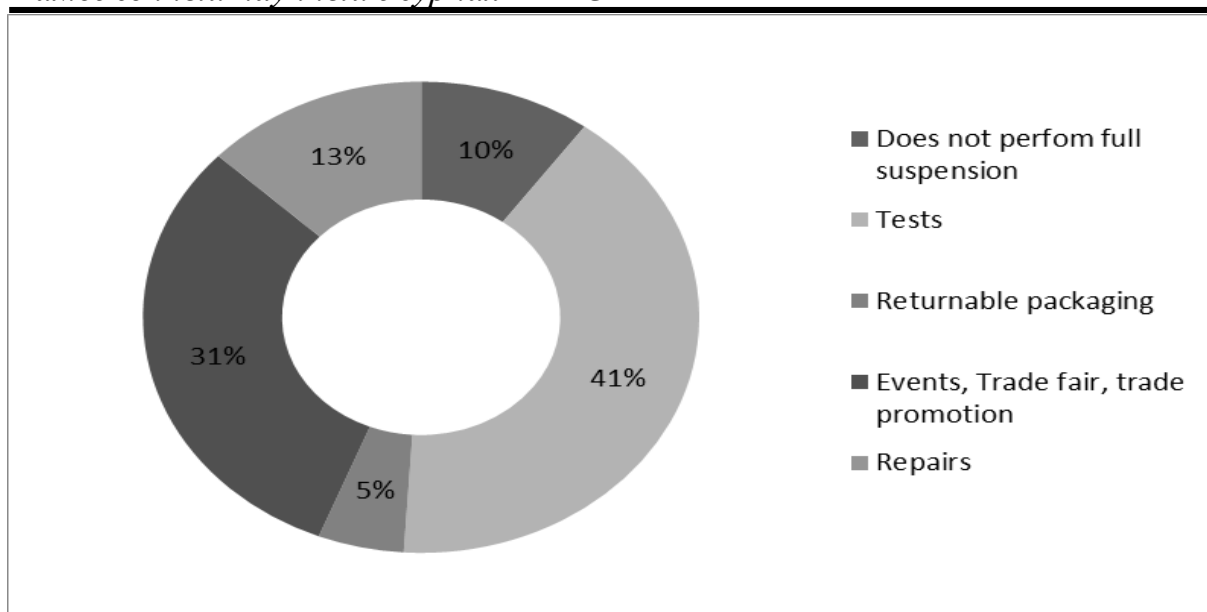
The sample had respondents from the South and Southeast States of Brazil (most developed are in Brazil). The predominance of the position of the respondents is related to director of operations, import manager, import/export analyst and customs broker. Figure 1 shows the distribution by type of temporary admission.



Source: Own elaboration

Figure 1. Types of Temporary Admission

We can see in the figure the predominance of the use of the regime of “total suspension.” In this type, we can note the predominance (72%) of the use for tests and events (article 5, I and VI, of IN RFB No. 1,361/2013), as we can see in Figure 2.

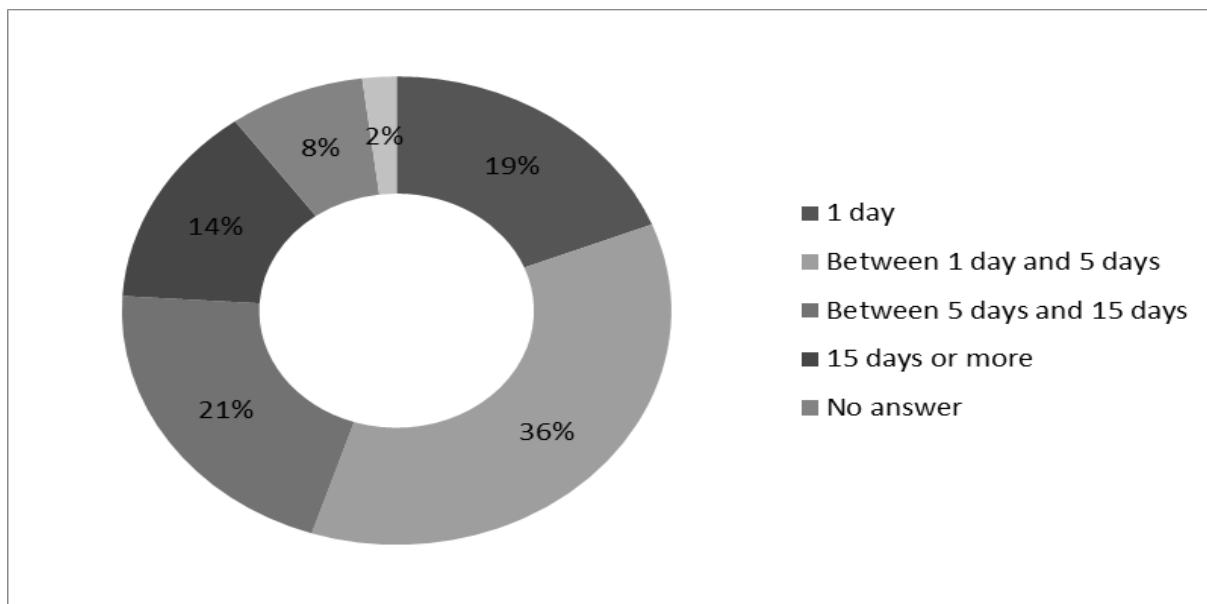


Source: Own elaboration

Figure 2. Distribution of goods admitted in the regime with "full suspension"

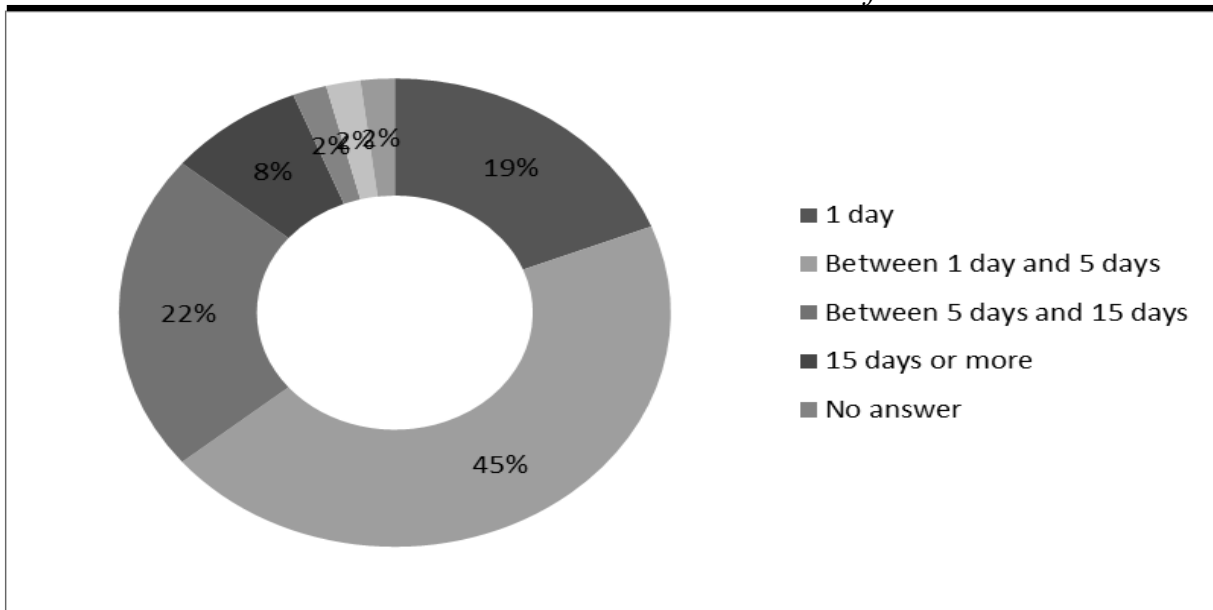
In relation to the time of formalization (“assembly”) of the administrative process and obtainment of the granting of the regime, before and after the new IN, Figures 3 and 4 illustrate the differences, and taking into account the periods of 1 to 5 days and 15 or more days, we can see that there has been a reduction on the processing time in the obtainment of the regime with IN/RFB No. 1361/2013.

Still in relation to the perceived time saving with IN RFB No. 1,361/2013, we point what steps were perceived as having an increased reduction in time in Figure 5.



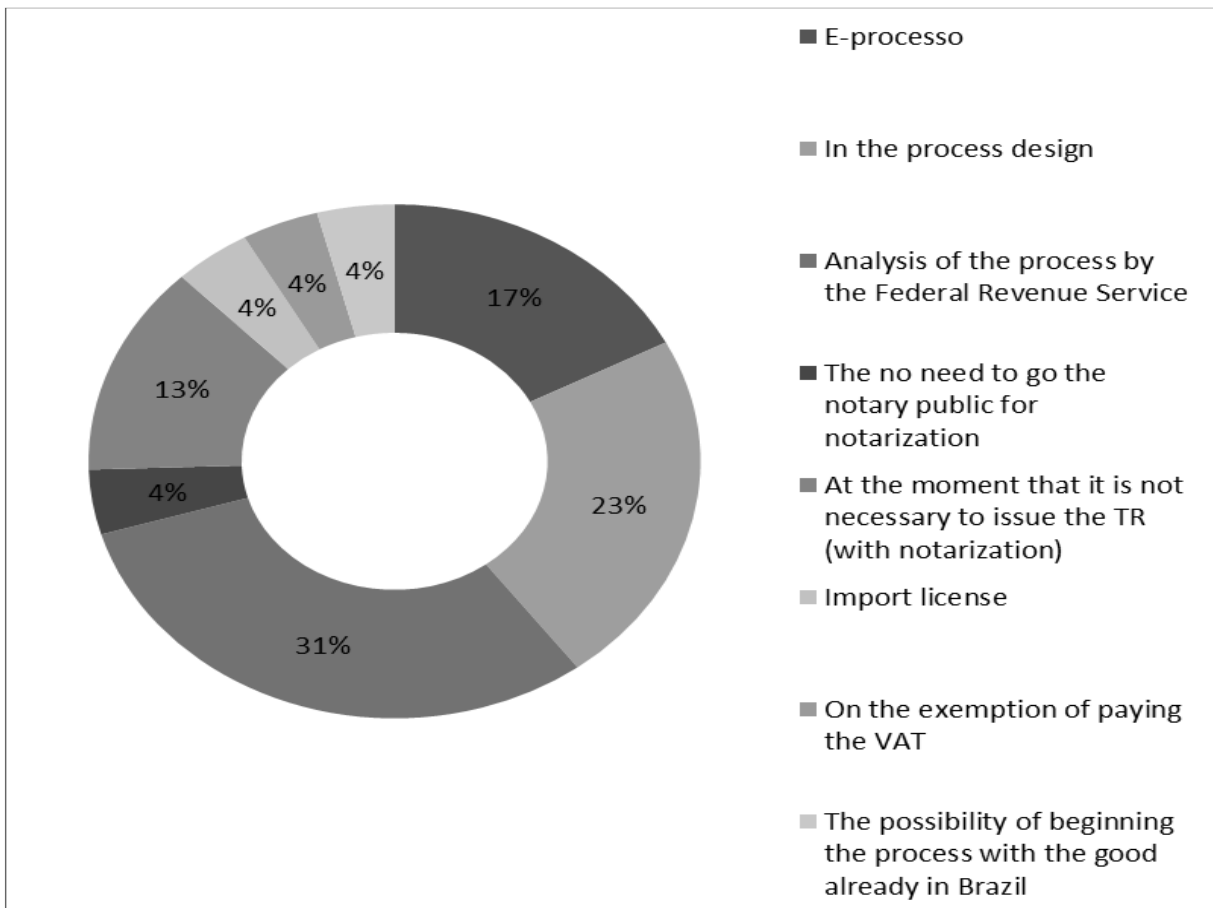
Source: Own elaboration

Figure 3. Average time for granting of the regime before IN RFB 1361/2013



Source: Own elaboration

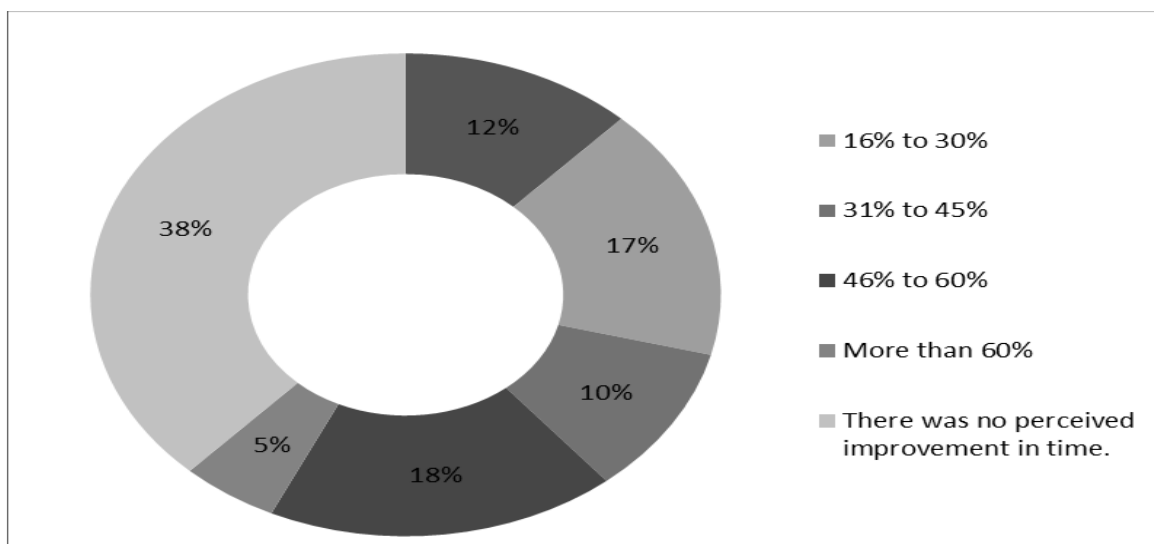
Figure 4. Average time for granting of the regime after IN RFB 1361/2013



Source: Own elaboration

Figure 5. Steps in which there was an increase in the perceived reduction in time

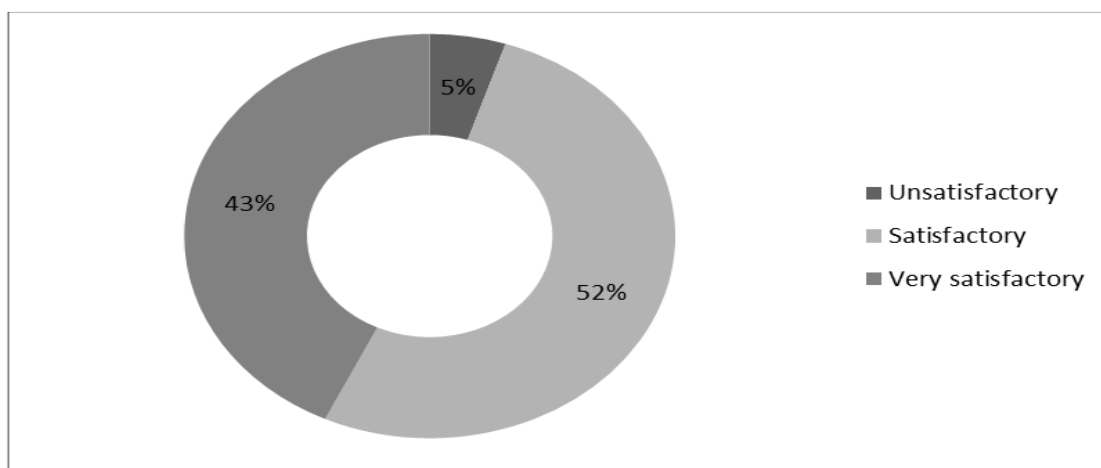
The adoption of the e-process (or digital process) allows for the immediate consultation and custody of all documents without the need for their resubmission at different stages and units of the RFB. Moreover, 57% identified that there was a reduction in time in several steps of the process, as is the case of the exemption of the need for notarization in the Statement of Responsibility (TR) and the incorporation of the Regime Request Application (RCR) in the e-process. Figure 6 summarizes the total perception of the reduction in time.



Source: Own elaboration

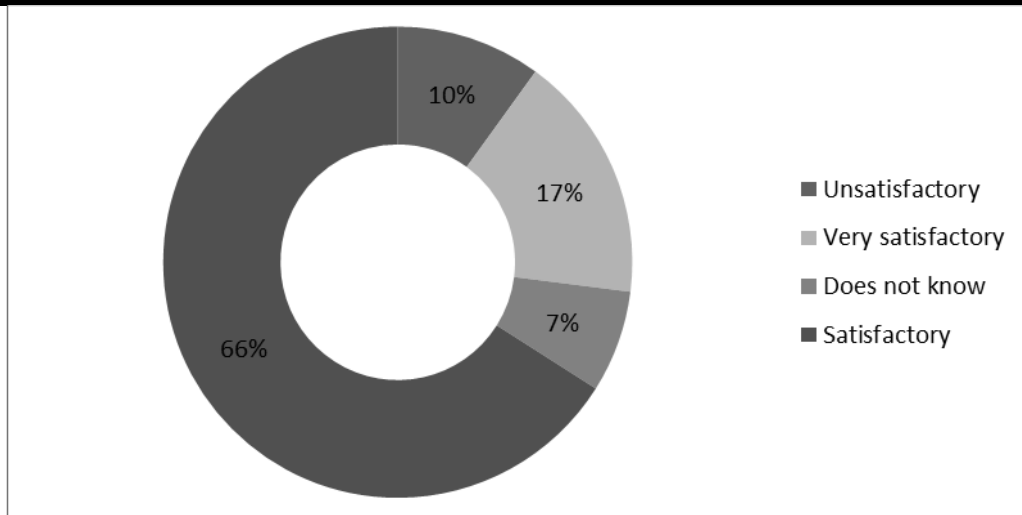
Figure 6. General perceived reduction in time compared to previous legislation

Considering the degree of satisfaction regarding the increase in the granting period of the regime, from (up to) three months, extendable only once, to six months, extendable automatically for 6 more months (article 13 of IN RFB No. 1,361/2013), we can note that 95% of the respondents approved this measure, as shown in Figure 7. And, regarding the request for extension of the granting deadline of the regime, Figure 8 shows that 84% of the respondents also approved of the way the process is conducted.



Source: Own elaboration

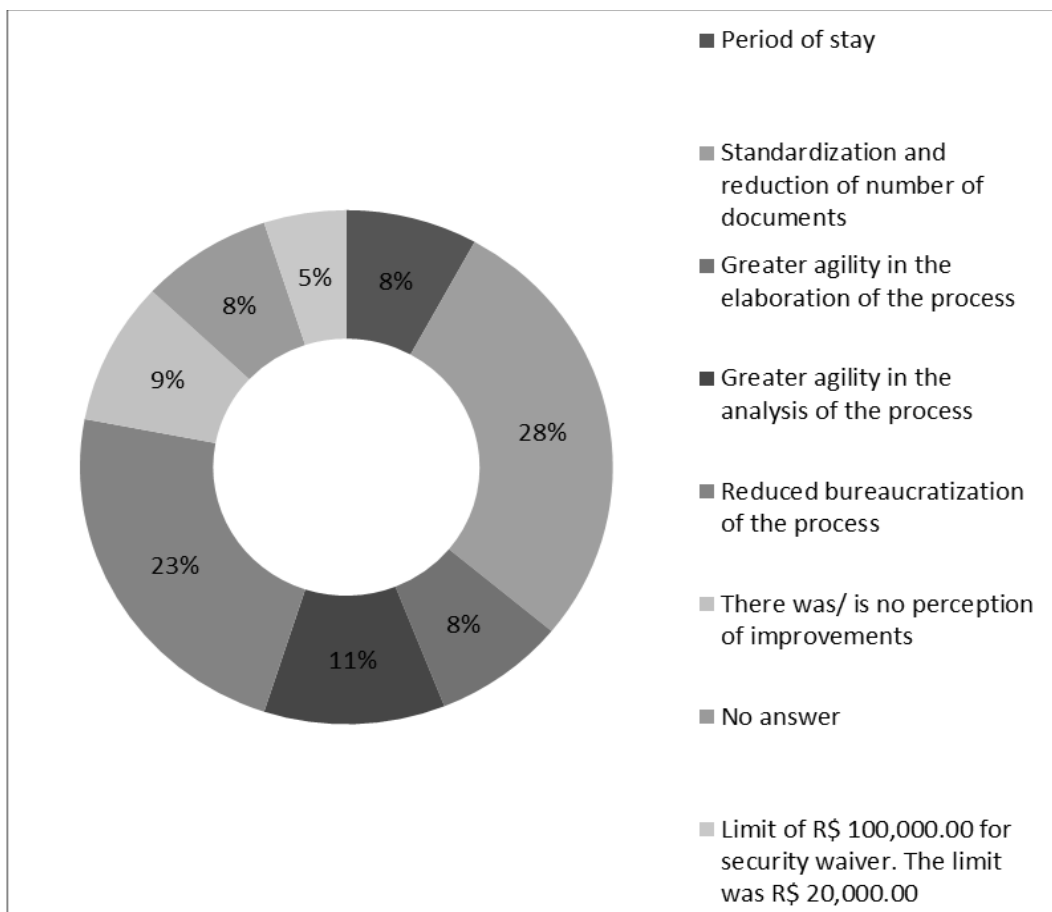
Figure 7. Perception in relation to the increase in the granting deadline of the regime



Source: Own elaboration

Figure 8. Perception on the extension of the deadline with the IN 1361

Regarding the other perceived improvements, Figure 9 illustrates that 83% of the respondents identified improvements related to the decrease in the number of documents

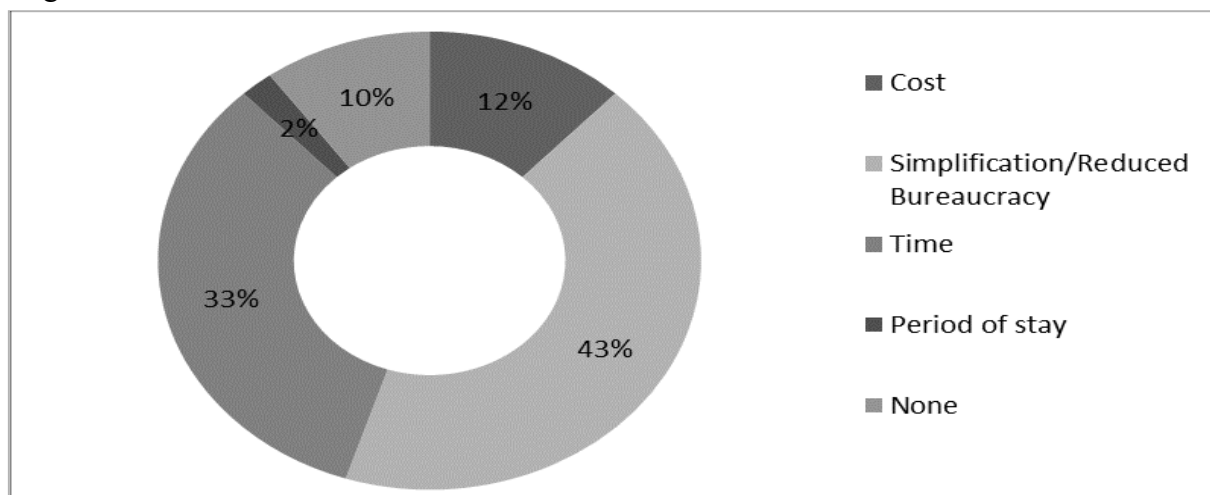


Source: Own elaboration

Figure 9. Perception of the improvements in the systematic of the IN 1361

required and standardization (28%); reduced bureaucracy in relation to the e-process and automatic extension (23%); greater agility in the analysis of the process by the RFB (11%); greater agility in the process design, considering the requirements of the new IN (8%); increased granting deadline of the regime (8%); and, increased value required for security waiver (5%). These improvements are in line with article 15 of the Istanbul Convention, in which it states that "each contracting party will reduce to a minimum the customs formalities."

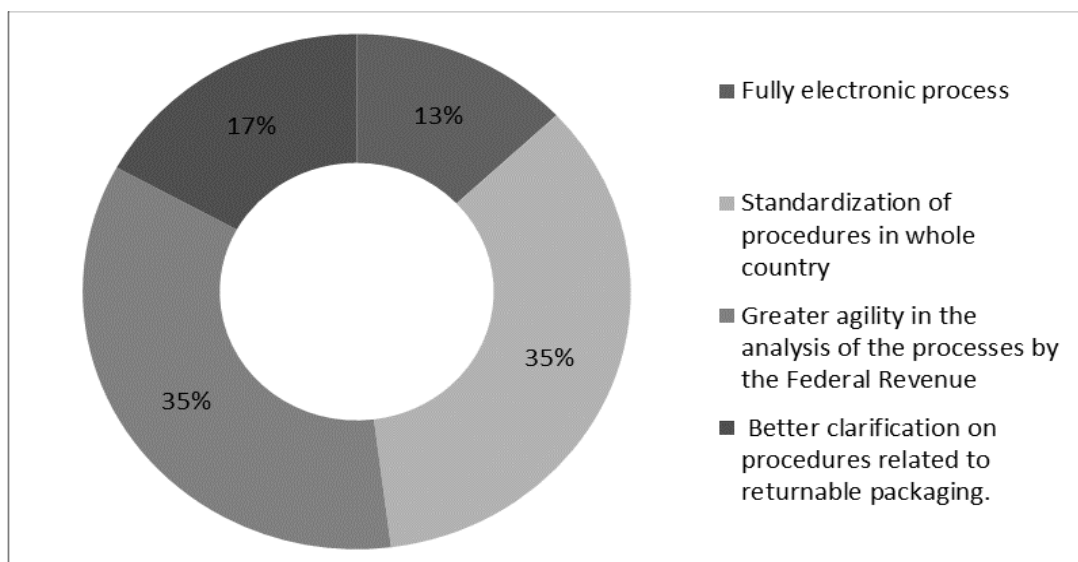
The perceived set of simplification measures (Figure 10) can be considered to be in line with aspects related to trade facilitation, such as the effective simplification (identified by 43% of the respondents) and the reduction in time (33%) and cost (12%), as shown in Figure 10.



Source: Own elaboration

Figure 10. Perception of the differences in the processes since the IN 1,361

As an example, considering the improvements that can still be implemented and that were not included in the IN RFB No. 1,361/2013, we highlight the use of 100% paperless procedures and the standardization of procedures among RFB units (Figure 11).



Source: Own elaboration

Figure 11. Perceived improvements that can still be implemented

The issue about the adoption of differentiated procedures in the RFB units tends to be minimized with the standardization of procedures in digital process and with the creation and improvement of the internal manuals of RFB.

In summary, improvements were perceived with the IN RFB No. 1,361/2013 in terms of agility, cost reduction, simplification and reduced bureaucratization, besides flexibility in terms of concession term and limits for exemption of securities in the special customs regime of temporary admission. This process was the result of the building of a relationship of partnership between the public sector and the private sector, promoting good practice, international standards, dialogue and empathy between the parties. The IN represents, in the context shown here, the first result of the partnership between the public sector and the private sector, in terms of redesigned customs processes, with benefits for all parties involved.

Finally, the IN can also cause a catalyst effect in terms of improvements in associated areas, such as the documentation of the internal procedures of the RFB, the cooperation between other public agencies and the expansion of the mapping methodology for the modernization of other normative acts.

Summary and concluding remarks

It should be noted that the recent changes made by IN RFB No. 1,361/2013 signal an alignment with the best international practices. If on one hand the standard was built with procedural experience in the private sector (as evidenced by the participation of the PROCOMEX Alliance), making it heavily operational and simplified, on the other it had low editorial and legal systematization quality.

The main challenge thus appears to come down to giving continuity to the progress in the alignment with simplified international guidelines, which reflect not only the "best practices," but the very historical evolution of the temporary admission in Brazil. And the participation of the private sector in the process is necessary, besides recommended, so that the new routines are effectively incorporated (and not simply imposed) to operators, thus contributing to the spontaneous compliance and consequently reducing the inspection work.

On the number of editorial legal inadequacies, it is appropriate to point out that they have been corrected in new standards (the Normative Instruction of May 2013 has already been amended in three occasions, and seems to be headed to a fourth and substantial build), this way adapting the infralegal standard text to the classifications and terms set out in the standards of higher hierarchy, such as the Customs Regulation.

The final result and its perceptions are positive, with reduced time and costs and simplification of procedures, as evidenced by this research. The normative consolidation initiative together with the procedural simplification is always representative of a modern vision of the Customs, aligned both to the best international practices and the internal objectives of the Customs (and RFB) and the concerns of the Brazilian business community.

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