

No. 33601

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**BRAZIL
and
PARAGUAY**

**Agreement on the restitution of stolen motor vehicles. Signed
at Brasília on 1 September 1994**

Authentic texts: Portuguese and Spanish.

Registered by Brazil on 1 March 1997.

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**BRÉSIL
et
PARAGUAY**

**Accord pour la restitution de véhicules automobiles volés ou
endommagés. Signé à Brasília le 1^{er} septembre 1994**

Textes authentiques : portugais et espagnol.

Enregistré par le Brésil le 1^{er} mars 1997.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL AND THE GOVERNMENT OF THE REPUBLIC OF PARAGUAY ON THE RESTITUTION OF STOLEN MOTOR VEHICLES

The Government of the Federative Republic of Brazil and
The Government of the Republic of Paraguay
(Hereinafter referred to as “the Contracting Parties”),

Considering the need to make coordinated efforts for the suppression of the illicit traffic in motor vehicles,

Have agreed as follows:

A. PRELIMINARY PROVISIONS

Article I

1. By virtue of this Agreement, it is established that motor vehicles originating in or proceeding from the territory of one of the Contracting Parties, which have entered the territory of the other Contracting Party unaccompanied by documents establishing their original ownership, or which appear to have entered the country in an irregular manner, shall be impounded and placed, within two working days, in the custody of the local customs authority.

2. For the purposes of paragraph 1 above, the impounding of vehicles originating in or proceeding from the territory of one of the Contracting Parties shall take place:

(a) Under a judicial order requested by the owner of the vehicle or his surrogate or representative;

(b) As a result of a traffic check carried out by the police or customs authorities of the other Contracting Party;

(c) At the formal request of the consular authority of the country in which the vehicle was stolen.

B. RECOVERY BY LEGAL PROCESS

Article II

1. Individuals or corporate bodies claiming recovery of a motor vehicle as being their stolen property shall petition the judicial authority of the territory in which the vehicle is located, either directly or through a representative, surrogate or duly authorized agent, or through the competent authorities of the Contracting Party of which they are nationals or in the territory of which they have their domicile. The claim shall be submitted within a period of twenty (20) months after the report has been filed with the police authority at the place where the theft occurred, during

¹ Came into force on 18 November 1996 by notification, in accordance with article XI.

which period the motor vehicle may not be sold. Upon expiration of this period, their right to submit such a claim under this Agreement shall lapse.

2. The petition for recovery shall be accompanied by the following documents, authenticated by the consular authority of the requested country:

(a) The original title of ownership of the vehicle or an officially authenticated copy thereof;

(b) A police report of the theft of the vehicle in the country of origin;

(c) In the case of insurance companies, a certificate of payment or transfer of rights of ownership together with a sum deposited on order of the court, as bond for legal costs, of the equivalent in the currency of the country of US\$ 500 (five hundred). If the applicant lacks the financial means to make such deposit, the consulate of the requesting country shall issue an affidavit of poverty in order to expedite the process of recovery through the Office of the Advocate for Poor and Absent Persons in the Republic of Paraguay, and the Public Advocate, in the Federative Republic of Brazil.

3. The claimant shall, personally or through his agent, or through the consular authority of the country of which he is a national or in which he is domiciled, petition the judicial authority of the territory in which the vehicle is located to trace and impound it on the basis of the documents submitted and, where possible, shall furnish the name and address of the person in possession thereof.

4. Upon receipt of the petition, the judge shall order the vehicle to be seized and placed within 2 (two) working days in the custody of the local customs authority. The impounding of the vehicle shall be based on an inventory and in no circumstances shall it be surrendered to either of the litigants or to any third party or institution as depository. The impounding of the vehicle shall be effected by means of a receipt which shall state the characteristics, accessories and overall condition of the vehicle.

5. Once the vehicle has been seized, the judge involved shall give notice of the fact within 2 (two) working days to the consular authority of the country of origin of the vehicle and to the person requested in order to enable the latter, within no more than 3 (three) working days, to submit the original documents certifying that he has title to the vehicle and that it entered the country legally.

6. The judge shall request the customs authority to provide within no more than 10 (ten) working days, without prejudice to the course of the proceedings, information regarding the circumstances under which the vehicle entered the country.

The judge shall request the Register of Motor Vehicles to provide the vehicle's registration certificate in order to verify that it is legally registered in the name of its holder or owner.

7. Upon expiry of the period referred to in paragraph 5 of this article, the case shall be tried by summary procedure and the judge shall order the vehicle to be surrendered immediately to the party found to have title to it, without further formalities or costs.

The appropriate authorities of the Contracting Parties shall set up machinery to establish preferential rates for the safekeeping of the vehicle.

8. This procedure for the restitution of the vehicle shall be implemented as rapidly as possible under the legislation of the Contracting Party in whose territory it is applied. No form of defence other than that established in this Agreement, and no delaying tactics, shall be permitted. In every case, the judge shall rectify any defects in the procedure in the best possible manner in favour of the parties and the procedures for implementation shall be concluded within 60 (sixty) working days.

9. Once his decision has become executory, the judge shall order the restitution of the vehicle to the owner, his surrogate or his representative, and shall send an official communication to the relevant consular authority or to the customs authority of the Contracting Party of which such owner, surrogate or representative is a national or in which he is domiciled, thereby ensuring that the vehicle leaves the territory of the country requested. The surrender of the vehicle shall take place with the participation of a customs official as far as the frontier designated by the customs authority of the requested country, where the customs authority of the requesting country shall receive it and issue a clearance certificate for the vehicle into its territory.

10. If the decision does not grant the request, the judge shall order the appropriate measures in accordance with national legislation, and the Contracting Parties shall recognize the right of ownership arising from the application thereof.

C. RECOVERY BY ADMINISTRATIVE MEANS

Article III

1. Recovery by administrative means shall take place where the theft of a vehicle is reported immediately and the person affected provides correct information on the vehicle and on the person illegally holding it within 30 (thirty) working days of the theft.

2. The competent police and/or customs authorities of either of the Contracting Parties shall seize the vehicle claimed. The said vehicle shall immediately be surrendered to the customs authority of the territory in which it was found and a certificate of surrender and inventory describing its characteristics, accessories and condition shall be prepared.

3. Upon receipt of the vehicle, the customs authority shall immediately arrange for the preparation of an administrative indictment and shall notify the consular authority of the other Contracting Party which, in turn, shall notify the presumed owner of the vehicle that it has been seized in the territory of one of the Contracting Parties, informing him of the procedures for recovering it within 20 (twenty) working days. The customs authority shall also subpoena the owner of the vehicle that has been seized to submit, within no more than 3 (three) working days, the original documents attesting to the legal status of the vehicle. If the documents are not submitted within the said time limit, the vehicle shall be surrendered directly in accordance with the procedures set forth in this Agreement.

4. The owner or his surrogate, his representative, the duly authorized agent or the consular authority of the Contracting Party of which he is a national or in which he is domiciled shall submit the relevant documentation within 40 (forty) working days from the date of notification to the respective consular authority.

Upon receipt of the documentation and subject to its being considered adequate by the customs authority, the vehicle shall within 5 (five) working days be delivered

to its owner, his surrogate or his representative, directly or through the consular, customs or police authorities of the Contracting Party of which he is a national or in which he is domiciled.

5. Where the owner of the seized vehicle is unknown, the customs authority shall, 5 (five) times in 10 (ten) days, place notices in a widely circulated national newspaper calling upon those concerned to exercise their rights within 10 (ten) working days of the date of the last such notice. The notices shall specify all the identifying characteristics of the vehicle, such as its make, model, colour, engine and chassis number, etc.

D. SURRENDER OF THE VEHICLE

Article IV

1. In the case of the owner, he shall receive the vehicle directly from the customs authority at the premises where the vehicle is impounded, together with the appropriate documentation.

2. In the case of the owner's surrogate, representative or agent, the vehicle shall be transferred, for the purpose of surrender, accompanied in all cases by a customs official, to the frontier designated by the customs authority of the requested country, where the customs authority of the requesting country shall receive it and issue the clearance certificate for the vehicle into its territory. The certificate shall be filed as the final document relating to the case.

Article V

If no person has come forward to exercise his right within the time limit specified in this Agreement, the competent authorities shall take appropriate measures in accordance with their national legislation and the Contracting Parties shall recognize the right of ownership arising from the application thereof.

Article VI

If any act or decision by an administrative authority is submitted to the competent judicial authority, the proceedings shall be governed by the rules set forth in this Agreement.

E. APPEALS

Article VII

The ruling of first instance may be appealed within not more than 3 (three) working days. If so, the records of the case shall be transmitted to the higher court without further formalities, in order that a final determination may be made within 5 (five) working days.

F. EXPERT APPRAISAL

Article VIII

1. Where there are indications that serial numbers have been tampered with or that identifying parts of a vehicle have been replaced, the judge shall request the assistance of an expert, without prejudice to the right of the interested parties to propose their own experts. The experts proposed must be licensed by the manufac-

turer of the vehicle to be inspected, or by a firm representing the make of vehicle. The inspection must be made in the presence of the person specifically designated by the consular authority of the country of which the interested party is a national or in which he is domiciled. In no case may the vehicle leave the bonded customs premises for the purposes of the inspection. In all cases, the experts shall submit their respective reports within 3 (three) working days.

2. The reports shall be based on the identification data furnished by the manufacturer of the vehicle, which shall be submitted to the judge after authentication by the consulate of the country of origin of the vehicle, which shall request the manufacturer or representative of the make of vehicle to confirm, within 30 (thirty) working days, whether the reports submitted are in accordance with the technical schedules drawn up by the manufacturer.

G. TIME LIMITS

Article IX

1. It is understood that all time limits specified in this Agreement shall be considered as procedural time limits prescribed by law.

2. Where not specified in this Agreement, time limits shall, in all cases, be the shortest provided for in the legislation of the Contracting Party in which the proceedings are conducted.

H. FINAL PROVISIONS

Article X

Any judicial or administrative procedures regarding the theft of vehicles originating in or proceeding from the territory of one of the Contracting Parties and located in the territory of the other Contracting Party which are in progress on the date of entry into force of this Agreement shall be governed by its provisions.

Article XI

1. This Agreement shall enter into force on the date on which each Contracting Party notifies the other through the diplomatic channel of the completion of the procedures required by its national legislation in force.

2. Either Contracting Party may terminate it at any time by notification in writing addressed to the other Contracting Party through the diplomatic channel, subject to six months' notice.

DONE at Brasília on 1 September 1994, in two originals, in the Portuguese and Spanish languages, both texts being equally authentic.

For the Government
of the Federative Republic
of Brazil:

CELSO L. N. AMORIM
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For the Government
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LUIS MARÍA RAMÍREZ BOETTNER
Minister for Foreign Affairs