

# BUSINESS GUIDE TO TRADE REMEDIES IN BRAZIL

ANTI-DUMPING, COUNTERVAILING  
AND SAFEGUARD LEGISLATION,  
PRACTICES AND PROCEDURES



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**Street address:** ITC,  
54-56, rue de Montbrillant,  
1202 Geneva, Switzerland

**Postal address:** ITC,  
Palais des Nations,  
1211 Geneva 10, Switzerland

**Telephone:** +41-22 730 0111

**Fax:** +41-22 733 4439

**E-mail:** [itcreg@intracen.org](mailto:itcreg@intracen.org)

**Internet:** <http://www.intracen.org>

BUSINESS GUIDE TO  
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## ABSTRACT FOR TRADE INFORMATION SERVICES

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### INTERNATIONAL TRADE CENTRE

Business Guide to Trade Remedies in Brazil: Anti-dumping, countervailing and safeguards legislation, practices and procedures.

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Guide to trade remedy procedures (anti-dumping, countervailing and safeguard), with particular reference to trade remedy legislation and practices in Brazil – provides a description of the WTO Agreements related to trade remedies; provides an overview of the procedural aspects of anti-dumping and countervailing investigations in Brazil; outlines elements involved in anti-dumping and countervailing investigations, as established by the Brazilian anti-dumping and subsidies and countervailing measures laws; reviews safeguard measures in Brazil, covering both substantive and procedural aspects; appendices contain overviews of anti-dumping and safeguard investigations; and decrees regulating the administrative procedures regarding the imposition of countervailing and anti-dumping measures; includes bibliography (p. 325).

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ITC, Palais des Nations, 1211 Geneva 10, Switzerland

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## Foreword

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Under the WTO Agreements, Members have the right to apply trade remedies in the form of anti-dumping, countervailing or safeguard measures subject to specific rules. The importance of trade remedies was highlighted at the WTO Ministerial Conference in Doha, where Members agreed to negotiations aimed at clarifying and improving disciplines under the 'Agreements on Implementation of Article VI of GATT 1994 and on Subsidies and Countervailing Measures ...' (Paragraph 28 of the Ministerial Declaration).

From 1995 to 2008, more than 3,400 anti-dumping investigations were initiated worldwide. For almost three-quarters of these cases, exporters in developing and transition countries were the main targets. According to information from the International Trade Centre's Business and Trade Policy programme, businesses in developing countries and transition economies engaged in the production and exportation of 'sensitive' products consider anti-dumping investigations, or the threat thereof, as a significant access barrier to a number of major markets.

Parties involved in anti-dumping and other trade remedy proceedings, namely exporters, importers and domestic producers of the product in question, often know very little about the procedures and what they entail. They are unaware of the basic substantive rules of the relevant WTO Agreements or implementing national legislation, have very little knowledge of their rights, and are thus ill-equipped to defend their business interests. There has been a growing demand for publications explaining to business people the essential laws applicable and practices followed in such proceedings.

It is in response to this demand that the International Trade Centre has published this series of Business Guides to Trade Remedies. The five publications of this series concern the relevant trade remedy rules and practices in Canada, the European Community, the United States of America, Brazil, South Africa and the Southern African Customs Union. The first three of these are the biggest traditional users of trade remedy measures. However, over the last few years, an increasing number of developing countries and transition economies have begun to implement trade remedy actions at an accelerated pace.

This volume focuses on Brazil, which has over recent years increased the usage of trade remedy measures. Its main objective is to highlight those aspects of the law and practice of Brazil and the appropriate provisions of the relevant WTO Agreements that may be of practical interest to business managers, exporters and importers of developing countries and transition economies. The guide is not for specialists; particular emphasis is therefore given to practical definitions, problems and recommendations.



Patricia Francis  
Executive Director  
International Trade Centre



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Unless otherwise specified, all references to dollars (\$) are to United States dollars, and all references to tons are to metric tons.

The following abbreviations are used:

ABEPET	Brazilian Association of the Producers of PET Packaging ( <i>Associação Brasileira dos Fabricantes de Embalagens PET</i> )
ABIQUIM	Brazilian Association of the Chemical Industry ( <i>Associação Brasileira da Indústria Química</i> )
ABREB	Brazilian Association of Resellers of Toys ( <i>Associação Brasileira dos Revendedores de Brinquedos</i> )
ABRINQ	Brazilian Association of the Producers of Toys ( <i>Associação Brasileira dos Frabricantes de Brinquedos</i> )
AD Agreement	Agreement on the Implementation of Article VI or Anti-dumping Agreement
AD Code	1967 Agreement on the Implementation of Article VI or Anti-dumping Code
ADP Committee	Committee on Anti-Dumping Practices
AFRMM	Additional Freight for Renovation of the Merchant Marine ( <i>Adicional de Frete para a Renovação da Marinha Mercante</i> )
AL	State of Alagoas
ANVISA	National Sanitary Supervision Agency ( <i>Agência Nacional de Vigilância Sanitária</i> )
APEX	Agency for Promotion of Exports from Brazil ( <i>Agência de Promoção das Exportações do Brasil</i> )
BNDES	National Bank for Economic and Social Development ( <i>Banco Nacional de Desenvolvimento Econômico e Social</i> )
CACEX	Foreign Trade Bureau ( <i>Carteira de Comércio Exterior</i> )
CAMEX	Trade Chamber ( <i>Câmara de Comércio Exterior</i> )
CCDC	Consultative Committee on Trade Remedies ( <i>Comitê Consultivo de Defesa Comercial</i> )
CGAN	General Coordination for Support to the Exporters, Negotiations and Rules ( <i>Coodenação-Geral de Apoio ao Exportador, Negociações e Normas</i> )
CGAP	General Coordination for Agricultural Products ( <i>Coodenação-Geral de Produtos Agropecuários</i> )
CGIN	General Coordination for Intermediary Products ( <i>Coodenação-Geral de Produtos Intermediários</i> )
CGMA	General Coordination for Metals and Finished Products ( <i>Coodenação-Geral de Metais e Produtos Acabados</i> )
COMEX	Executive Committee for CAMEX Management ( <i>Comitê Executivo de Gestão da CAMEX</i> )

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CPA	Customs Policy Commission ( <i>Comissão de Política Aduaneira</i> )
CTIC	Technical Coordination of Trade Exchange ( <i>Coordenação Técnica de Intercâmbio</i> )
CTT	Technical Coordination of Tariffs ( <i>Coordenação Técnica de Tarifas</i> )
DECEX	Department of Trade ( <i>Departamento de Comércio Exterior</i> )
DECOM	Department of Commercial Defense ( <i>Departamento de Defesa Comercial</i> )
DEINT	Department of International Negotiations ( <i>Departamento de Negociações Internacionais</i> )
DEPLA	Department of Planning and Development of Foreign Trade ( <i>Departamento de Planejamento e Desenvolvimento de Comércio Exterior</i> )
DEPOC	Department of Trade Policies ( <i>Departamento de Políticas de Comércio Exterior</i> )
DF	Brazilian Federal District
DINTER	Department of International Negotiations ( <i>Departamento de Negociações Internacionais</i> )
DPPC	Department of Planning and Trade Policy ( <i>Departamento de Planejamento e Política Comercial</i> )
DSB	Dispute Settlement Body
DTIC	Technical Department of Commercial Exchange ( <i>Departamento Técnico de Intercâmbio Comercial</i> )
DTT	Technical Department of Tariffs ( <i>Departamento Técnico de Tarifas</i> )
EMBRAPA	Brazilian Agricultural Research Corporation ( <i>Empresa Brasileira de Pesquisas Agropecuárias</i> )
GATT	General Agreement on Tariffs and Trade
GDP	Gross domestic product
GTD	Technical Group on Commercial Defense ( <i>Grupo Técnico de Defesa Comercial</i> )
IMF	International Monetary Fund
ITO	International Trade Organization
LDC	Least developed countries
MICT	Ministry of Industry, Trade and Tourism ( <i>Ministério da Indústria, Comércio e Turismo</i> )
MDIC	Ministry of Development, Industry and Trade ( <i>Ministério do Desenvolvimento, Indústria e Comércio Exterior</i> )
MF	Ministry of Finance ( <i>Ministério da Fazenda</i> )
MFA	Multifibre Arrangement
NCM	Mercosur Common Nomenclature ( <i>Nomenclatura Comum do Mercosul</i> )
OECD	Organization for Economic Co-operation and Development
PROEX	Export Financing Program ( <i>Programa de Financiamento à Exportação</i> )
SACU	Southern African Customs Union
SE	State of Sergipe
SEAE	Secretariat of Economic Monitoring ( <i>Secretaria de Acompanhamento Econômico</i> )
SECEX	Secretariat of Foreign Trade ( <i>Secretaria de Comércio Exterior</i> )
SINDCOCO	Brazilian Association of the Producers of Coconut ( <i>Sindicato Nacional dos Produtores de Coco do Brasil</i> )

SISCOMEX	Integrated Trading System ( <i>Sistema Integrado de Comércio Exterior</i> )
SG Agreement	Agreement on Safeguards
SG Committee	Committee on Safeguards
SCM Committee	Committee on Subsidies and Countervailing Measures
SPI	Secretariat of Industrial Politic ( <i>Secretaria de Política Industrial</i> )
TEC	Mercosur Common External Tariff ( <i>Tarifa Externa Comum do Mercosul</i> )
TMA	Toy Manufacturing of America, Inc.
VER	Voluntary Export Restraints
WTO	World Trade Organization



## Chapter 1

# The WTO trade remedy system

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The use of anti-dumping, countervailing measures and safeguard measures has spread very quickly in the past few decades. Globalization and economic integration have boosted international trade and weakened domestic frontiers to foreign products. These measures, which constitute the trade remedy system, are utilized to protect the domestic industry from foreign competition or against practices that may be considered unfair.

In order to allow a better comprehension of the current framework for trade remedies, this first chapter will examine the world trading environment and the World Trade Organization (WTO), the international organization responsible for regulating international trade, from a historical perspective. This section presents the evolution of the multilateral trading system from the Bretton Woods Conference to the establishment of WTO.

The chapter also provides a brief description of the WTO Agreements related to trade remedies, namely the Agreement on the Implementation of Article VI, or Anti-dumping Agreement (AD Agreement), the Agreement on Subsidies and Countervailing Measures (SCM Agreement), and the Agreement on Safeguards (SG Agreement). This section differentiates the three types of trade remedies existing under the WTO Agreements and provides an overview of the investigation process and the substantive issues regarding anti-dumping, subsidies and countervailing duties and safeguards.

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## From GATT to WTO: a historical perspective

After the Second World War, countries were economically disrupted. The need to reconstruct the worldwide economy led to the United Nations Monetary and Financial Conference, held at Bretton Woods, New Hampshire (United States) in 1944. On that occasion, government authorities reached the conclusion that, in order to achieve this goal, it was essential to create three international organizations, namely: the International Bank for Reconstruction and Development (the World Bank), the International Monetary Fund (IMF) and the International Trade Organization (ITO).

ITO, which was to be responsible for promoting trade expansion by lowering trade barriers among countries, never came into existence, since no major country ratified the ITO Charter at the United Nations Havana Conference. Nevertheless, 23 countries adopted a provisional arrangement of the ITO Charter related to negotiations on tariffs and goods, the General Agreement on Tariffs and Trade (GATT), which came into effect on 1 January 1948.

GATT included an international agreement establishing a set of rules for conducting international trade and a provisional structure to administer the

agreement. It established general principles applicable to international trade in goods, such as national and most-favoured nation treatment and progressive liberalization.

During its almost 50 years of existence, GATT became a forum for periodical rounds of negotiations. From 1947 to 1994, there were eight rounds of negotiations under the auspices of GATT. The first five rounds accomplished the lowering of tariffs. The Kennedy Round (1963-1967) and the Tokyo Round (1973-1979) not only accomplished tariff reductions, but also introduced a series of agreements on non-tariff barriers. While the Kennedy Round introduced an Anti-Dumping Code, the negotiations under the Tokyo Round resulted in a series of codes concerning subsidies and countervailing duties, customs valuation, government procurement, import licensing procedures and technical barriers to trade.

The last round of negotiations under GATT, the Uruguay Round (1986-1994), aimed at strengthening the existing disciplines and bringing new topics into discussion. After seven years of negotiations, the Final Act incorporating the Uruguay Round agreements was signed in Marrakesh on 15 April 1994. The Final Act also established the creation of an international organization in the field of international trade, WTO, which came into existence on 1 January 1995.

WTO continued and improved the GATT system. It incorporated the updated GATT regulations (GATT 1994) and expanded the framework of the agreement to services, investments and intellectual property rights. In addition, it adopted a dispute settlement mechanism which added effectiveness to the decisions of WTO.

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## The evolution of the WTO trade remedy system

### Building on the GATT trade remedy system

Trade liberalization under the GATT/WTO system has lowered and removed tariffs and other customs impediments to trade. As a result, domestic industries that used to be protected by custom duties have become exposed to foreign competitors. To prevent damage to the domestic industry, or to remedy the injury suffered from competition with foreign industries – due to ‘unfair’ practices or because they are more efficient than the domestic ones – the GATT/WTO system has set forth a comprehensive framework of rules, known as the trade remedy system. Such measures enable governments to respond to import problems in a more legitimate manner, by restraining the amount of imports into their countries in certain circumstances.

Trade remedies have existed in the multilateral trading system since 1947 and the discipline has been enforced over the eight rounds of negotiations under GATT. Article VI of GATT sets forth general rules governing the application of anti-dumping and countervailing duties; Article XVI contains general provisions on subsidies; and Article XIX establishes the possibility for a GATT contracting party to use safeguard measures to protect its industries from increased imports.

#### *Anti-dumping*

Article VI of GATT condemns export sales below normal value when they cause or threaten to cause material injury to an industry or if they are materially retarding the establishment of a domestic industry. Sales are considered to be

below normal value when the export price is lower than the comparable price for products destined for consumption in the exporting country, in the ordinary course of trade. Provided this criterion is satisfied, the importing country can adopt anti-dumping duties equal to the difference between the normal value and the export price.

In the Kennedy Round of negotiations, discussions on the procedural rules for the imposition of anti-dumping duties resulted in the 1967 Agreement on the Implementation of Article VI, or the Anti-dumping Code (AD Code). The AD Code laid out detailed criteria and procedures for the invocation of anti-dumping actions but it did not make any reference to the part of Article VI related to countervailing duties. In the Tokyo Round of negotiations, the 1967 AD Code was revised, primarily with respect to causality and injury determination.

The AD Code was renegotiated in the Uruguay Round and a new Anti-dumping Agreement (AD Agreement) was adopted.

### *Subsidies and countervailing duties*

Article VI of GATT also refers to subsidization and countervailing duties, but few rules on subsidies are laid out in this article. According to Article VI, countervailing duties can be levied by member countries on imports that are causing harm to domestic industries because of subsidization by a foreign government, since the subsidies result in below normal value pricing.

The general provisions on subsidies in GATT are described in Article XVI. This article originally required that signatories should notify GATT of any subsidy granted in their territories affecting imports or exports and should hold consultations with the signatories whose interests were threatened or which were suffering serious prejudice thereof. This provision was expanded in 1955 to include more specific rules on export subsidies. Another amendment to Article XVI was made in 1960 to include an illustrative list of export subsidies.

The Tokyo Round of negotiations resulted in a plurilateral agreement on subsidies, which established rules and procedures to be followed in countervailing investigations: the Subsidies Code. The procedural and substantive provisions set forth in the Subsidies Code are very similar to those regarding anti-dumping. Nevertheless, it did not define subsidy practices and which practices should or should not be permissible in international trade.

In the Uruguay Round, the Subsidies Code was renegotiated and the Agreement on Subsidies and Countervailing Measures (SCM Agreement) was adopted.

### *Safeguard measures*

Article XIX sets forth the safeguard measures regime, which are escape clauses to GATT obligations. These measures, which may be either tariffs or quotas, allow a GATT signatory to modify or withdraw trade concessions in order to avoid or remedy serious injury to its industry caused by the increase in imports of a certain product. It is important to highlight that the domestic industry must produce a product which is like or directly in competition with the product whose importation is increasing and that the increase in imports must be due to unforeseen developments. Safeguard measures must be non-discriminatory and the interested signatories must agree with the measures or receive proper compensation.

In the Uruguay Round the WTO Agreement on Safeguards (SG Agreement) was adopted.

## The WTO Agreements related to trade remedies

WTO provides detailed substantive and procedural rules governing trade remedy measures. The AD, SCM and SG Agreements establish rules that enable governments to respond to import problems that are causing injury or threatening to cause injury to their domestic industries.

However, these Agreements do not require a country to implement trade remedy laws. If a WTO Member intends to make use of trade remedies, it can incorporate the WTO Agreements into its domestic legislation or it can adapt its legislation to the requirements of the WTO Agreements. In either case, laws regarding trade remedies, administrative processes and procedures must be consistent with the AD, SCM and SG Agreements.

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## Distinction between the trade remedy measures

Although anti-dumping duties, countervailing duties and safeguard measures are mechanisms used to restrain the amount of imports into a country, there are substantive differences between them.

The first difference consists in the fact that while anti-dumping and countervailing duties are used to remedy the effects of unfair competition, safeguard measures are used to allow a domestic industry to adjust to trade liberalization. In this sense, the investigation process for the imposition of a countervailing duty is very similar to the anti-dumping investigation process, since both investigations concern unfair trade practices. Safeguard investigations, on the other hand, are significantly different from anti-dumping and countervailing duty investigations as the fairness or unfairness of the imports is not considered.

A substantial difference between anti-dumping and countervailing measures concerns the nature of the agents involved in the practice of dumping and subsidization. Dumping relates to business activities between private companies, whereas subsidization is a financial contribution made by a government or public body.

Anti-dumping and countervailing duties are imposed against the imports of a particular product from specific countries. A safeguard measure, on the other hand, must be adopted non-discriminatory, which means it is imposed against all imports of a given product, affecting all the countries that export the product.

Because the imposition of a safeguard measure will affect the balance of rights and obligations between the importing and exporting countries, the country that applied the measure must enter into consultations with the countries whose exports are affected by the safeguard to negotiate a proper compensation. When a country applies an anti-dumping or a countervailing duty, no compensation to the exporting country is required.

While anti-dumping and countervailing duties are applied to counteract imports that are causing or are threatening to cause material injury or material retardation to a domestic industry, safeguard measures are used to protect the domestic industry from imports that are causing or threatening to cause serious injury. The concept of injury used in an anti-dumping or in a countervailing duty investigation (material injury) is not the same concept of injury used in a safeguard investigation (serious injury).

Safeguard investigation is usually carried out entirely in the market which is suffering injury or is threatened by injury. There is no need to analyse price levels or other data in the exporting country. In anti-dumping and countervailing investigations it is paramount that the authorities analyse the conditions in the exporting market to see whether there has been dumping or subsidization.

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## The WTO Agreements in brief

### The Anti-Dumping Agreement

The AD Agreement sets forth detailed procedural rules governing dumping investigations, such as rules related to the complaints of domestic producers and to the establishment of transparency provisions on investigation and decision-making. In addition to the procedural rules, the AD Agreement contains substantive rules regarding the methodologies to be applied in assessing and measuring the dumping margin, the determination of the existence of injury and the establishment of the causal link between dumping and injury.

According to the AD Agreement, a product is being dumped if the export price is lower than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country. A Member cannot impose an anti-dumping measure unless it determines, pursuant to an investigation conducted in conformity with the provisions of the AD Agreement, that: (a) there are dumped imports; (b) the domestic industry is materially injured or is threatened with material injury, or that the establishment of a domestic industry is being materially retarded; and (c) there is a causal link between the dumped imports and the injury.

The AD Agreement states that the only action WTO Members can take against dumping is the application of anti-dumping measures. The measures allowed by the AD Agreement are provisional measures, definitive anti-dumping duties and price undertakings.

### The Agreement on Subsidies and Countervailing Measures

The SCM Agreement is a substantial improvement of the Tokyo Round Subsidies Code. It is mandatory for all WTO Members, and is an extensive and detailed text which provides a complete overall framework on the subject.

Like the Tokyo Round Subsidies Code, the SCM Agreement contains rules on international obligations regarding the initiation and conduct of countervailing investigations, the imposition of preliminary and final measures, the use of undertakings, and the duration of measures. It specifies that a WTO Member may not impose a countervailing measure unless it determines that there are subsidized imports, injury to a domestic industry, and a causal link between the subsidized imports and the injury.

For the first time, the SCM Agreement presents a definition of subsidies. According to the Agreement, a subsidy is defined as a financial contribution by government or public body involving: (a) direct transfer of funds; (b) potential direct transfer of liabilities; (c) government revenue that is otherwise due but is forgone; (d) government provision of goods or services other than general infrastructure; (e) government payments to a funding mechanism or direction to a private body to carry out any of the foregoing functions; or (f) any form of income or price support in the sense of Article XVI of GATT that results in a

benefit. Thus, the SCM Agreement applies not only to measures of national governments, but also to measures of subnational governments and of such public bodies as State-owned companies.

Under the SCM Agreement, subsidies can be classified as: prohibited or red subsidies; actionable or yellow subsidies; and non-actionable or green subsidies. Prohibited subsidies are those contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance; and those contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods. Actionable subsidies are subsidies that cause adverse effects to the interests of other WTO Members, such as injury to domestic industry of another signatory, nullification or impairment of benefits affecting directly or indirectly other WTO Members, and serious prejudice to the interests of another Member. If it is determined that such adverse effects exist, the subsidizing Member must withdraw the subsidy or remove its adverse effects. Non-actionable subsidies could either be non-specific subsidies or specific subsidies involving assistance to industrial research and pre-competitive development activity, assistance to disadvantaged regions, or certain type of assistance for adapting existing facilities to new environmental requirements imposed by law or regulations. This category, applied provisionally for five years, ended on 31 December 1999.

The Agreement also presents the definition of specificity and determines that only specific subsidies are subject to the SCM Agreement. This means that a subsidy under the SCM Agreement must have been specifically provided to an enterprise or industry or group of enterprises or industries. There are four types of specificity within the meaning of the SCM Agreement, namely: (a) enterprise-specificity, when a government targets a particular company or companies for subsidization; (b) industry-specificity, when a government targets a particular sector or sectors for subsidization; (c) regional specificity, when a government targets producers in specified parts of its territory for subsidization; and (d) prohibited subsidies, when a government targets export goods or goods using domestic inputs for subsidization.

## **The Agreement on Safeguards**

The SG Agreement is the first multilateral agreement on the subject. It imposes a severe prohibition on the use of 'grey area' measures other than the safeguard measures permitted under the Agreement, such as voluntary export restraints (VERs). The use of grey area measures was very popular at the time the SG Agreement entered into force. In view of that, the Agreement established a period of four years – ended on December 1999 – during which existing measures that were not compatible had to be phased out.

Another important feature of the Agreement is the establishment of a series of procedural rules and standards for the adoption of a safeguard measure (such as transparency, procedural fairness and public notice to interested parties), as well as the definition of important concepts related to safeguard investigations, namely the concepts of serious injury and domestic industry. It is also important to note that the SG Agreement interprets the nature of the causal link between increased imports and serious injury.

If a careful investigation demonstrates that a product is being imported into a country in such increased quantities, absolute and relative to the domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products, the SG Agreement allows the government of this country to apply

safeguard measures. The main objective of the safeguard measures is to temporarily protect the domestic industry while it adjusts to the competition with foreign companies.

The Agreement establishes a maximum period of 8 years for the application of a safeguard measure by developed countries, and a maximum period of 10 years if the measure is applied by developing countries. If a preliminary determination demonstrates the existence of critical circumstances and finds that delay would result in damage that would be difficult to repair, and if there is clear evidence that the increased imports have caused or threatened to cause serious injury to domestic producers, provisional safeguards may be applied for a maximum period of 200 days.

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## Procedures for anti-dumping and countervailing investigations

Because of the similarity between the anti-dumping and subsidy frameworks and investigation procedures, this section covers both anti-dumping and countervailing investigations.

### The investigation process

An anti-dumping or countervailing investigation is initiated with a written complaint from the domestic industry alleging that dumping or subsidization is taking place and that the industry is suffering injury or threat of injury or retardation as a result. The complaint must meet the documentation requirements set forth in the AD and SCM Agreements. If it does not meet the requirements, it has to be supplemented or resubmitted.

It is important that the authorities examine whether the complaint has the required degree of support of the domestic industry. The application is to be made by or on behalf of the domestic industry and must be supported by domestic producers whose collective output constitutes more than 50% of the total production of the like product by the portion of the domestic industry expressing either support for or opposition to the complaint. No investigation shall be initiated when domestic producers expressly supporting the application account for less than 25% of total production of the like product produced by the domestic industry.

As soon as the notice of initiation is published, the authorities must send a copy of the non-confidential version of the complaint to the exporters and questionnaires to all the interested parties. The exporters must have at least 30 days to respond to the questionnaires. Questionnaires are considered to be received one week after the date they were sent. However, the exporters may request an extension of this deadline in order to provide the information requested in the questionnaires. The exporters must prepare careful responses to the questionnaires because the authorities will base their findings on these information. It is essential that the exporters provide detailed information on the products exported by them so that the authorities can verify whether these products are the same products that are under investigation. It is also important for the exporters to submit correct and complete answers to the questionnaires since incorrect and incomplete answers will allow the authorities to base their findings on the facts available.

The authorities must then examine the documents and request more data, if necessary, in order to decide whether there is sufficient evidence that an investigation should be initiated. When these requirements are met, the government of the exporting country must be notified. The public notice must

identify the product under investigation, the exporting country (or countries), set out deadlines for comments and provide the contact details of the authorities.

Authorities gather detailed information from exporters, importers and the domestic industry, through questionnaires. The authorities will analyse the questionnaires in order to conclude whether there is dumping or subsidization, injury or threat of injury or retardation and if there is a causal link between them. The authorities will then make a positive or a negative preliminary determination and give public notice of their determination.

The preliminary determination is negative if there is no sufficient evidence on the existence of dumping or subsidization and consequent injury or threat of injury or retardation; this allows the authorities to terminate the investigation. If the preliminary determination is positive, and the authorities believe that is necessary to prevent injury being caused while the investigation is still in progress, they can impose provisional measures.

The authorities verify the information submitted and collect new evidence in order to reach a final decision on the existence of dumping or subsidization and on whether the domestic industry is suffering material injury, threat of injury or retardation because of dumped exports or subsidization. The parties can now comment on the factual and legal basis of the preliminary determination and submit further information. The investigation can involve disclosure meetings between authorities, parties and interested parties, in which they discuss the details of the findings. Public hearings can also occur at this time.

The investigation process is officially concluded with the publication of the final determination and the detailed statement of reasons explaining the decision of the investigating authorities in the *Official Gazette*. Provided the final determination attests to the existence of dumping or subsidization and that the domestic industry is suffering injury or threat of injury or retardation as a result, the authorities can apply final anti-dumping or countervailing duties. However, the application of duties is not mandatory even when all requirements are met. The investigating authorities have the option not to impose duties. If they decide to impose duties, these measures cannot be higher than the dumping margin and it is preferable that they are the lowest duties able to remove the injury to the domestic industry.

As an alternative to the application of duties, the investigating authorities can enter into price undertakings. Through price undertakings individual exporters endeavour to revise their export prices or cease exports at dumped prices in order to eliminate the injurious effect of the dumping. Public notice must be given of any decision to accept a price undertaking or of the termination of an undertaking and of the termination of a definitive anti-dumping duty.

## Complaint

The complaint submitted by the domestic industry must be in the form of a written submission. The complaint must meet the documentation requirements set forth in the AD and SCM Agreements. If it does not meet these requirements, it must be supplemented or resubmitted by the complainant.

The burden of making a case is on the domestic industry. The complaint must present accurate and sufficient evidence on dumping or subsidization and consequent injury or threat of injury or retardation in order to allow the authorities to decide, on a *prima facie* basis, to initiate an anti-dumping or countervailing investigation. A lack of evidence will allow the authorities to reject the complaint.

It is also paramount that the complaint achieves the required degree of support from the domestic industry, as described above. If it does not, the investigation authorities must reject the complaint.

The complainant must present an accurate definition of the product concerned, since this definition establishes the scope of the investigation in terms of product. The description of the imported goods must include the name of the country of origin, as well as the names and contact details of the known foreign producers, exporters and domestic importers. It is also essential to include in the application the names and contact details of the domestic producers of the product concerned or like products, the estimated total domestic production and the estimated total domestic market (including imports).

Other data that the domestic industry must present in the complaint are: (I) the estimated price at which goods are being sold to importers in the importing country; (ii) the estimated prices at which goods are being sold in the domestic market of the exporter or the estimated cost of production of the imported good; (iii) evidence on subsidization including a description of the subsidy programme and supporting details of the subsidy and the estimated amount of subsidy; (iv) sales lost to dumped or subsidized exports; (v) depression of market prices; (vi) decline in profitability; and (vii) loss of market share.

### **Interested parties**

The AD and SCM Agreements define as interested parties in the investigations: (I) exporters or foreign producers of the product under investigation, their trade or business association; (ii) importers of the product under investigation, their trade or business association; (iii) the Government of the exporting Member; (iv) producers of the like product in the country of import, their trade and business association; and (v) any other foreign or domestic parties a Member wants to include in the investigation.

### **Duration of investigations**

Investigations must be concluded within one year after initiation. In exceptional circumstances, the investigation can last up to 18 months. There is no time limit for each phase or event of the investigation.

### **Normal value and export price**

The AD Agreement establishes that normal value is the price at which the imported product is sold for consumption in the exporting country in the ordinary course of trade.

Although WTO does not establish a definition of export price, it is understood as the price at which goods are sold to the importer excluding all charges and expenses incurred after the sale of the goods.

### **Determination and calculation of the margin of dumping or the existence of a subsidy**

According to the AD Agreement, the margin of dumping is the extent by which the normal value exceeds the export price, expressed in percentage terms or as a specific amount. The margin of dumping represents the difference between the normal value and the export price.

The SCM Agreement – as explained earlier – defines subsidy as a financial contribution by the government or a public body.

## Injury determination

The Agreements define material injury as material injury itself, threat of material injury or material retardation of the establishment of a domestic industry. For the determination of injury there must be an objective assessment of the volume and price effects of dumped or subsidized imports and of the impact of such imports on the domestic industry. This examination must be based on positive evidence and no one or several of the factors considered is determinative for the conclusion of the existence of injury.

In establishing the causal link between dumped or subsidized imports and material injury, known factors other than dumping or subsidy which may be causing injury must be examined. Injury caused by these factors must not be attributed to dumping or subsidization.

A cumulative evaluation of the effects of dumped or subsidized imports from more than one country may be undertaken if the investigating authorities find out that the margin of dumping or the amount of subsidy from each country is not *de minimis*, the volume of imports from each country is not negligible, and a cumulative assessment is appropriate in light of the conditions of competition among the imports.

## Like product

According to the AD Agreement and the SCM Agreement, a like product is a product that is identical to the imported product under consideration or, if there is no such product, a product which has characteristics closely resembling those of the imported product.

The determination of the like product is an essential element in anti-dumping and countervailing investigations, since it will lead to the definition of the domestic industry and to which product in the domestic market of the exporting country will be used for the determination of the normal value. Therefore, the definition of the like product has a significant influence on the determination of the margin of dumping as well as on the injury determination.

## Domestic industry

The domestic industry is the industry being injured by the alleged dumped or subsidized exports. The definition of domestic industry refers to the group of producers of the product under investigation that corresponds to a major proportion of the total domestic production of the product.

In principle, the domestic industry concerns producers in the whole country. Exceptionally, the domestic industry can be defined regionally, meaning the investigation will concern only part of the territory, based on special rules. Domestic producers may be excluded from consideration as part of the domestic industry if they are related to exporters or importers of the dumped product. The support of the domestic industry is a very important feature for the validity of the application for the initiation of an anti-dumping or countervailing investigation.

## Provisional measures

Provisional measures can be provisional duties, a security by cash deposit, or a bond which may be equal to but no higher than the amount of the dumping margin provisionally estimated. They can be applied only at least 60 days after initiation of the investigation and may not exceed 4 or 6 months, while the authorities examine whether a duty lower than the margin of dumping would be

sufficient to remove the injury. However, these periods can be extended to 6 to 9 months, respectively, if requested by exporters accounting for a significant share of the trade involved.

### **Price undertakings**

The Agreements give the investigating authorities the possibility to enter into voluntary price undertakings with individual exporters instead of imposing provisional or definitive duties.

Through a price undertaking, the exporter agrees to cease exports at distorted prices or to revise its prices, in order to eliminate the damaging effect of the dumping or the subsidy. The exporter entering into a price undertaking must raise its export price to the normal value or to a rate that, although lower than the margin, is sufficient to eliminate the injury arising from the dumped imports.

Although undertakings and duties have equivalent effects on the prices of the imports, it is important to note that these are quite different measures. Whereas price undertakings concern imports at their source, raising their export price, duties are applied to imports at the border and raise the level of commercial protection rather than the price of the exported product.

The investigating authorities are not obliged to accept proposals for undertakings. Undertakings cannot be accepted unless the authorities have made an affirmative preliminary determination on dumping or subsidization or injury. Public notice of any decision on acceptance or termination of the undertaking must be given. The authorities may request periodical reports on relevant information in order to monitor compliance with the undertaking.

### **Imposition, collection of duties and retroactivity**

Members tend to apply anti-dumping and countervailing duties according to three modalities: (a) *ad valorem* duties; (b) specific duties; and (c) variable duties.

Duties can be collected only on imports made after the effective date of the final determination. Nevertheless, the Agreements allow the collection of duties before the effective date of the final determination in two situations: (a) when provisional duties are converted into definitive duties; and (b) when definitive duties are retroactively collected up to 90 days prior to the date of application of provisional measures.

Investigating authorities can proceed to the retroactive collection of definitive duties before the date of application of provisional measures if: (a) there is a history of the practice causing injury; (b) the importer was aware of the practice or if a dramatic quantity of dumped or subsidized imports in a very short time is causing injury; or (c) if the remedial effect of the definitive duties is likely to be undermined. Duties may be collected for a period up to 90 days prior to the application of provisional measures but in no case prior to the initiation.

If provisional duties are higher than final anti-dumping duties, the excess must be reimbursed, but if the definitive duties are higher than the provisional duties, the difference cannot be charged.

### **Duration of the duties**

Provisional duties must be applied for the shortest period possible, up to four months. Exporters representing a significant percentage of the trade involved may request the extension of these duties. These time extensions give the

exporters more time to demonstrate that they are not dumping or subsidizing. Duties may be extended from four to six months, when no 'lesser duty' analysis is undertaken, and from six to nine months, when a lesser duty analysis is undertaken.

Definitive anti-dumping or countervailing duties shall lapse five years from the date they have been imposed. Such duties may be extended for five years if the authorities conclude that their absence would result in the continuation of dumping or subsidization and injury.

## Reviews

The AD and the SCM Agreements allow exporters to request the review of the anti-dumping or countervailing duties imposed by the investigating authority. This request can be made at the interim stage or at the expiry of the duties. The rules that apply to the review investigation are the same rules that apply to the investigation process, including questionnaires, hearings and verification visits.

The types of reviews allowed under the AD and the SCM Agreements are: (a) interim or mid-term review; (b) expiry or sunset review; and (c) newcomer or new shipper review.

### *Interim review*

An interim review can be initiated during the lifetime of definitive duties in order to repeal, amend or confirm the duties. The authorities will examine whether the duties are still necessary and whether injury would be likely to continue existing or recur without the duties or with lower duties.

Any party can request an interim review provided it submits positive evidence substantiating the need for a review. The authorities can request the review at any time; interested parties can request a review only after a reasonable period of time from the imposition of the duties.

Interim reviews shall last up to 12 months. If the authorities conclude that duties are no longer necessary and that injury would not continue existing without them, duties must be withdrawn immediately.

### *Expiry review*

Definitive anti-dumping and countervailing duties last for five years from the date of imposition. However, these duties may be extended beyond five years if the investigating authorities determine that their expiry would result in the continuation or recurrence of dumping or subsidization and injury.

Sunset reviews can be initiated by the authorities or upon a duly substantiated request made by or on behalf of the domestic industry and filed before the completion of the five-year period. In order to assess the consequences of the expiry of the duties, the investigating authorities must analyse relevant economic facts that might indicate that dumping or subsidization would occur if the duties were removed.

No duty should be levied until the review is concluded. Sunset reviews are normally concluded within 12 months.

### *Newcomer review*

A company that has begun exporting to the country applying duties only after the investigation period can request a newcomer review. The purpose of this

review is to assess an individual margin of dumping for this newcomer and therefore its own duty rates, which are generally lower than the residual duties established for the exporting company.

The authorities will initiate a newcomer review upon request of the newcomer. The company has the burden of proof that: (a) it exports to the country imposing the duties; (b) it did not export to this country during the investigation period; and (c) it is not related to any of the exporters or foreign producers that are subject to the original duties.

During this review, no duties can be collected. If the review confirms the existence of dumping or subsidy and injury (or threat of injury or retardation), and a causal link between them, duties can be applied retroactively. There is no specific time limit for the completion of new shipper reviews but they must be conducted more quickly than assessments and other reviews.

## **Refund**

If the dumping margin or the amount of subsidy on the basis of which duties are paid has been eliminated or reduced to a level that is below the level of duty in force, the importer can request reimbursement of duties collected.

## **Transparency, access to information and confidentiality**

At all phases of the investigation, the authorities must assure confidential treatment of information submitted by the interested parties for which they request confidential treatment. Information shall be treated as confidential by the investigating authorities if it is confidential by nature or if it is provided on a confidential basis by the parties to the investigation.

Since it is important to disclose as much information as possible to the parties affected by the investigation throughout the investigation process, when confidential treatment is granted the party must present a non-confidential summary. This non-confidential summary will be given to all interested parties, including foreign governments. Confidential information can be disclosed to other parties only if disclosure is authorized by the party submitting the information.

## **Special and differential treatment for developing countries**

Both the AD and SCM Agreements contain provisions granting specific and differential treatment for developing countries.

The AD Agreement establishes that, before applying anti-dumping duties to exporters from developing countries, developed countries shall explore the possibilities of constructive remedies. It is important to emphasize that developed countries are not obliged to provide constructive remedies, but only to consider this possibility with an open mind. Although the AD Agreement does not present a definition of constructive remedies, it is understood that such remedies comprehend price undertakings and the imposition of a lesser duty rule.

The SCM Agreement defines different levels of development among countries and determines that countries with the lowest level of development receive the most favourable treatment. The three categories of developing countries under the SCM Agreement are: (a) least developed countries (LDCs); (b) WTO Members with gross domestic product (GDP) per capita of less than \$1,000 per year; and (c) other developing countries. The specific and differential treatment for developing countries refers to different levels of obligation and transition periods. For example, LDCs and WTO Members with a GDP per capita of less

than \$1000 per year are excluded from the prohibition on export subsidies. Other developing countries had an eight-year period to phase out their export subsidies, while LDCs had eight years and other developing country Members five years to phase out import-substitution subsidies. Subsidies related to privatization programmes are not actionable multilaterally when subsidization occurs in developing countries. Finally, regarding countervailing measures, exporters from developing countries have to receive more favourable treatment with respect to the termination of investigations if the level of subsidization or volume of imports is small.

## **Appeal procedures**

The AD and SCM Agreements establish that WTO Members shall maintain judicial, arbitral or administrative tribunals or procedures to review final determinations in anti-dumping and countervailing investigations. These reviews will examine the consistency of the investigating process and decision with the domestic legislation in force, as well as the consistency of this legislation with the WTO rules. Tribunals must be independent from the investigating authorities. The Agreements also anticipate the possibility of challenging an anti-dumping or countervailing duty before the WTO Dispute Settlement Body (DSB).

## **Notifications**

Members are obliged to notify their own laws, regulations and administrative procedures governing the initiation and conduction of anti-dumping and countervailing investigations, as well as the authorities competent to initiate and conduct investigations, to the Committee on Anti-Dumping Practices (ADP Committee) and to the Committee on Subsidies and Countervailing Measures (SCM Committee) respectively. Members that have no anti-dumping or subsidies and countervailing measures, laws or regulations shall notify this fact.

Members shall report without delay to the AD and SCM Committees all preliminary or final actions taken with respect to anti-dumping and countervailing duties, as well as a list of all anti-dumping measures in force and subsidies granted or maintained within their territories. The absence of subsidies shall be reported as well. Such reports shall be available in the WTO Secretariat for inspection by other Members, since all notifications are fully accessible to the public, except when a notifying Member specifically requests otherwise.

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## **Procedures for applying safeguard measures**

### **Relationship between the SG Agreement and Article XIX of GATT 1994**

The SG Agreement sets forth the rules for application of safeguard measures pursuant to Article XIX of GATT 1994, which allows suspension of GATT concessions and obligations under emergency circumstances. The role of the SG Agreement is to clarify and reinforce the disciplines of GATT. Therefore, any measure for which the coverage of Article XIX is invoked must be taken in accordance with the provisions of both article XIX of GATT 1994 and the SG Agreement.

## **Unforeseen developments**

According to the SG Agreement, safeguard measures may be imposed by a WTO Member if particular products are being imported in such increased quantities that injury has been caused or threatened to its domestic industry. However, Article XIX of GATT 1994 specifies that safeguard measures may be applied only if unforeseen developments lead to the increase in imports. Therefore, although the SG Agreement does not require the increased imports to result from unforeseen developments, since the SG Agreement and GATT 1994 apply together it is necessary to prove the existence of unforeseen developments in order to apply a safeguard measure consistently with the WTO Agreements.

## **Determination of serious injury or threat of serious injury**

The SG Agreement defines serious injury as a significant impairment in the position of a domestic industry. Threat of serious injury is defined as a threat which is clearly imminent as shown by facts, not based on mere allegation, conjecture or remote possibility.

Investigating authorities must evaluate all relevant factors that demonstrate the condition of the industry in determining whether serious injury or threat of injury exists, such as absolute and relative rate and amount of increase in imports, market share taken by the increased imports, employment of the domestic industry and changes in level of sales, production, productivity, capacity utilization, profits and losses. They must not attribute to imports injury caused by other factors.

The SG Agreement determines that safeguard measures should be applied only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment.

## **Domestic industry**

Like the AD Agreement, the SG Agreement defines the domestic industry as producers as a whole of the like or directly competitive products operating within the territory of a member or producers who collectively account for a major proportion of the total domestic production of those products.

## **Like product**

A like product is a product which is identical to the imported dumped product under consideration or, if there is no such a product, a product which has characteristics closely resembling those of the dumped product.

According to the SG Agreement, the domestic industry entitled to request imposition of safeguard measures is the domestic industry that produces the like or directly competitive products. Injury determination is also measured based on the situation of production of the like product. Therefore, the definition of the like product is essential to a safeguard investigation.

## **Causation**

The investigating authorities, when conducting an investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, shall evaluate all relevant factors of an objective and quantifiable nature in order to reach a conclusion on the situation of that industry.

The SG Agreement requires the authorities to evaluate the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment. If the investigating authorities conclude there is no causal link between increased imports of the product concerned and serious injury or threat thereof, safeguard measures cannot be applied.

### **Non-attribution**

According to the SG Agreement, when factors other than the increased imports are causing injury to the domestic industry, such amount of injury cannot be attributed to increased imports. Safeguard measures can be applied only when the increased imports alone are the cause of serious injury.

### **Parallelism**

The application of safeguard measures must be consistent with the investigation. Therefore, Members whose exports are taken into consideration to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry must be the very same Members subject to the application of safeguard measures, if the authorities decide in favour of the application of safeguards.

This does not mean a Member is allowed to apply a measure to some Members and not to others just because the investigating Member decided not to include those Members for no special reason. In exceptional circumstances, such as in cases of regional agreements, the investigating Member may exclude its partners in a regional trade agreement from the application of the safeguard measure, provided the imports from those countries have been excluded from the investigation.

### **Provisional measures**

A Member may apply a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. These measures, however, can be applied only in critical circumstances where delay would cause damage to the domestic industry and this would be difficult to repair.

A provisional measure must take the form of a tariff increase and must be promptly refunded if the final determination of the investigation does not conclude that increased imports have caused or threatened to cause serious injury to the domestic industry. The maximum duration of a provisional safeguard measure is 200 days and this shall be counted as part of the initial period for the application of any safeguard measure.

### **Duration of the safeguard measure**

According to the SG Agreement, safeguard measures should be limited to the period of time necessary to prevent or remedy serious injury and to facilitate adjustment. A safeguard measure must remain in force for no longer than four years. Nevertheless, the measure can be extended up to eight years – including the period of application of any provisional measure, the period of initial application and any extension thereof – provided the investigating authorities attest to the necessity of this extension and show evidence that the industry is adjusting. A measure extended in this way shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

Developing countries are allowed to apply safeguard measures for up to 10 years.

### **Review and reimposition of the measure**

If a safeguard measure is imposed for a period longer than one year, it must be progressively liberalized during its lifetime. A safeguard measure for a duration exceeding three years is to be reviewed not later than the mid term of the measure. At this review, it is recommended that the Member withdraw it or increase the pace of liberalization of the measure.

A safeguard measure cannot be reimposed on a product for a period equal to the duration of the previous measure. Therefore, in general, the reimposition of safeguards is subject to a non-application period of at least two years. However, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product when at least one year has elapsed since the date the measure was applied and if it has not been applied to the same product more than twice in the five years immediately preceding its date of introduction. An extended measure shall not be more restrictive than it was at the end of the initial period.

A Member shall immediately notify the SG Committee upon taking a decision to extend a safeguard measure.

### **Notifications and transparency**

The SG Agreement provides for the creation of a Committee on Safeguards (SG Committee). The SG Committee is responsible for reviewing all safeguard notifications, monitoring the implementation and operation of the Agreement, making findings on compliance with respect to procedural provisions related to the application of safeguard measures, assisting WTO Members with consultations, and reviewing proposed retaliations. The SG Committee must report all its conclusions to the Council for Trade in Goods.

Members are required to notify the following events to the SG Committee: (a) initiations of investigations into the existence of serious injury or threat and the reasons therefore; (b) findings of serious injury or threat caused by increased imports; and (c) decisions to apply or extend safeguard measures. The notifications must contain the relevant information on which the decisions of the investigating authorities are based.

Before applying or extending a safeguard measure, Members are required to enter into consultations with the WTO Members who have substantial interests as exporters of the product concerned, in order to review the facts of the situation, to exchange views on the proposed measures, and to reach an equilibrium on the level of concessions and obligations.

Whenever a WTO Member decides to apply a provisional measure, it must notify the SG Committee before applying the measure and must initiate consultations immediately after such measures are applied. The Council for Trade in Goods, through the SG Committee, must be notified immediately of the results of consultations, mid-term reviews, compensation, and suspension of concessions.

Members are also required to notify their laws, regulations and administrative procedures, as well as their own pre-existing safeguards and grey area measures, to the SG Committee. Members are also allowed to counter-notify other Members' relevant laws and regulations, actions or measures in force.

## **Transparency, access to information and confidentiality**

Investigating authorities must assure confidential treatment of the information submitted by the interested parties for which they request confidential treatment. Information shall be treated as confidential by the investigating authority if it is confidential by nature or if it is provided on confidential basis by the parties to the investigation. Members are not obliged to disclose confidential information in their notifications.

However, if the competent authorities deny the request for confidential treatment and if the party is unwilling either to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information, unless it is demonstrated that the information is correct.

Whenever confidential treatment is granted by the investigating authorities, the domestic industry must present a non-confidential summary. This non-confidential summary will be given to all interested parties, including foreign governments, exporters and importers. Confidential information can be disclosed to other parties only if disclosure is authorized by the party submitting the information.

## **Obligation to offer compensation**

In order to maintain the balance between concessions and obligations, a safeguard measure can be applied only when the Member imposing the measure and the affected Members enter into consultations on compensation. If consultations are not successful, the affected Members may withdraw equivalent concessions or other obligations under GATT 1994, but only after three years from the date of imposition of the safeguard measure and only if the safeguard is applied consistently with the provisions of the SG Agreement.

## **Procedures to appeal**

Final determinations in safeguard investigations can be reviewed by an independent judicial, arbitral or administrative tribunal in the territory of the Member that applied the measure. These reviews examine the consistency of the investigating process and decision with the domestic legislation in force, as well as the consistency of this legislation with the WTO rules. The SG Agreement anticipates the possibility of challenging safeguard measures before the WTO DSB.

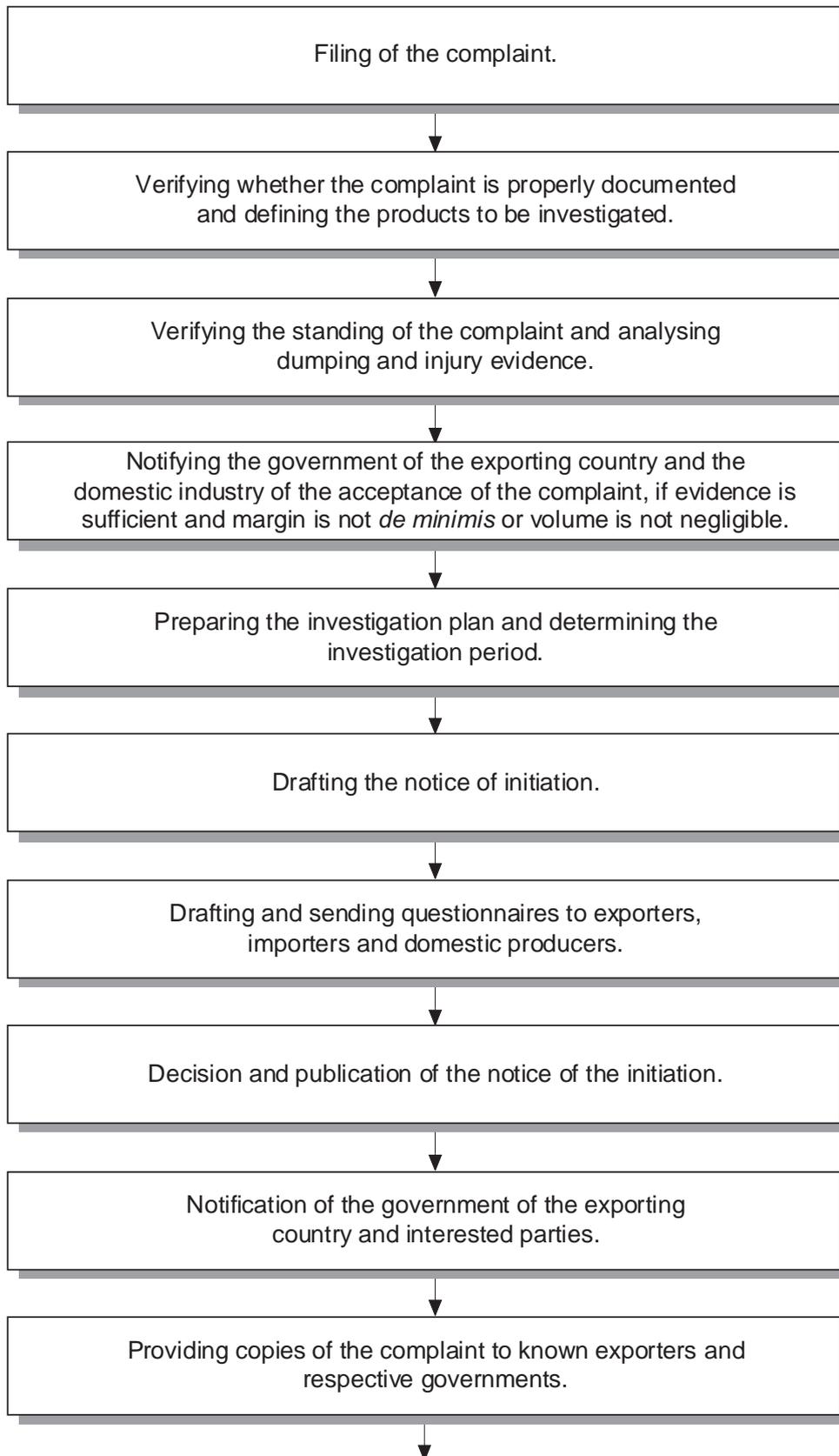
## **Special and differential treatment for developing countries**

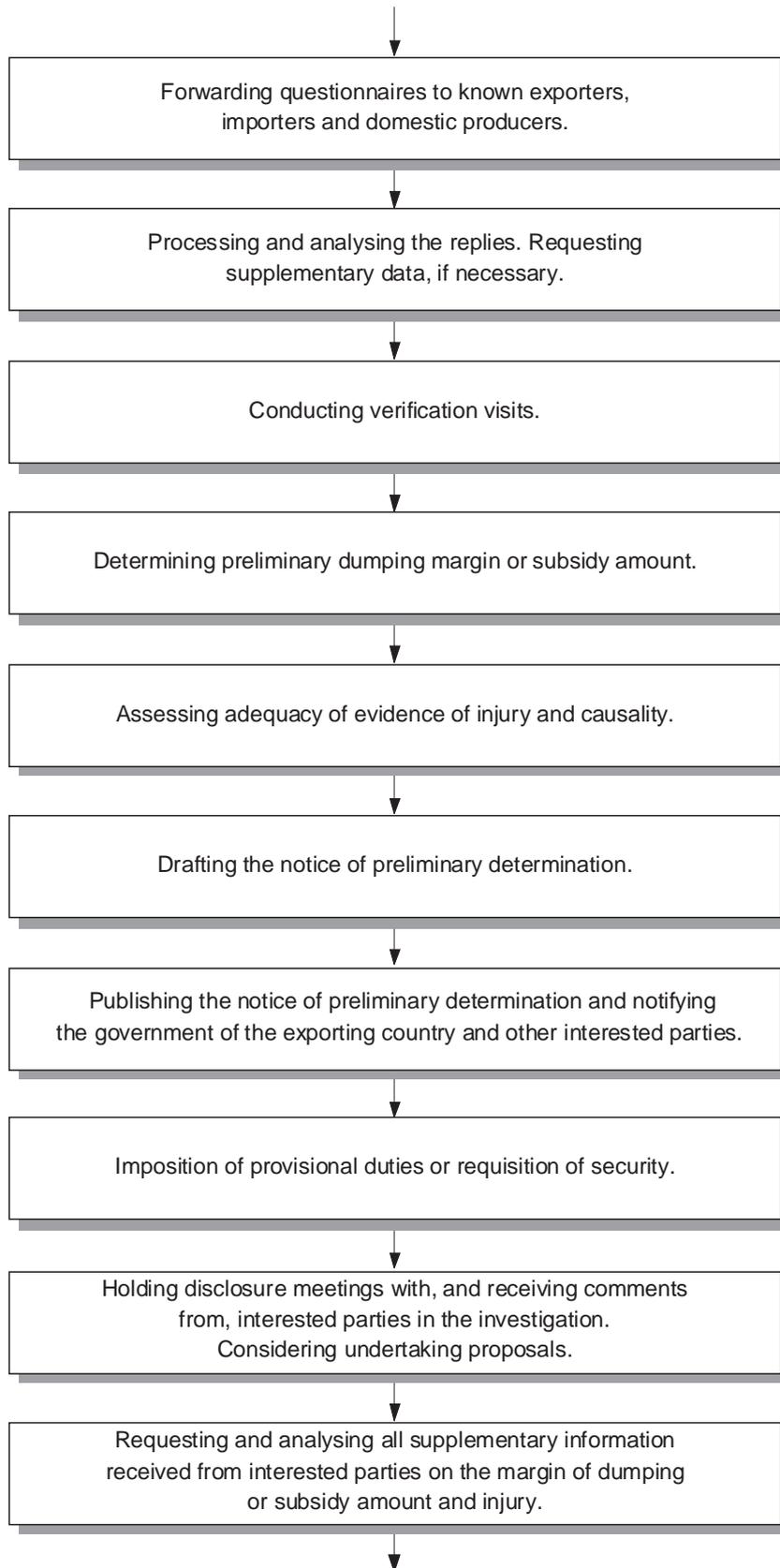
The SG Agreement contains certain provisions with respect to specific and differential treatment for developing countries.

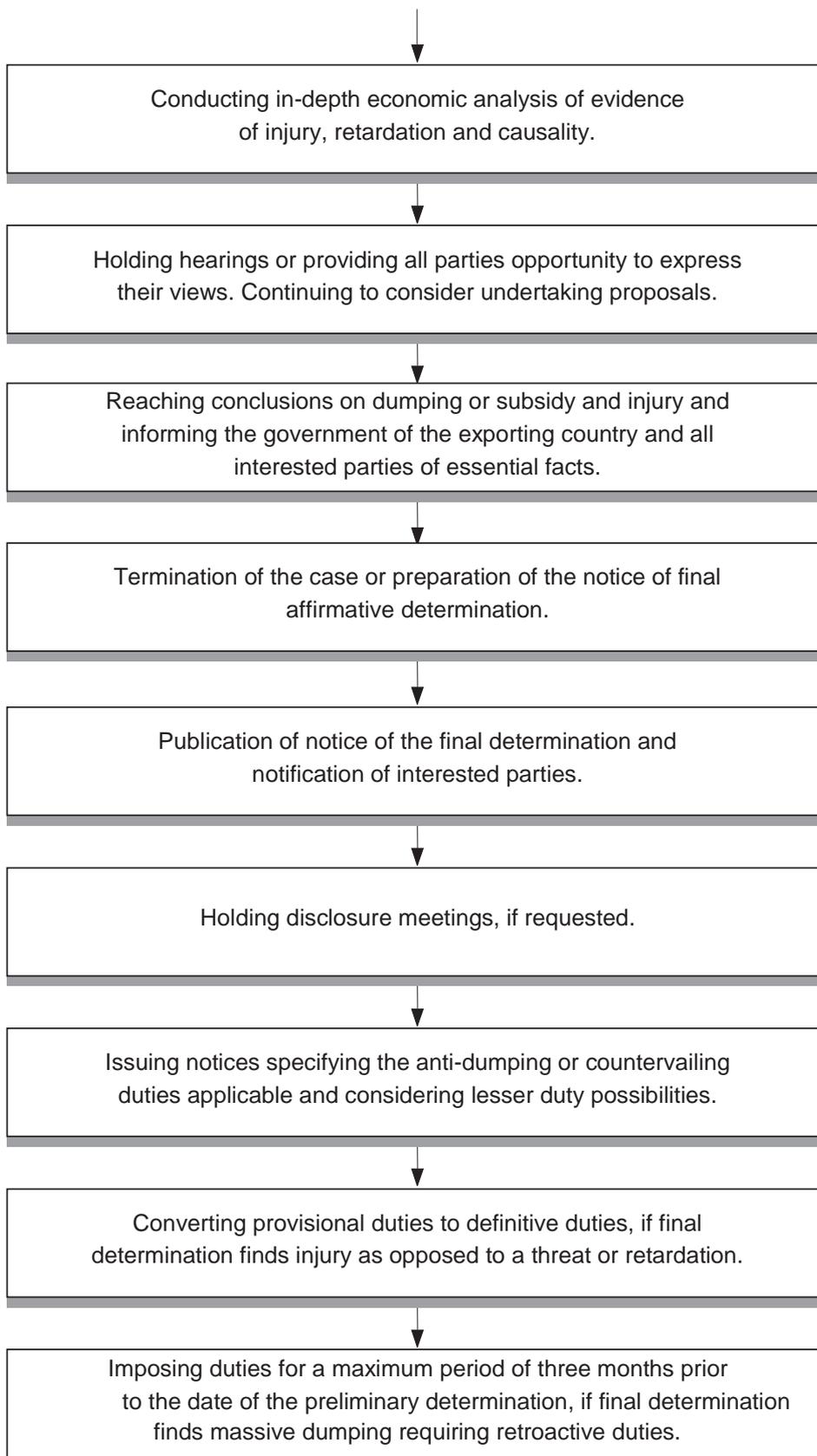
Safeguard measures cannot be applied to a product from a developing country Member if this country's share in the imports of the product concerned is equal to or lower than 3% and if developing country Members with less than 3% import share collectively account for no more than 9% of total imports of the product concerned.

Developing countries can also extend the period of application of a safeguard measure up to two years beyond the normal maximum (to 10 years in total) and apply a safeguard measure again to the same product after a period equal to half of the duration of the previous measure, provided they respect the non-application period of at least two years without the application of the measure.

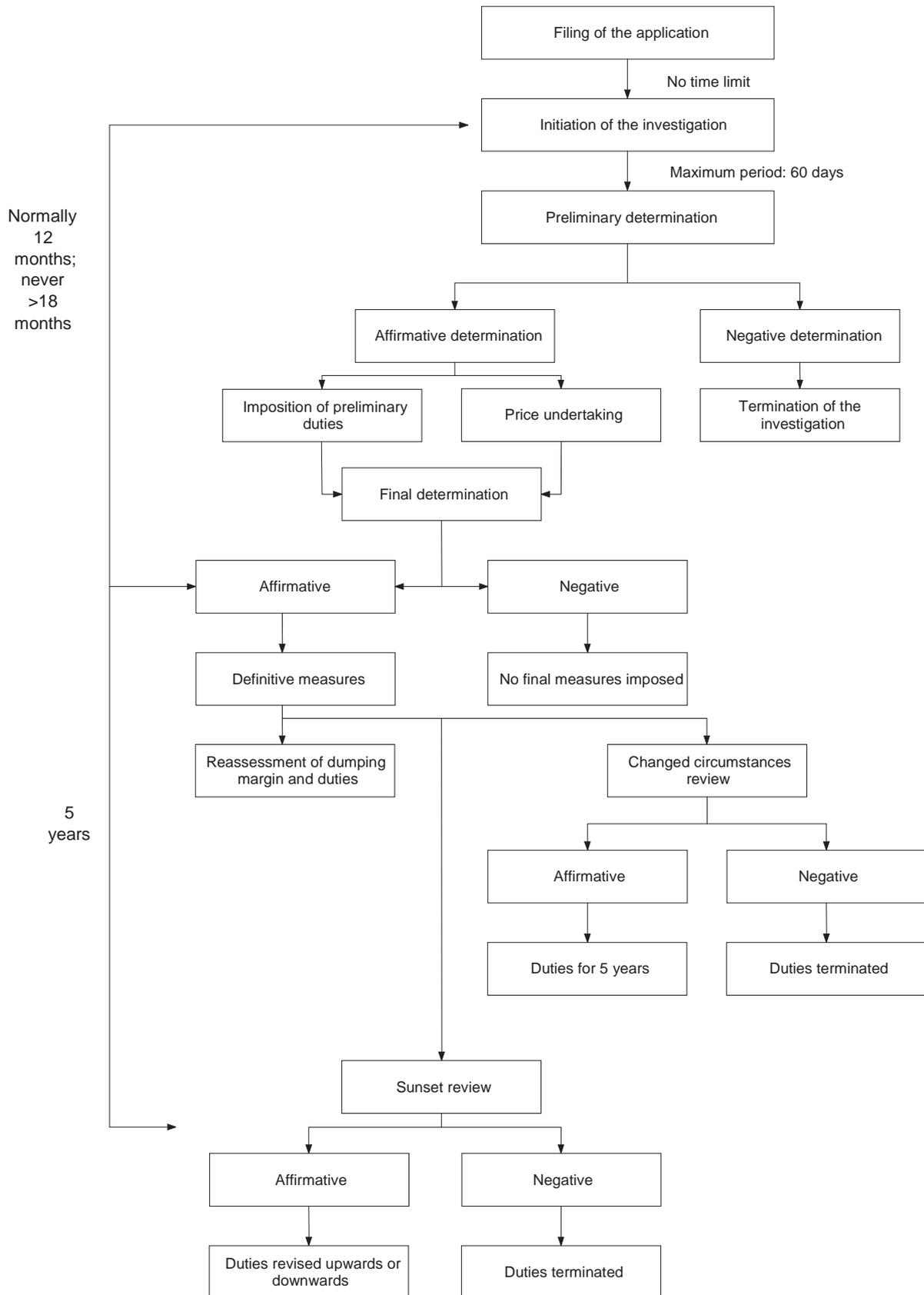
Flowchart of anti-dumping or countervailing investigation procedures







Flowchart – Length of anti-dumping and countervailing investigations



## Chapter 2

# Investigations related to dumping and subsidies in Brazil – Procedural aspects

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This chapter gives a broad picture of the procedural aspects of anti-dumping and countervailing investigations in Brazil. It covers:

- ❑ The use of anti-dumping and countervailing measures system in Brazil, in the past and nowadays, including some figures demonstrating that although Brazil is a major user of the trade remedies, it is not protectionist;
- ❑ The regulatory framework for this system, presenting the laws and regulation involved;
- ❑ The trade remedy system as an administrative process, which means all principles and prerogatives of an administrative process are applicable to an investigation related to trade remedies;
- ❑ The institutional framework for this system, presenting the government bodies involved in an investigation;
- ❑ The preliminary issues that exporters subject to an investigation in Brazil should be aware of;
- ❑ All procedural steps regarding anti-dumping and countervailing issues;
- ❑ Issues related to the payment of duties;
- ❑ Duration and reviews of trade remedies.

The term ‘investigation’, for the purpose of this book, will mean the administrative process, before the Department of Commercial Defence (DECOM), corresponding to the product-country pair or to the product-complainant pair.

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## The use of trade remedies in Brazil

### Historical background

Law 313, of 30 July 1948, contains GATT as negotiated in 1947. By doing this, Brazil introduced into its legal system references to anti-dumping duties and countervailing measures, as provided in GATT Article VI (*see* chapter 1). In 1950, GATT negotiations deepened the disciplines of Article VI, which were incorporated, in Brazil, through Legislative Decree 43, of 20 July 1950. Nevertheless, those developments did not have any practical impact, because there were no rules on the application of anti-dumping and countervailing measures.

Until 1988, the following two instruments of trade policy were used in Brazil:

- ❑ The ‘list of minimum value’ (*pauta de valor mínimo*), established by the Tariff Law of 1957, applied in cases where the external price could not be easily verified, or in cases of suspected dumping; and
- ❑ The ‘reference price’ (*preço de referência*), first applied in 1970, for domestic industry protection in cases where very different prices were found for imports from various origins.

The use of these mechanisms to protect the domestic industry from foreign competitors became a way to reduce imports and secure surpluses in the balance of payments, enabling Brazil to meet its international debts. These instruments were managed in a discretionary and non-transparent manner, benefiting lobbies from the private sector. They were terminated when Brazil incorporated the GATT Code on Customs Valuation (by Legislative Decree 9, of 8 May 1986 and Decree 92930, of 17 July 1986).

Because the way Brazil used to deal with trade remedies was challenged by several GATT contracting parties, in 1986 Brazil committed itself to changing the relevant disciplines by 1988. In addition to this, during the 1980s Brazilian trade policy was shifting, from a policy of import substitution (very high tariffs, large use of non-tariff barriers, import quotas, special tax regimes, where only products with no like product in Brazil could be imported) into an open market model. The new approach included tariff reductions and a more transparent import regime.

In this context, in 1987 Brazil adopted legislation related to the GATT Anti-dumping Agreement and the GATT Agreement on Subsidies and Countervailing Measures, both negotiated in the Tokyo Round (1979) (Legislative Decree 22, 5 December 1986, Decree 93962, 23 January 1987, and Resolution CPA 1227, 2 June 1987). Competence was granted to the Customs Policy Commission (*Comissão de Política Aduaneira, CPA*), under the Ministry of Finance, to implement both Agreements and to administrate the imposition of anti-dumping and countervailing duties established in the GATT Agreements.

CPA consisted of an executive secretariat, designated by the Minister of Finance, which was in charge of conducting investigations and preparing a technical report to be presented to a group of representatives from: the ministries related to the department of economy (six representatives), governmental agencies (seven representatives) and the private sector (three representatives). CPA established a formal procedure for initiating, conducting and terminating anti-dumping and countervailing investigations.

At that time, the most important agency in the Brazilian trade policy context was CACEX (*Carteira de Comércio Exterior*, established by Law 2145, 29 December 1953), a department of the Bank of Brazil (*Banco do Brasil*). CACEX was responsible for issuing documentation for export and import transactions, and for financing exports. In practice, it maintained control over imports until the end of the 1980s, by using administrative mechanisms.

In 1988 and 1989, tariffs were reduced and most of the special import regimes were terminated. In 1990, the new Brazilian president Fernando Collor de Melo enacted rules that deeply changed trade policy in Brazil. Imports were liberalized, and import tariffs were substantially reduced. This led to an increase in imports, followed by an excessive exposure to international competition, which led to tariff increases.

In 1990, a large administrative reform created the Ministry of Economy, Finance and Planning, unifying the former Ministry of Finance, and Planning and Ministry of Industry and Trade. The new ministry was composed of an executive secretariat and four secretariats, among them the Internal Economy Secretariat (*Secretaria Nacional de Economia*), which coordinated the Department

of Trade (*Departamento de Comércio Exterior*, DECEX). DECEX continued to oversee the Technical Coordination of Tariffs (*Coordenação Técnica de Tarifas*, CTT; formerly CPA), and the Technical Coordination of Trade Exchange (*Coordenação Técnica de Intercâmbio*, CTIC; formerly CACEX).

In October 1993, under the presidency of Itamar Franco, the Ministry of Industry, Trade and Tourism (*Ministério da Indústria, Comércio e Turismo*, MICT) was created. The Secretariat of Foreign Trade (*Secretaria de Comércio Exterior*, SECEX) became part of MICT and coordinated three departments: the Technical Department of Tariffs (*Departamento Técnico de Tarifas*, DTT), the Technical Department of Commercial Exchange (*Departamento Técnico de Intercâmbio Comercial*, DTIC), and the Department of Planning and Trade Policy (*Departamento de Planejamento e Política Comercial*, DPPC). Trade policy was thus split between the Ministry of Finance and MICT.

Brazil incorporated the Uruguay Round Agreements into its legal system with Legislative Decree 30, 15 December 1994, and Decree 1355, 30 December 1994.

In May 1995, the Brazilian president Fernando Henrique Cardoso created the Trade Chamber (*Câmara de Comércio Exterior*, CAMEX), composed of an executive secretary and the following Ministries: Secretariat of State (*Casa Civil*); Foreign Affairs; Finance; Planning and Budgetary Affairs; MICT; and Agriculture.

In addition to this, the former three departments of SECEX became four: the Department of Trade Operations (*Departamento de Operações de Comércio Exterior*, DECEX), which eventually incorporated the responsibilities of the former DTIC; the Department of International Negotiations (*Departamento de Negociações Internacionais*, DINTER), in charge of Mercosur and WTO negotiations, as well as of the changes in import tariff rates; the Department of Trade Policies (*Departamento de Políticas de Comércio Exterior*, DEPOC); and the Department of Commercial Defence (*Departamento de Defesa Comercial*, DECOM), in charge of anti-dumping, countervailing and safeguards proceedings.

The establishment of CAMEX and DECOM (as a technical branch of SECEX), to deal specifically with trade remedies, demonstrated the importance of these instruments to Brazilian trade policy once Brazil opened its economy, exposing domestic industry to competitors from all over the world.

The Ministry of Finance retained the authority to raise tariffs. Decisions in terms of trade remedies were taken after technical analysis by DECOM and a report by SECEX, and were ratified by both MICT and the Ministry of Finance, in the legal form of an Interministerial Administrative Rule (*Portaria Interministerial*). In October 2001, CAMEX was granted the power to establish anti-dumping and countervailing duties, and to adopt safeguard measures. CAMEX became a body chaired by the Minister of Development, Industry and Trade (*Ministério do Desenvolvimento, Indústria, e Comércio Exterior*, MDIC) and composed of the Ministers of Foreign Affairs, Finance, Agriculture, and Planning, and the Secretary of State of the Presidency. Decisions are taken by majority. This institutional reform weakened the power of the Ministry of Finance in this matter, since it became one vote among six.

In Brazil, the WTO Anti-Dumping Agreement is implemented by Decree 1602, 23 August 1995 (the Brazilian AD Law). It lays down the administrative procedures for the application of anti-dumping measures. The WTO Agreement on Subsidies and Countervailing Measures is implemented by Decree 1751, 19 December 1995 (the Brazilian SCM Law). The WTO Safeguards Agreement is implemented by Decree 1488, 11 May 1995 (the

Brazilian SG Law), as amended by Decree 1936, 20 June 1996. The Brazilian legislation can be considered fully consistent with the WTO trade remedy agreements.

### **The present use of the Brazilian trade remedies system: some figures**

Brazil has an important role in global trade. According to the WTO Annual Report for 2007, Brazil was the 24th biggest exporter in the world, with \$160 billion, 1.15% of world exports. Brazil is also a major importer, being in 28th place with \$126 billion, 0.89% of world imports.

One can expect that a sharp increase in imports would cause the domestic industry of any country to be more active in seeking trade remedies. That was the case also in Brazil. In 2007, Brazil was considered the fourth largest user of anti-dumping measures among developing countries, behind India, Argentina and South Africa.<sup>1</sup>

Relevant data regarding the use of trade remedies measures in Brazil are available for the period from 1988 to 2007.<sup>2</sup> During this period, 288 investigations, including reviews, were initiated regarding unfair practices: 267 related to dumping and 16 to subsidies. In the same period, there were 5 cases on safeguards.

#### *Use of the system by imposition of duties*

Of the 288 investigations related to trade remedies initiated between 1988 and 2007:

- ❑ Definitive measures were imposed in 135 dumping cases, 9 subsidy cases and 5 safeguard cases. Of the definitive trade remedies imposed by DECOM, 90% concerned dumping practices, 6% related to subsidies and 4% to safeguards.
- ❑ In 55% of the investigations, the authorities imposed definitive anti-dumping or countervailing duties. In 40%, the investigation terminated without application of duties; in 4% the parties opted for price undertakings; and in 1% of the investigations the duties imposed have been suspended.

The fact that almost half of the investigations terminated without imposition of measures indicates that the Brazilian trade remedies system does not seem to be protectionist of the domestic industry. The fact that only 1% of the duties imposed were suspended does not mean this is an unusual practice in Brazil, but rather that it is an instrument recently applied: the suspension occurred in very recent cases.

#### *Use of the system by exporting country*

Of the 288 investigations related to dumping and subsidies initiated between 1988 and 2007, it can be seen that:

- ❑ 49 against imports from China;
- ❑ 44 investigations were against imports from the United States of America;
- ❑ 16 against imports from India; and
- ❑ 11 against imports from the Russian Federation.

<sup>1</sup> 'País é sexto em uso de antidumping', Valor Econômico, 3 November 2004.

<sup>2</sup> *Source*: DECOM.

Of the 115 of these investigations resulting in the application of definitive measures, the highest number of definitive anti-dumping and countervailing duties applied was against China (37), followed by the United States (14), India (10), the Russian Federation (6) and South Africa (5).

It is interesting to compare this list with the major exporters to Brazil in 2007:<sup>3</sup>

- ❑ European Union → 22.2%;
- ❑ United States → 15.7%;
- ❑ China → 10.5%.
- ❑ Argentina → 8.6%;
- ❑ Nigeria → 4.4%;

The figures above demonstrate that the anti-dumping and countervailing duties imposed in Brazil do not always reflect the volume of imports. China, for example, was the source only of 4.4% of Brazilian imports in 2003 but was subjected to the largest number of investigations.

### *The use of the system by product*

Of the 288 investigations related to dumping and subsidies initiated between 1988 and 2007, anti-dumping and countervailing investigations concerned the most different products, classified under six industrial segments:

- ❑ Agriculture;
- ❑ Chemical, petrochemical and rubber;
- ❑ Metals;
- ❑ Textiles, fibres and leather;
- ❑ Other intermediary industries;
- ❑ Capital goods and other manufactured products.

Chemical products are the leading segment in terms of investigations initiated (118). Not surprisingly, the Brazilian domestic industries related to this sector are more active in requesting action. Traditionally, competition in this sector is very aggressive. On the one hand, chemical industries are capital intensive, and so many chemical companies may be tempted to practise dumping and also benefit from subsidies. On the other hand, chemical industries all over the world are traditionally old industries, politically powerful but sometimes not very efficient, so they seek government protection against imports. In Brazil the situation is no different: in terms of definitive measures in force, the chemical sector continues to be the leader, with 21 measures imposed (34.4%).

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## **Regulatory framework**

It is important to keep in mind the core legislation that governs the Brazilian trade remedies system, in effect as at January 2005.

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3 *Source:* Brazilian Central Bank, January 2004.

<i>Decree 1355, 30 December 1994</i>	<i>Incorporates the Uruguay Round Agreements, which includes the imposition of anti-dumping duties, countervailing measures and safeguard measures. These disciplines were brought fully into Brazilian legal system: the agreements related to dumping, subsidies and safeguards were translated into Portuguese, so that the Brazilian legislation could be adapted to them.</i>
<i>CAMEX Resolution 9, 22 March 2001</i>	<i>Establishes the Technical Group on Commercial Defence, in the scope of COMEX (the Executive Committee of CAMEX).</i>
<i>Decree 1602, 23 August 1995</i>	<i>Regulates the administrative process related to anti-dumping duties. For this reason, for the purposes of this book, it will be called the Brazilian Anti-dumping Law (Brazilian AD Law).</i>
<i>SECEX Circular 21/96, 2 April 1996</i>	<i>Establishes the requirements for the complaint regarding the initiation of an anti-dumping investigation.</i>
<i>Decree 1751, 19 December 1995</i>	<i>Regulates the administrative process (investigation) related to subsidies and countervailing measures. For this reason, for the purposes of this book, it will be called the Brazilian Subsidies and Countervailing Measures Law (Brazilian SCM Law).</i>
<i>Circular 20/96, 2 April 1996</i>	<i>Establishes the requirements of the complaint regarding the initiation of a countervailing investigation.</i>
<i>SECEX Circular 59, 28 November 2001</i>	<i>Establishes rules on confidential information, deadlines and non-market economy markets in trade remedies investigations.</i>
<i>Law 9019/95, 30 March 1995</i>	<i>Provides for the imposition of anti-dumping duties and countervailing measures.</i>
<i>Decree 1488, 11 May 1995</i>	<i>Regulates the administrative process (investigation) related to safeguard measures. For this reason, for the purposes of this book, it will be called the Brazilian Safeguards Law (Brazilian SG Law).</i>
<i>Decree 1936, 20 June 1996</i>	<i>Amends Decree 1488 of 11 May 1995, and establishes that safeguard measures will be applied as an increase in the import tax (TEC).</i>
<i>SECEX Circular 19, 8 April 1996</i>	<i>Establishes the requirements for the complaint regarding the initiation of a safeguard investigation.</i>
<i>Decree 2667, 10 July 1998</i>	<i>Regulates the execution of the 19 Additional Protocol to the Economic Complementation Agreement No. 18 among Brazil, Argentina, Paraguay and Uruguay, of 17 December 1997. For the purposes of this business guide, it will be denominated Mercosur rules.</i>

## The trade remedies system as an administrative process

### Administrative process in Brazil

The General Law on Administrative Process (*Lei Geral do Processo Administrativo*, Law 9784, 29 January 1999) regulates the administrative process, but special regulations, when they exist, prevail over the General Law. In the case of trade remedies, the laws and regulations (referred to above), that incorporate the provisions of the WTO Agreements, are the main source of law. The General Law applies only in cases where such special regulation is silent, in order to provide all the principles regarding the administrative process in Brazil.

## **Principles of the administrative process in Brazil, focusing on trade remedies**

Articles 5 and 37 of the Brazilian Federal Constitution, as well as the General Law on Administrative Process and the specific Brazilian laws regarding trade remedies, provide that the Public Administration shall follow the principles of legality, impersonality, morality, transparency, efficiency, finality, justification, due process of law, legal certainty, public interest, formality, active role, and right of review.

### ***Legality***

The principle of legality indicates that administrative activities must be authorized by law. The Administration has to act within the limits of the law.

In this sense, the Brazilian AD Law and the Brazilian SCM Law state that the parties in the process shall obey only the rules published before the act, or rules specified in writing to the parties in a formal communication. They say also that the parties in the process shall follow the instructions given by the law and by SECEX for the preparation of submissions and documents in general, otherwise they are not valid, and will not be part of the process.

### ***Impersonality***

The principle of impersonality is intended to ensure that the Administration treats everybody in an equal manner. The only intention of the Administration must be to protect the public interest, without favouritism of any type.

In other words, all interested parties in an investigation must be given the same opportunities of defence, and be subject to the same prerogatives (transparency, protection of confidential information, etc.) and duties (burden to prove every argument, etc.).

### ***Morality***

The principle of morality incorporates elements of the principles of legality and impersonality. It says that the Administration has to act according to the rules of ethics and with honesty.

This means acting in accordance with the law, because when the Administration acts in an immoral way, it is automatically against the law. This principle is also violated when the Administration treats individuals in a discriminatory way.

### ***Transparency***

According to the principle of transparency, the Administration must make public its acts as a means to legitimate them before the citizens. Of course, this principle does not mean all information must be made public. Some information may be restricted to the interested parties; other information must be protected by rules concerning confidentiality.

According to the Brazilian AD Law and the Brazilian SCM Law, the right to consult the records and request a certificate concerning the investigation shall be restricted to the parties and their legal representatives.

Information considered as confidential cannot be disclosed to other parties, but a summary containing non-confidential information must be submitted.

### ***Efficiency***

The principle of efficiency means that the Administration must pay attention to the quality of the service rendered, to its swiftness, and to the use of the most modern and least cumbersome means to better serve the people.

The Brazilian AD Law and the Brazilian SCM Law provide that nothing in these laws will prevent the Administration from acting or making decisions rapidly. By the same token, this principle says that an investigation regarding trade remedies shall not act as a non-tariff barrier to trade.

### ***Finality***

The principle of finality indicates that the Administration has to give priority to its ultimate objective of serving the public interest, which will not be achieved if private interests are privileged.

### ***Justification***

Administrative acts must always be justified. The decisions made by officials of the Administration have to contain the reasoning that logically explains the conclusion. Justification is a central element in ensuring well-founded decisions, as well as a means for the people to verify the impartiality, legality and reasonability of the decisions.

According to Brazilian law, any determination, in the course of an investigation related to trade remedies, has to come as a part of a legal opinion from SECEX, which must contain detailed information and the assessment of each and every fact and right at issue.

### ***Due process of law***

The principles of the adversarial system and the right of legal defence, both comprised in the principle of due process of law, are provided in the Brazilian Federal Constitution (Article 5, para. LV) and reaffirmed in the General Law. The administrative process, as a group of acts performed by the parties or by the Administration itself, should be structured according to the principle of due process.

The principle of the adversarial system is due to the fact that the process is bilateral by nature. Both parties must be offered equal opportunities to defend their interests, in a permanent dialogue during the process. Moreover, any evidence presented by one party is subject to analysis by the Administration only if the other party knows about it and has the opportunity to discuss it.

Because it exercises an investigative power, the Administration must keep its distance from the parties, while at the same time encouraging the parties to participate actively in the process.

### ***Legal certainty***

The principle of legal certainty concerns the predictability of the results of the application of legal rules by the Administration. Certainty is related to clarity, transparency, objectivity and justification, so that individuals may foresee the application of the legal rule to the specific cases in which they are involved.

### ***Public interest***

The Administration develops its activities with the aim of benefiting society as whole. In this context, public interest is the ultimate objective of the

Administration, in accordance with the principle of finality referred to above. In this sense, the competence of an administrative body cannot be rejected, and powers cannot be granted, unless expressed in law.

Public interest must be understood as impersonality, and as the opposite of giving privilege to private interest.

### ***Formalities***

The administrative process related to trade remedies is subject to some formalities. All procedural acts, arguments and evidence must be written. Hearings and any oral information provided by the parties, even in verification visits, must also be reported in written form. After the final hearing the parties may submit final comments, and then the evidentiary stage of the investigation is closed: information received thereafter cannot be included in the records. In addition to this, all documents must be in Portuguese; documents in foreign languages must be translated by a sworn translator.

No doubts, these formalities favour transparency. It must be said, however, that requirements related to formalities must be interpreted in a reasonable and flexible manner, so as to preserve the rights of the parties, especially those which concern the right of defence.

### ***Active role***

According to this principle the Administration must actively drive the investigation. The Administration is allowed to correct information provided by the parties. It may also verify all data necessary to take a decision, by request of the parties or *ex officio*. The Administration must always, when possible, seek other sources to confirm or refute the information provided by the parties.

### ***Right of review***

An administrative process does not result in a final decision. After a decision, administrative reviews and judicial reviews regarding trade remedies are still possible.

#### ***Administrative review***

Anti-dumping and countervailing investigations are subject to the special laws on trade remedies, as well as to the General Law on Administrative Process. Both provide for administrative reviews.

#### **Special review**

The Brazilian AD Law and the Brazilian SCM Law establish that, after a final decision regarding the imposition of anti-dumping duties or countervailing measures, three kinds of reviews are possible.

These reviews take the form of an investigation, sometimes in an abbreviated form. The ‘expiry review’ has the aim of checking whether duties should remain in effect after the expiry period of five years. The ‘mid-term review’ is aimed at modifying duties, whether because of a ‘misunderstanding’ in the original procedure or because the situation has changed. The ‘newcomer review’ changes duties payable by exporters who were not exporting to Brazil during the investigated period and hence deserve an individual duty. These reviews take place upon request by the complainant in an original case, by another interested party or *ex officio*, depending on the case.

### General review

In addition to these three types of reviews, investigations regarding trade remedies are also subject to ‘general’ administrative reviews, which are not part of the investigation procedure. The General Law establishes that the Administration must reverse its own decisions if they have flaws that make the object of the administrative decision illegal. An administrative decision is considered to be illegal if the authority that issued the decision was not the competent authority, or if its form, reasoning or purpose infringes the law. Once illegality is proved, the legal step to be taken depends on the nature of the problem. If it is a mere irregularity, it can be rectified by the authority itself, revalidating the administrative act. If the flaw cannot be rectified, the decision must be reversed. A decision can also be revoked by the Administration for reasons of convenience or opportunity.

A general administrative procedural review may be requested by any individual or association that has had its rights affected by the decision (normally an interested party in the investigation), based on the argument of illegality. It must present a written submission requesting the review, addressed to the authority responsible for the decision, namely the director of DECOM, the secretary of SECEX or the chair of CAMEX. The request for review must be presented within 10 days from the date of the publication of the decision in the *Official Gazette*.

The administrative review is analysed by the administrative authority that is up to three levels above the authority responsible for the decision challenged. This means that a decision by DECOM can be reviewed by the secretary of SECEX, the chair of CAMEX or the Minister of MDIC.

Thirty days from the request for review, the authority in charge of the review must receive the records. It then has five days to issue a decision.

### Judicial review

An administrative decision may always be challenged in court, because of the exclusive competence of the Judiciary Power, whose competence cannot be removed (Brazilian Federal Constitution, Article 5, para. XXXV). However, because of the principle of separation of powers, the Judiciary cannot replace the Administration; by law its competence is limited to controlling the legality of administrative acts.

*Example: In the anti-dumping case regarding exports of polycarbonate resin from the European Union (excluding Germany) and from the United States, and the review regarding exports of the same product from Germany, a Brazilian importer requested the suspension of the proceedings. In accordance with a judicial order, the proceedings were suspended for 30 days. A second judicial decision extended the suspension indefinitely. A third decision established that the investigation could continue only for exports from the European Union except Germany. The whole investigation was then terminated without examination of substantial aspects because of a request by the complainant.<sup>4</sup>*

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## Institutional framework

The institutional framework for trade remedies is under the structure of the Ministry of Development, Industry and Trade (MDIC). The Minister of MDIC chairs the CAMEX, the collegiate body formed also by representatives of other

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<sup>4</sup> See SECEX Circular 46, dated 28 July 2004, published on 30 July 2004.

Ministries. CAMEX rules on the main aspects of the trade remedies system, such as the imposition of measures. SECEX is the body in charge of carrying out investigations and of submitting reports to CAMEX with decisions and recommendations on dumping and subsidies and safeguards cases. SECEX executes this task through DECOM, its technical branch.

## MDIC

The Ministry of Development, Industry and Trade (*Ministério do Desenvolvimento, Indústria e Comércio Exterior*, MDIC) received this denomination by the Law 10683, of 28 May 2003. This Ministry is in charge of trade policy and it has an important role regarding trade remedies, according to Decree 4632, of 21 March 2003. MDIC has also the following competence: (I) policies for development of industry, commerce and services; (ii) intellectual property and technology; (iii) metrology, standardization and industrial quality; (iv) regulation and execution of programmes and activities related to trade; (v) participation in international negotiations related to trade; (vi) formulation of policies of support to small companies and handcraft initiatives; and (vii) performance of the activities related to the registry of commerce.

With regard to the trade remedies system, SECEX is subordinated to MDIC, and the Minister of MDIC chairs CAMEX. Please see below the role of these bodies.

Since January 2003, MDIC has been headed by Minister Luis Fernando Furlan. MDIC is located in Brasília, at:

Esplanada dos Ministérios, Bloco “J”  
70053-900, Brasília – DF  
Tel: +55 61 21097000  
[www.mdic.gov.br](http://www.mdic.gov.br)

## CAMEX

### *Competence*

According to Decree 4732, 10 June 2003, the Chamber of Trade (*Câmara de Comércio Exterior*, CAMEX) is in charge of formulating, adopting, implementing and coordinating policies and activities concerning trade in goods and services, including tourism. In this sense, CAMEX has to be consulted with regard to any new bills, or legislative or regulatory initiatives in general, on trade matters. CAMEX has to approve any institution or amendment, by any governmental body, of any administrative act regarding trade in Brazil.

In performing its activities, CAMEX has to consider Brazilian obligations under WTO, Mercosur and the Latin-American Integration Association (*Associação Latino-Americana de Integração*, ALADI). Moreover, CAMEX has to take into account the role of trade as an instrument for economic growth.

CAMEX is responsible for:

- Establishing guidelines and procedures related to the implementation of trade policies aiming at the competitive entry of Brazil into the international market.
- Coordinating and driving the activities of the governmental bodies that deal with trade.
- Concerning export-import activities, establishing guidelines on rules and procedures regarding: simplification of the administrative system; registration of companies; nomenclature of goods; export-import purpose; product classification and standardization; labelling; and rules of origin;

- ❑ Establishing guidelines for trade negotiations, in the scope of bilateral, regional and multilateral agreements.
- ❑ Driving policies related to customs.
- ❑ Formulating guidelines regarding tariffs.
- ❑ Establishing guidelines with respect to trade remedies.
- ❑ Establishing guidelines on financing exports of goods and services.
- ❑ Establishing guidelines and coordinating policies for external trade promotion, as well as providing information on trade.
- ❑ Advising on policies related to international transportation and freight.
- ❑ Establishing import and export tariff rates.

Regarding trade remedies, CAMEX is competent to rule on:

- ❑ Termination of investigations with positive determinations.
- ❑ Imposition of anti-dumping duties, countervailing measures and safeguard measures (both provisional and definitive).
- ❑ Acceptation and termination of price undertakings.
- ❑ Suspension of the imposition of such measures.
- ❑ Results of reviews regarding definitive duties or price undertakings.

CAMEX rules on trade remedies based on reports presented by SECEX, with recommendations related to the investigation. CAMEX usually follows the decisions taken by SECEX, but is able to rule otherwise, for political consideration, national interest reasons, or convenience and opportunity reasons.

CAMEX rules on the trade matters attributed to it, including trade remedies, by way of Resolutions (CAMEX Resolutions). Before the existence of CAMEX Resolutions for trade remedy decisions, these decisions were established in Administrative Rules issued by MICT and the Ministry of Finance (*Portarias Interministeriais MICT/MF*).

### **Structure**

CAMEX is chaired by the Minister of Development, Industry and Trade, and includes the Minister of State, the Minister of Finance, the Minister of Planning, the Minister of Foreign Affairs, and the Minister of Agriculture. Other governmental officials may be invited to join the Ministers Council meetings, when concerned. The Ministers Council meets at least once a month, or when summoned by its Chair.

CAMEX also has an Executive Management Committee (*Comitê Executivo de Gestão*, COMEX) and a Private Sector Consultative Council.

COMEX is in charge of assessing the impact of barriers and bureaucratic obstacles to trade and to tourism (including movement of persons), and indicating means to eliminate such barriers. This committee consists of: the chair of the Ministers Council; the Secretaries of MDIC, the Minister of Finance, Minister of Agriculture, Minister of State, and the Secretary-General of the Ministry of Foreign Affairs; the Secretary of the Ministry of Transport; the Secretary of the Ministry of Labour and Employment; the Secretary of the Ministry of Environment; the Secretary of the Ministry of Science and Technology; the Secretary of the Ministry of Tourism; the Secretary of Foreign Affairs of the Ministry of Finance; the Secretary of the Internal Revenue Service of the Ministry of Finance; the Secretary of Agricultural Policies of the Ministry of Agriculture; the Secretary of CAMEX; the Secretary of Trade of MDIC; the Sub-Secretary General of Integration, Economic and Trade Matters of the

Ministry of Foreign Affairs; the Director of International Matters of the Bank of Brazil; the Director of the International Department of the Bank of Brazil; a member of the Board of the National Bank for Economic and Social Development (*Banco Nacional de Desenvolvimento Econômico e Social*, BNDES); and a representative of the Agency for the Promotion of Exports from Brazil (*Agência de Promoção de Exportações do Brasil*, APEX-Brasil).

The Private Sector Consultative Council is composed of 20 representatives from companies, academic institutions and trade unions. Its function is to assist COMEX by elaborating studies and proposals to improve trade policies.

The Secretary of CAMEX is Mario Mugnaini Jr. CAMEX is located in Brasília, and may be reached at:

Tel. +55 61 21097090 / 21097050  
E-mail: [camex@desenvolvimento.gov.br](mailto:camex@desenvolvimento.gov.br)

## GTDC

The Technical Group on Commercial Defence (*Grupo Técnico de Defesa Comercial*, GTDC) was created in 2001 (CAMEX Resolution 9, 22 March 2001), in the scope of COMEX.

GTDC is in charge of the technical examination of SECEX proposals on: the imposition of anti-dumping duties and countervailing measures, provisional or definitive; the approval of price undertakings in anti-dumping and countervailing investigations; and the imposition of provisional or definitive safeguard measures. It is up to GTDC to inform CAMEX about the initiation of anti-dumping, countervailing and safeguard investigations.

GTDC is chaired by the Secretary of CAMEX and consists of one representative of each governmental body that composes CAMEX. Secretariat functions are performed by DECOM, which is in charge of convening meetings.

## SECEX

The Secretariat of Foreign Trade (*Secretaria de Comércio Exterior*, SECEX) is the MDIC body in charge of:

- Formulating proposals for policies and programmes concerning trade as well as establishing the legal framework for their implementation;
- Suggesting guidelines for the use of tariff instruments in the context of the objectives of Brazilian trade policy, and suggesting import and export tariff rates;
- Participating in negotiations related to trade agreements;
- Implementing trade remedies mechanisms; and
- Supporting Brazilian exporters that are subject to investigations related to trade remedies abroad.

SECEX carries out its activities in four technical departments:

- Department of Trade Transactions (*Departamento de Operações de Comércio Exterior*, DECEX);
- Department of International Negotiations (*Departamento de Negociações Internacionais*, DEINT);
- Department of Commercial Defence (*Departamento de Defesa Comercial*, DECOM);
- Department of Planning and Development of Trade (*Departamento de Planejamento e Desenvolvimento de Comércio Exterior*, DEPLA).

Regarding trade remedies, SECEX is responsible for ruling, in SECEX Circulars, on the following issues:

- ❑ Initiation of investigations;
- ❑ Extension of the period of investigations;
- ❑ Termination of investigations upon request by the complainant;
- ❑ Initiation of the review of definitive duties or price undertakings;
- ❑ Termination of the investigation without application of any measures.

All SECEX Circulars must be published in the *Official Gazette* within 20 days.

The Secretary of SECEX is in charge of presenting a report on the outcome of the investigation. The report has to be presented to CAMEX (more specifically, to GTDC).

## DECEX

DECEX's mission is to increase Brazilian exports. For this purpose, it seeks to facilitate trade and improve trade mechanisms in Brazil. DECEX is competent, *inter alia*, to:

- ❑ Develop and execute policies and programmes relating to trade in Brazil, and establish rules and procedures for the implementation of such policies;
- ❑ Implement sectoral guidelines for trade and decisions taken in domestic and international forums for trade in goods;
- ❑ Coordinate actions in the context of the Agreement on Import Licensing Procedures, in regional forums and WTO, and participate in events in Brazil and abroad;
- ❑ Administer the WTO Agreement on Textiles and Clothing (while in effect);
- ❑ Control prices, weights, measures, classification and quality declared in import and export transactions;
- ❑ Analyse requests for reducing the tax revenue rate for transfer of funds for payments related to the promotion of Brazilian goods abroad;
- ❑ Advise on the trade aspects of the Export Financing Programme (*Programa de Financiamento às Exportações*, PROEX);
- ❑ Coordinate the development, implementation and management of the Integrated Trading System (*Sistema Integrado de Comércio Exterior*, SISCOMEX);
- ❑ Coordinate the action of external agents that deal with trade transactions;
- ❑ Represent MDIC in meetings concerning the SISCOMEX;
- ❑ Maintain and update the database of Brazilian exporters and importers of the SECEX;
- ❑ Assess and investigate frauds in trade, and suggest penalties;
- ❑ Participate in meetings in other bodies concerning technical sectoral matters, and in internal and international events related to trade in Brazil; and
- ❑ Coordinate and implement actions taken jointly with the private sector, international agencies and other governmental entities.

SECEX also prepares studies on: sectoral assessments regarding trade, and the interdependency with internal commerce; the logistics of trade transactions; creation and improvement of systems for standardization, classification and

inspection of exportable goods; the evolution of strategic products and markets for Brazilian trade, based on sectoral competitiveness and availability worldwide; and suggestions to improve trade legislation.

Edson Lupatini Jr is the Director of DECEX. DECEX is located at:

Esplanada dos Ministérios, Bloco “J” – 9º andar, sala 918  
70053-900 Brasília-DF  
Tel: +55 61 21097562  
Fax: +55 61 21097188

## DEINT

DEINT has competence to participate in international trade negotiations, more specifically to:

- Negotiate and promote studies and initiatives for support, information and orientation for the participation of Brazil in trade negotiations;
- Develop activities related to trade with international organizations;
- Coordinate internally the preparatory work for Brazilian participation in trade negotiations, and advise on the extension and withdrawal of concessions.

Rosária Costa Baptista is the Director of DEINT. DEINT is located at:

Esplanada dos Ministérios, Bloco “J” – 7º andar, sala 724  
70053-900 Brasília-DF  
Tel: +55 61 21097416  
Fax: +55 61 21097385

## DEPLA

DEPLA is competent to, among others:

- Suggest policies and programmes related to trade, and follow the execution of such policies and programmes;
- Develop studies on products and markets that may be strategic for Brazil, in order to increase Brazilian exports;
- Elaborate and put into practice capacity-building programmes for micro and small enterprises;
- Elaborate and put into practice programmes to develop the export culture;
- Follow meetings, in national and international forums, related to the development of trade and electronic commerce;
- Elaborate and edit technical materials on export activity;
- Produce, analyse and disseminate statistical data and information regarding trade;
- Elaborate partnerships between public and private entities, for the development of programmes related to export promotion;
- Participate in national and international committees related to export promotion.

Among the programmes under responsibility of DEPLA related to export promotion are:

- The *Programa Cultura Exportadora*. This programme aims to increase the participation of small companies in Brazilian exports and the number of companies able to export, by spreading export culture and by giving support to potential exporters.

- ❑ The *Radar Comercial*. A joint initiative with APEX-Brasil, this is an instrument for consultations and analysis of data related to trade for products, worldwide and in selected markets (average prices, dynamism, performance of exports from Brazil, etc.), that aims to assist Brazilian exporters to find good opportunities for exporters.
- ❑ The *Portal do Exportador*. This website aims to assist Brazilian exporters by gathering information on exports, such as legislation, mechanisms, seminars, how to export, and barriers to trade in other countries, and answers questions related to exports ([www.portaldoexportador.gov.br](http://www.portaldoexportador.gov.br)).
- ❑ The *Fala Exportador*. A free call centre that answers questions related to exports (0800 9782332).
- ❑ The *Vitrine do Exportador*. Database, available in the net ([www.exportadoresbrasileiros.gov.br](http://www.exportadoresbrasileiros.gov.br)), containing lists of Brazilian exporters, by product, by product and country of destination, by company. Brazilian exporters may make available a show room of their companies in this website.

Fábio Martins Faria is the Director of DEPLA. DEPLA is located at:

Esplanada dos Ministérios, Bloco “J” – 8º andar, sala 814-B  
 70053-900 Brasília/DF  
 Tel.: +55 61 2109-7081  
 Fax: +55 61 2109-7075

## DECOM

DECOM is the department of SECEX that deals directly with trade remedy issues. It has three main responsibilities.

### *DECOM carries out investigations*

DECOM's first role, which is of utmost importance for this book, relates to trade remedy investigations in Brazil. This task consists of analysing complaints requesting initiation of an investigation. Once an investigation has been initiated, DECOM is in charge of carrying out the investigation, and is responsible for the determination of dumping or subsidy, injury and causality, or finding that increased imports are causing injury, giving rise to safeguard measures. When the investigation is terminated, DECOM may recommend the application of trade remedies. The rules related to trade remedies, as applied by DECOM, have never been challenged in WTO.

Although DECOM is responsible for the investigation, it does not rule on the imposition of anti-dumping, countervailing or safeguard measures. DECOM constitutes the technical arm of SECEX (the governmental body of MDIC in charge of trade). If the investigation carried out by DECOM results in a positive determination of all requirements for the application of a trade remedy, a recommendation to this effect is presented by SECEX to CAMEX. Only CAMEX can actually apply these measures in Brazil.

### *DECOM supports Brazilian exporters in investigations abroad*

The second task of DECOM is to support Brazilian exporters involved in investigations carried out abroad. Upon request by the Brazilian company involved in the investigation, DECOM may help with responses to questionnaires, be present on verification visits, etc.

As at 31 December 2003, there were seven investigations in course against Brazilian products (mainly metal products). Two of these investigations were taking place in Canada, two in the United States, one in Turkey, one in India and one in Argentina. At the same time, there were 41 anti-dumping and

countervailing duties and price undertakings in force against Brazilian exports. Most of these duties and undertakings were applied by the United States (19), followed by Canada (6) and Argentina (6), India (4), South Africa (3), Mexico (2) and the European Union (1).

DECOM may also advise whether WTO rules on trade remedies are being respected by the country in charge of the investigation in a particular case, and advises Brazil in WTO cases brought by Brazil.

### ***DECOM has a role in international activities***

Because of its technical expertise in trade remedies, the third role of DECOM is to follow discussions and participate in negotiations on trade remedies in international forums, supporting Brazilian diplomats (who represent Brazil internationally). Brazil takes part in several discussions and negotiations on the subject.

### ***WTO activities***

DECOM follows the regular meetings of the WTO Committees on Dumping Practices, Subsidies and Countervailing Measures, and Safeguards. These Committees convene six-monthly meetings. DECOM presents to each Committee meeting a report about investigations in progress and the application of trade remedies. In the meetings, WTO Members have the opportunity to exchange views on the application of the disciplines related to trade remedies applied by other Members. DECOM also notifies every initiation of a safeguard investigation, termination of such investigations and imposition of safeguard measures, according to the WTO SG Agreement.

The Fourth WTO Ministerial Conference, in Doha, 2001, decided on a new round of negotiations which includes anti-dumping and subsidies (safeguards are not under negotiation in WTO), according to Article 28 of the Doha Ministerial Declaration:

*'The ministers agreed to negotiations on the Anti-dumping (GATT Article VI) and the Subsidies and Countervailing Measures Agreements. The aim is to clarify and improve disciplines while preserving the basic concepts, principles and effectiveness of these agreements, and taking into account the needs of developing and least-developed participants.'*

*In the initial negotiating phase, participants will indicate which provisions of these two agreements they want clarified and improved in the next phase – including provisions disciplining trade distorting practices. The ministers mention specifically fisheries subsidies; they say participants should aim to clarify and improve WTO disciplines, taking into account the sector's importance to developing countries.'*

These negotiations are carried out by the Negotiating Group on Rules. Brazil is very active in the rules negotiations.

In anti-dumping negotiations, Brazil presents proposals as part of the 'Friends of Anti-dumping' group. This is an informal group, under the leadership of Japan, of countries that intend to strengthen WTO anti-dumping disciplines so as to protect exporters against an arbitrary use of trade remedies. This means the WTO Agreements would be reformed to reduce the discretionary power of countries to apply the anti-dumping rules as they wish. In opposition to the 'Friends of Anti-dumping' there are countries that prefer to maintain the existing disciplines in WTO, and keep the right for Members to apply their own standards on anti-dumping.

Proposals endorsed by Brazil in the rules negotiations include:

- ❑ Application of the ‘lesser duty’ rule by all Members;<sup>5</sup>
- ❑ Disciplines on the extension of the application of anti-dumping measures;<sup>6</sup>
- ❑ Improvement of the disciplines related to reviews;<sup>7</sup>
- ❑ Utilization of ‘facts available’;<sup>8</sup>
- ❑ Prohibition of use of the ‘zeroing’ practice in calculation of dumping margins;<sup>9</sup>
- ❑ Disciplines on price undertakings.<sup>10</sup>

Brazil has a particular position. It suffers many anti-dumping investigations abroad, but at the same time is a major user of trade remedies. Brazil intends to see stronger disciplines, but not so strong as to drastically restrict its use of trade remedy measures to protect the Brazilian industry.

Because of this, Brazil also participates in the ‘Middle Group’ created in February 2005. This group, under the leadership of the European Communities, intends to amend the WTO Anti-dumping Agreement with the aim of facilitating the application of WTO disciplines. The Middle Group is at the stage of exchanging views and harmonizing positions, and has not presented any proposals.

#### ***Other international activities***

DECOM also participates in other international discussions and negotiations.

In Mercosur, DECOM coordinates domestically the Committee on Commercial Defence and Safeguards, and follows discussions related to trade remedies in the Mercosur Trade Commission.

In the FTAA scope, DECOM elaborates proposals in order to reach consensus in the Mercosur region for a unique proposal in FTAA negotiations. DECOM also participates in other negotiations involving Mercosur (such as Mercosur-European Union, Mercosur-India, Mercosur-SACU), and follows discussions on subsidies in OECD.

#### ***Structure of DECOM***

DECOM has four sections:

- ❑ Support to the Exporter, Negotiations and Rules (*Coordenação-Geral de Apoio ao Exportador, Negociações e Normas*, CGAN):  
decom.cgan@desenvolvimento.gov.br.
- ❑ Agricultural Products (*Coordenação-Geral de Produtos Agropecuários*, CGAP):  
decom.cgap@desenvolvimento.gov.br.
- ❑ Intermediary Products (*Coordenação-Geral de Produtos Intermediários*, CGIN):  
decom.cgin@desenvolvimento.gov.br.
- ❑ Metals and Finished Products (*Coordenação-Geral de Metais e Produtos Acabados*, CGMA):  
decom.cgma@desenvolvimento.gov.br.

5 See document TN/RL/W/119, at [www.wto.org](http://www.wto.org).

6 See document TN/RL/W/46, at [www.wto.org](http://www.wto.org).

7 See document TN/RL/W/83, at [www.wto.org](http://www.wto.org).

8 See document TN/RL/W/93, at [www.wto.org](http://www.wto.org).

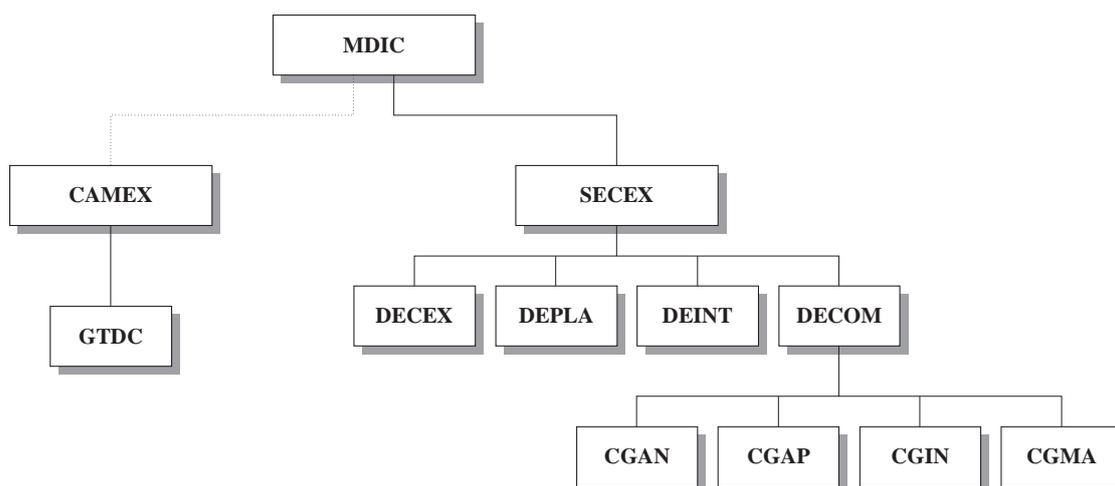
9 See document TN/RL/W/113, at [www.wto.org](http://www.wto.org).

10 See document TN/RL/W/118, at [www.wto.org](http://www.wto.org).

DECOM is located at:

Esplanada dos Ministérios, Bloco “J” – 8º andar, sala 803  
 70053-900 Brasília/DF  
 Tel. +55 61 2109-7770  
 Fax +55 61 2109-7445  
 E-mail: decom@desenvolvimento.gov.br

### Institutional framework: chart



## Preliminary issues

For an exporter (or a producer) subject to an anti-dumping or countervailing investigation, it is important to know what to anticipate and how to react. Clearly, the best defence against the imposition of an anti-dumping duty or a countervailing measure is to prevent the initiation of an investigation in the first place. Once an investigation has been initiated, the exporter will probably have to make decisions such as whether to cooperate with DECOM and whether to obtain legal counsel.

For the Brazilian producers interested in initiating an investigation, it is important to understand the work involved.

## Precautionary measures

Under the threat of suffering an anti-dumping duty or a countervailing measure, the exporter should first, to the extent possible, adjust its prices in its home markets to ensure that they are not (at least significantly) higher than their export prices. This action makes it difficult for the exporter's competitors in the Brazilian market to prove dumping.

*For example, if the domestic price of a given product from the factory is \$10 per unit, and the cost of transporting the product to Brazil is \$2 per unit, then the export price at the Brazilian frontier should not be less than \$12 per unit.*

*Domestic price (at factory): \$10*

*Add transport cost to Brazil: \$2*

*Export price (at the Brazilian frontier): \$12*

Exporters should make sure that their accounting records show such concepts as normal value, export price, benefit from subsidy, in order to make it easier for the investigating authorities to verify the dumping margin or the amount of subsidy. This precautionary measure helps exporters to provide better information at short notice in case of investigation.

## The importance of cooperation

Once the investigation is initiated, exporters are faced with the question of whether or not to cooperate with investigation. In most cases, cooperation will lead to a better result at the conclusion of the proceedings. Although cooperating in an anti-dumping or countervailing investigation can be expensive and time-consuming, there are a number of reasons why it is advisable.

First, where the Brazilian authorities consider that protective measures are necessary, duties will be imposed on all products originating in the country subject to the measures. Non-cooperating producers normally have higher duties imposed upon them than those who have cooperated.

*Example: In a review regarding exports of jute bags from India and Bangladesh, since there were no exports of the product to Brazil during the period of analysis, all companies producing jute bags from these two countries received questionnaires inquiring about sales to the internal market and exports to third countries. No producers from Bangladesh and only five producers from India responded to questionnaires.*

*For the Indian companies that cooperated by responding to the questionnaires, DECOM verified the following normal values: \$0.77/kg for Gloster Jute Mills Ltd; \$0.78/kg for Cheviot Company Ltd; \$0.77/kg for Howrah Mills Company Ltd; \$0.71/kg for Birla Corporation Ltd; and \$0.69/kg for The Ganges Manufacturing Company Ltd.*

*For the other non-cooperating companies from India and the companies from Bangladesh, the normal value was calculated based on the best information available, reaching the amount of \$0.91/kg.*

*In that investigation, DECOM found no exports to Brazil, during the period of review, from any origin. Therefore, there was no export price, and no dumping margin could be calculated. Possibility of recovery of dumping was verified by comparing the normal values (plus expenses related to importation in Brazil) with the average price corresponding to the sales made by the Brazilian industry in the same period.*

*For the Indian companies that responded to the questionnaires, the normal values incorporating expenses related to importation in Brazil were: \$1.09/kg for Gloster Jute Mills Limited; \$1.10/kg for Cheviot Company Limited; \$1.09/kg for Howrah Mills Company Ltd; \$1.02/kg for Birla Corporation Ltd; and \$0.99/kg for The Ganges Manufacturing Company Ltd. For the other companies, the amount was \$1.27/kg.*

*The ex-factory price charged by the Brazilian industry in the same period was \$1.21/kg.*

*Indian companies that provided enough information to DECOM do not need to practice dumping in order to export to Brazil. The best information available for the other companies, however, allowed the conclusion that they would be required to practice dumping if they intend to export jute bags to Brazil.*

*After a determination of recovery of injury of the Brazilian industry, a specific duty of \$0.22 was applied to the companies that had not cooperated with the Brazilian authorities, while the companies that had cooperated were exempt duties.<sup>11</sup>*

Second, a failure to cooperate on the part of the exporter, whether in the form of a refusal or by submitting false or misleading information, will allow

<sup>11</sup> See CAMEX Resolution 24, of 9 September 2004.

DECOM to base its decisions on the ‘facts available’. In addition to publicly available information (e.g. official import statistics), the facts available will often include information provided by the complainant industry. In other words, DECOM may use information provided by the exporter’s competitors in Brazil. Not surprisingly, such information tends to exaggerate the level of dumping by, or subsidizing of, the exporter.

Third, cooperation allows an exporter to have a measure of control over the outcome of the investigation. Cooperating in the investigation, and ensuring that any duties imposed on your company are based on accurate data, is the most effective means of minimizing the level of duties.

Finally, when considering the costs associated with cooperating in an investigation, an individual business should consider the amount and value of its exports to Brazil and the potential for such exports in the future. The business should consider the possibility of gaining market share if competitors are put ‘out of the business’ by very high duties on their exports to Brazil. If the Brazilian market is a strategic one for the exporter in question, the costs associated with cooperating may be relatively minor in comparison with the advantages of maintaining reasonable access to the Brazilian market.

### **The importance of legal counsel**

Another issue that must be considered when an exporter is faced with an anti-dumping or a countervailing investigation, and one that is closely related to cooperation, is whether to employ legal counsel. Again, the decision involves weighing the importance of the Brazilian market against the cost of participating in the investigation with the assistance of experienced legal counsel.

Like other administrative procedures, Brazilian anti-dumping and countervailing procedures are complex and burdensome. Obtaining legal counsel experienced in this kind of procedure in Brazil will help the exporter obtain the most favourable outcome possible. Exporters are often not aware of the procedural rights available to interested parties or how to use them. Moreover, sometimes there are very specific legal issues at stake that should be brought to the attention of the Brazilian authorities. The right counsel will be able to provide such guidance and help defend the interests of the exporting producers.

As said before, investigators have the discretion to use the ‘facts available’ if the information provided by the exporter is considered inaccurate or if it cannot be verified. Producers who have cooperated without employing counsel may find the demands made by DECOM during verification visits difficult to meet. Given their experience, legal counsel can be of vital assistance in preparing a company for such a visit, and preventing the use of ‘facts available’ against the company.

Legal counsel can also assist a cooperating producer by structuring a questionnaire response in a specific manner, and according to the practices adopted by DECOM. For example, grouping together certain products or expenses can have a significant effect on the final result.

### **The use of the pre-analysis formulary**

Since 1 December 2003, companies interested in requesting a dumping investigation have been able to fill in an electronic form on the MDIC website ([www.desenvolvimento.gov.br/sitio/secex/defComercial/for\\_Eletronico.php](http://www.desenvolvimento.gov.br/sitio/secex/defComercial/for_Eletronico.php)) and submit it to DECOM ([decom@desenvolvimento.gov.br](mailto:decom@desenvolvimento.gov.br)).

The pre-analysis formulary acts as an informal draft of a complaint. The information to be provided in the electronic form is similar to the information required for the complaint, and every requirement is followed by thorough explanations.

This form is not obligatory, but is intended to assist the Brazilian industry potentially interested in initiating an investigation, reducing the possibility that a complaint will be refused for lack of information. It is also a good opportunity for the Brazilian industry to understand the protection they can request from Administration, and get in contact with the structure of DECOM.

Most importantly, Brazilian producers can learn about the kind of information they have to provide in a complaint, so that they may decide the merits of initiating an investigation. They may decide it will be too difficult and expensive to gather so much information about their competitors' production. In addition, a lot of information about themselves will have to be disclosed somehow, despite the confidential treatment of some information.

The following data are required in the form:

- Full qualification of the complainant.
- Indication of the period for the analysis of the existence of dumping and injury (the five 12-month periods (P) closest to the date of presentation of the complaint – P1 to P5).
- Regarding the product:
  - Description;
  - Countries of origin of the imports allegedly being dumped;
  - Uses and applications of the product in Brazil;
  - Description of the like product produced in Brazil;
  - Uses and applications of the like product in Brazil.
- Regarding representativeness of the complainant:
  - Production of the complainant (P1 to P5);
  - Production and sales of other domestic producers (P1 to P5).
- Information regarding the existence of dumping:
  - If the exporting country is a market economy country -
    - The normal value based on the sales in the domestic market of the exporting country, during the period under investigation;
    - The normal value based on exports to third countries, during the period under investigation;
    - The normal value constructed in the exporting country, corresponding to the period under investigation – raw materials, labour, other costs, total cost of production, administrative expenses, selling expenses, total cost, profit, ex factory price.
  - If the exporting country is a non-market economy country -
    - The normal value calculated based on sales in the domestic market of a third country that is a market economy country, during the period under investigation;
    - The normal value based on exports from a third country that is a market economy country to another (except Brazil), during the period under investigation;
    - The normal value constructed in a third country that has a market economy, corresponding to the period under investigation – raw materials, labour, other costs, total cost of production, administrative expenses, selling expenses, total cost, profit, ex factory price.
  - Export price to Brazil, during the period under investigation.

- ❑ Information regarding the existence of injury to the domestic industry:
  - Capacity installed;
  - Sales and inventories: initial stock, production, sales in the domestic market, exports and final stock by period (P1 to P5);
  - Revenue from sales in the domestic market (P1 to P5);
  - Total cost of production: raw materials, labour, other costs, administrative expenses, selling expenses, by period (P1 to P5);
  - Number of employees by period (P1 to P5);
  - Salaries by period (P1 to P5);
  - Cash flow evolution by period (P1 to P5).

At this stage there is no need to provide evidence for the information provided.

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## The investigation

### Interested parties

The complainant requests the Administration to interfere in the economic relationship by means of an administrative act that aims to neutralize price distortion verified during the investigation (dumping or subsidy). This measure may be in the interest of some industries and not of others, whether Brazilian or foreign ones. In this sense, the Brazilian AD and SCM Laws consider as interested parties in the investigation:

- ❑ Domestic producers of the like product, and the association that represents them;
- ❑ Importers or consignees of the goods under investigation and the association that represents them;
- ❑ Foreign exporters or producers, generally called ‘exporters’, of the product in question and the associations that represent them;
- ❑ The governments of the countries exporting the product in question;
- ❑ Other parties, either Brazilian or foreign, considered by SECEX to be interested.

### The role of the Administration

SECEX, in DECOM, is the governmental body in charge of carrying out anti-dumping and countervailing investigations, being responsible for the assessment of the existence of dumping or subsidy, injury and the causal link between them.

It has to keep equally distant from the parties in the anti-dumping and countervailing procedures, so that it will be able to decide according to the public interest. In this sense, SECEX has to stay neutral with regard to the investigation.

The Brazilian AD and SCM Laws allow SECEX to initiate an investigation *ex officio* in exceptional circumstances, as long as there is sufficient evidence of dumping, injury and causal link between them justifying the initiation of an investigation. The government of the country or countries concerned must be notified of the existence of such evidence, before the initiation of the investigation. Even in this case, however, the Administration is not an interested party in the investigation.

**Example:** In the anti-dumping case regarding stainless steel, SECEX included *ex officio* exports from France and Germany in the investigation.<sup>12</sup>

If a complaint satisfies the requirements for the initiation of an investigation, the Administration cannot refuse to investigate.

## The complaint

Except in the rare cases where the Administration initiates an investigation *ex officio*, investigations are initiated under request by the domestic industry producing goods like those being imported, or on its behalf, by means of a complaint in writing and pursuant to the instructions issued by SECEX.

Both the Brazilian AD Law and the Brazilian SCM Law provide the requirements for the complaint. SECEX Circular 20/96, and SECEX Circular 21/96, both dated 2 April 1996, provide more detail on this point, establishing the exact list of information and data to be provided in the complaint, as well as the documentation to be attached to it.

The complaint and supporting documentation have to be submitted in four sets of copies (except if DECOM establishes otherwise), and delivered to the clerk's office of DECOM, in Brasília (although DECOM does still accept complaints at its offices in Rio de Janeiro). According to SECEX Circular 59, of 28 November 2001, the complaint can be also delivered by facsimile or a similar data transmission method. In this case, the original version of the complaint must be delivered to the clerk's office of DECOM, in Brasília or in Rio de Janeiro, within five days. Information provided otherwise will not be considered by DECOM in the investigation.

The law is strict with respect to the information that must be contained in the complaint. This means the export producer may have scope for defence in the investigation based on requirements missed by the complainant. For this reason, it is important that the exporter is aware of all the requirements for the complaint to be accepted by DECOM/SECEX.

In brief, the complaint must contain:

- Definition of the goods that are subject to the complaint;
- Description of the Brazilian industry that produces the like goods;
- Evidence that imported goods are being dumped or subsidized; and
- Evidence that the dumped or subsidized imports of the goods are causing or threatening to cause injury to Brazilian production of the like goods.

### *Qualification of the complainant*

As first step, the complainant has to introduce itself. It can be a single domestic producer of the like product, a group of producers, or the association that represents them. In case of multiple producers, all of them must provide their corporate name, address and contact telephone number.

The complaint must also contain indication of the legal representative or representatives of the complainant who will act before SECEX. They may be members of the board of directors of the company or lawyers. In either case, documents that prove the power of the representatives, such as articles of association, minutes of shareholders' or quota holders' meetings, or powers of attorney must be provided.

<sup>12</sup> See Interministerial Administrative Rule MICT/MF 18, published on 23 December 1999, and Interministerial Administrative Rule MICT/MF 34, published on 26 May 2000.

The complainant must also indicate the industry on whose behalf the complaint is being filed.

*Example:* In the anti-dumping review regarding exports of jute bags from India, the complainant was the Jute Manufacturers Development Council (JMDC), a body established by the Indian Government to promote jute products from India, in the internal market and abroad. Although JMDC showed evidence that it represented all Indian producers and exporters of jute bags, some companies, and not JMDC, responded to the questionnaires.<sup>13</sup>

### ***The product to be investigated***

The description of the product that the complainant requests be investigated is central to the whole procedure. The definition of domestic industry and like product must refer to the product as described in this part; dumping and injury shall be strictly calculated for this product. In other words, the description restricts the investigative activity of DECOM. For this reason, the exporter has room to act, for example by contesting the descriptions of the exported product or the like product produced domestically by the complainant.

Regarding the product covered by the request for initiation of an investigation, the complainant has to provide the following information:

- Identification of the product and tariff classification according to the Mercosur Common Nomenclature (NCM);
- Evolution of the imports in the previous five years;
- Detailed description of the product allegedly dumped or subsidized, such description to include information on the technical characteristics of the product, indicating, where applicable, model, type, dimension, power, chemical composition and/or any other particularity;
- Detailed description of the like product produced domestically, specifying any differences with regard to the product allegedly dumped or subsidized;
- Indication of main uses and applications of the product.

The complaint has to provide documents, catalogues, and any other material that indicates the technical characteristics of the product.

*Example 1:* In the dumping case regarding stainless steel from South Africa, Germany, Japan, Spain, France, Italy and Mexico, the description of the product at issue and like product produced in Brazil was challenged by the exporters. DECOM decided, in that case, that the exported product and the like product produced in Brazil were like products because both were compatible with international standards, and they had the same chemical composition, same physical and mechanic properties and same final uses.<sup>14</sup>

*Example 2:* In the anti-subsidy investigation regarding polyethylene terephthalate (PET films) from India, before the decision of DECOM on whether the complaint was properly documented, the complainant requested that two other tariff classification items should be added to the list of items presented in the complaint. Because of the complexity of the product concerned, DECOM held two meetings with the complainant to present information on the technical characteristics of the product.<sup>15</sup>

<sup>13</sup> See SECEX Circular 50, of 8 July 2003, published on 9 July 2003.

<sup>14</sup> See Interministerial Administrative Rule MICT/MF 18, published on 23 December 1999, and Interministerial Administrative Rule MICT/MF 34, published on 26 May 2000.

<sup>15</sup> See SECEX Circular 50, of December 16, 2002.

**Example 3:** In the anti-dumping investigation related to exports of powdered milk from Argentina, the milk in natura produced in Brazil was considered like the powdered milk (packed for industrial consumption, not for retailing). The market was the same for the imported and the Brazilian products since both were for industrial consumption. The only difference found between milk in natura and powdered milk was the water content; all other physical characteristics were the same (any chemical products in the powdered milk were added for preservation purposes).<sup>16</sup>

**Example 4:** In the anti-dumping investigation regarding drugs containing insulin from Denmark, France and the United States, DECOM stated that the existing physical differences among the drugs containing insulin should not be interpreted so restrictively that the drugs were considered to be distinct products. According to DECOM, such differences should be weighed only if it could be demonstrated that the use, the application or the perception of the users of the different kinds of drugs containing insulin were different, which was not the case. Even if the differences among the insulin preparation were taken into consideration for a price comparison, based on the information submitted by the interested parties and in the concept of like product established by the Brazilian AD Law, DECOM considered that the product produced in Brazil was similar to the products under investigation.<sup>17</sup>

### ***Domestic production and representativeness of the complainant***

Normally, investigations are initiated by the domestic industry that produces goods like the imports, or on its behalf. For these reason, for the investigation to be initiated, the complaint has to demonstrate that the complainant legitimately represents the interests of the domestic industry. The representativeness may be contested by the exporters.

In order to be considered domestic industry, the complaint must meet the following conditions:

- ❑ It must demonstrate that the complainant does in fact produce the like product;
- ❑ It must demonstrate that the domestic producers supporting the complaint account for more than 25% of the total production of the like product by the domestic industry;
- ❑ It must demonstrate that the complaint is supported by those Brazilian producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the domestic industry expressing either support for, or opposition to, the complaint.

The two last requirements are intended to avoid complaints that receive very little support, but preserve the right to present a complaint seeking protection even in the absence of unanimity. In addition to the reasonable requirement of support by at least one quarter of the total production, the complaint must be subject to more approval than rejection within the Brazilian industry, in terms of production (not by number of producers). DECOM may seek confirmation regarding representativeness of the complainant.

**Example 1:** In the anti-dumping case regarding light and compact barilla from Bulgaria, Poland, Romania, Spain and the United States, the complainant was a company representing 100% of the total production of the like products at issue.<sup>18</sup>

<sup>16</sup> See CAMEX Resolution 1, of 2 February 2001, published on 23 February 2001.

<sup>17</sup> See SECEX Circular 5, of 9 February 2001.

<sup>18</sup> See SECEX Circular 53, published on 23 September 1996, SECEX Circular 37, published on 11 September 1997; SECEX Circular 23, published on 30 September 1998; Interministerial Administrative Rule MICT/MF 13, published on 30 September 1998.

**Example 2:** In the anti-dumping investigation regarding exports of acrylonitrile from Mexico and the United States, the domestic industry was considered to be the complainant, ACRINOR, which represented 100% of the production of the like product in Brazil.<sup>19</sup>

**Example 3:** In the countervailing investigation regarding polyethylene terephthalate (PET films) from India,<sup>20</sup> DECOM asked the Brazilian Association of Producers of PET Packaging (Associação Brasileira dos Fabricantes de Embalagens PET – ABEPET) to confirm the information presented in the complaint that the complainant held 100% of the production capacity of PET films in Brazil.

*If there are 100 producers for product X, and one of them alone produces 30% of the total production, it can file a complaint alone, subject to the requirement that less than 60% of the total production reject the complaint.*

In order to find out if the complaint is duly represented, the complainant must provide information on the production of the product for the previous 12 months. The estimated amount and value of the total production in Brazil of the like product must be indicated, as well as the amount and value of the complainant's production, for a better understanding of the share of the total production that supports the investigation.

In cases where the complaint is filed on behalf of the domestic industry (e.g. by an association or a trade union, the complainant must indicate the name of the producers represented, as well as the amount and value of their production.

The complainant should also make its best efforts to indicate the name and address of domestic producers of the like product that are not represented in the complaint, as well as the amount and value of the production corresponding to such producers. The complainant is requested to attach statements from the producers that are not represented in the complaint, regarding their support for or refusal to initiate an investigation.

In addition, under this item of the complaint, the complainant should indicate the companies that produce but also import the product at issue.

### ***The existence of dumping or subsidy***

#### ***Dumping***

The complaint must show that the imported products are being dumped, that is, that the goods are sold at a lower price for export to Brazil than for domestic consumption at the country of origin.

A positive dumping determination depends on evidence that export prices are lower than prices charged in the domestic market of the exporting country. For this reason, the complaint must indicate:

- The exporting country or countries;
- The price in the domestic market of the exporting country, or elements that allow investigators to determine the price that would normally be the price in the domestic market of the exporting country (the normal value); and
- The export price to Brazil.

These data must be provided for every exporter from the countries involved in the Brazilian imports that are allegedly dumped. The complaint must also indicate the various kinds and models of the product investigated.

<sup>19</sup> See SECEX Circular 53, of 16 February 2004, published on 18 February 2004.

<sup>20</sup> See SECEX Circular 50, of December 16, 2002.

### Origin of the product

Regarding the product (or products) dumped, the complainant must name the country or countries of origin and the exporting country or countries (if different from the country of origin).

The names and addresses of producers in the country or countries of origin and exporters to Brazil must be indicated.

### Normal value

#### *Market economy exporting countries*

If the exporters are located in a market economy country, the complainant must provide the price charged by each exporting producer referred above in its domestic market. Any changes during the previous year and in the previous months of the current year must be included. The volume of sales at each price must also be provided.

The price indicated should be the ex-factory price for ordinary sales transactions of the like product designated for domestic consumption in the exporting country. If the indicated price is not ex-factory, the complainant must indicate the level of trade, and how to determine the corresponding ex-factory price.

If prices vary according to sales policies (based on volume of sales, kind of customers, etc.), the complainant must specify which price it is using.

Sometimes, there are simply no sales in the domestic market of the exporting country, the volume of sales is very low, or there are particular market conditions regarding the product at issue. In these cases, it is not possible to obtain the information on prices in the domestic market of the exporting country required in the complaint. After justifying the reasons, the complainant is allowed to indicate the prices charged by producers or exporters referred to earlier in this section in sales to third countries in the previous year and the previous months of the current year, indicating any changes and the level of trade on which the price was based. Another option is to indicate the constructed value in the exporting country, for each producer or exporter referred to (i.e. the production cost plus a reasonable amount corresponding to general, selling and administrative expenses, plus an amount for profit), related to the previous year and the previous months of the current year. The methodology employed to obtain the figure must be presented, itemizing each part of the calculation, as follows:

	<i>Technical coefficient</i>	<i>Price per unit</i>	<i>Total cost</i>
<i>(a) Raw material (specify)</i>			
<i>(b) Labour</i>			
<i>(c) Other costs</i>			
<i>(d) Total cost of production (a+b+c)</i>			
<i>(e) Administrative expenses</i>			
<i>(f) Selling expenses</i>			
<i>(g) Total cost (d+e+f)</i>			
<i>(h) Profit</i>			
<i>(I) Price ex-factory (g+h)</i>			

**Example:** In the anti-dumping investigation concerning imports of phenol (hydroxybenzene) from the United States and the European Union, the complainant stated that the normal value was obtained by calculating the average of the highest monthly prices published in Icis Lor Group and Tecnon (UK) Ltd, from January to December 2000. According to the complainant, the export amounts negotiated were irrelevant in the domestic market of the United States and the European Union and, consequently, were subject to higher prices. The complainant adjusted the normal value to reach the ex-factory price, and discounted the average cost of freight (\$20 per ton).<sup>21</sup>

#### *Non-market economy exporting countries*

If the exporter of the product allegedly dumped is located in a country that is not predominantly a market economy, it is difficult to find out how prices are formed. For this reason, there is no sense in comparing prices charged by the exporting producer in the domestic market with the exporting price to Brazil.

In this case, the Brazilian AD Law authorizes the complainant to present information regarding prices charged by producers from a third country that is a market economy country. It is up to the complainant to choose one of the three alternatives below:

- The price effectively charged, preferentially ex-factory, for the like product in ordinary selling transactions for domestic consumption in the third country that is a market economy country, indicating any changes during the previous year and during the previous months of the current year, as well as the volume of sales to which the price provided refers; or
- The price charged by producers or exporters located in a third country that is a market economy country, in exports to other countries (except Brazil), during the previous year and previous months of the current year; or
- The constructed value in the third country that is a market economy country, with the elements of the calculation, for the previous year and the previous months of the current year, shown according to the following chart:

	<i>Technical coefficient</i>	<i>Price per unit</i>	<i>Total cost</i>
<i>(a) Raw material (specify)</i>			
<i>(b) Labour</i>			
<i>(c) Other costs</i>			
<i>(d) Total cost of production (a+b+c)</i>			
<i>(e) Administrative expenses</i>			
<i>(f) Selling expenses</i>			
<i>(g) Total cost (d+e+f)</i>			
<i>(h) Profit</i>			
<i>(I) Price ex-factory (g+h)</i>			

<sup>21</sup> See SECEX 20, of 20 April 2001, published on 19 April 2001.

Although the law allows the complainant to use prices from a third country, it must justify the choice of such country as a base for establishing the normal value. In cases where the complainant is not able to provide information on normal value based on a third country that is a market economy country, it must explain this impossibility and then provide the price ex-factory (stating the margin of profit used) or the constructed value of the product at issue in the Brazilian market, for the previous year and the previous months of the current year.

### Export price

To enable comparison between prices charged in the domestic market and in exports to Brazil, the complainant must provide the export price to Brazil for the product allegedly dumped, during the previous year and the previous months of the current year. The information must be in the form of a chart, as follows:

<i>Company:</i> _____ <i>Amount/quantity:</i> _____	\$	<i>Source and date of information</i>
<i>(a) CIF price to Brazil</i>		
<i>(b) Freight to Brazil</i>		
<i>(c) Insurance to Brazil</i>		
<i>(d) FOB price to Brazil (a-b-c)</i>		
<i>(e) Other exporting costs to Brazil (such as transportation factory-port and others – specify)</i>		
<i>(f) Ex-factory price of the product designed for export to Brazil (d-e)</i>		

*Example: In the anti-dumping investigation concerning imports of phenol (hydroxybenzene) from the European Union and the United States, to determine the export price the complainant used the statistics of the LINCE FISCO system (Secretariat of the Internal Revenue Service), concerning the imports of phenol from the European Union and the United States from January to December 2000, and calculated the average FOB price.<sup>22</sup>*

### Related companies

The complaint should indicate whether there are reasons to believe that the export price is unreliable because the exporter and the Brazilian importer have an association or a compensatory arrangement, or for any other reason. The complaint must explain the reasons and indicate the sale price of the imported product for the first Brazilian independent buyer, estimating all costs included from the ex-factory price, such as freight, insurance, import tax, other import costs and a reasonable margin of profit for the reseller of the product, according to the chart below.

<sup>22</sup> See SECEX 20, of 20 April 2001, published on 19 April 2001.

	\$	Source and date of information
(a) Sales price for the first Brazilian independent buyer		
(b) Taxes related to the sale		
(c) Importer's profit on resale		
(d) Importer's expenses on resale (specify)		
(e) Price of the imported like product, after internalization (a-b-c-d)		
(f) Various expenses		
(g) Additional Freight for Renovation of Merchant Marine (AFRMM) (25% without freight)		
(h) Import tax		
(I) CIF price to Brazil (e-f-g-h)		
(j) Freight to Brazil		
(k) Insurance		
(l) FOB price to Brazil (i-j-k)		
(m) Other exporting costs to Brazil (transportation factory-port, and others – specify)		
(n) Ex-factory price of the designated product to the Brazilian market (l-m)		

### Comparing normal value with export price

More than simply providing information regarding the normal value and the export price, the complaint must describe any distinctions between the product sold in the domestic market of the exporting country (the product used for the normal value determination) and the product exported to Brazil (the product used for the export price determination), so that an appropriate comparison of the normal value and the export price may take such differences into consideration.

The differences between the product used for the normal value determination and the product used for the export price determination must be expressed in terms of physical characteristics, indicating the effects of such differences on the prices at issue. The complaint must also specify any other differences between the products at issue relating to quantities, level of trade, sales conditions, etc., indicating the adjustments needed to compensate for such differences and make the prices comparable. This also applies if there are significant differences in terms of productivity and costs of production due to the use of different technologies.

**Example:** In the anti-dumping investigation concerning imports of phenol (hydroxybenzene) from the United States and the European Union, in order to obtain an export price comparable to the normal value (ex-factory price), the complainant deducted from the FOB price the following expenses: agent commission; factory-port transportation; container expenses; and compensatory adjustments related to the estimated financing deadline. For the purpose of initiating the investigation, SECEX accepted the methodology used by the complainant.<sup>23</sup>

<sup>23</sup> See SECEX 20, of 20 April 2001, published on 19 April 2001.

### ***Subsidy***

A positive subsidy determination depends on evidence that there is in fact a countervailable subsidy provided by a foreign government. For this reason, the complaint must indicate:

- The exporting countries;
- The subsidy programmes at issue; and
- The export price to Brazil.

These data must be provided for every exporter from the countries involved in the Brazilian imports that are allegedly subsidized. The complaint must indicate the various kinds and models representing different classifications, sizes and content of the product investigated.

### **Origin of the product**

Regarding the product (or products) that is/are subsidized, the complaint must specify the country or countries of origin and the exporting country or countries (if they are different from the country of origin).

The names and addresses of producers from the country of origin and exporters to Brazil must be indicated.

*Example: In the countervailing investigation regarding polyethylene terephthalate (PET films) from India, the complainant stated that India was the country of origin of the subsidized imports.<sup>24</sup>*

### **Subsidy programme**

The complainant must describe all subsidy programmes that it intends to include in the investigation. For each one, the complaint must indicate:

- The authority that grants the subsidy;
- The objectives of the subsidy programme at issue;
- The kind of subsidy and how it is granted (for production, for export, for transportation; direct or indirect; etc.);
- The beneficiaries of the subsidy (sectoral, regional, etc.);
- The portion of the total production and of the exports of the product at issue that have been benefiting from the subsidy programme;
- Whenever possible, the amount of subsidy granted to the producers and/or exporters of the product at issue, explaining the methodology used for the calculation;
- The starting date of the subsidy programme;
- Duration of the programme.

Copies of legislation related to the subsidy must be attached to the complaint.

### ***Export price***

The export prices to Brazil of the product allegedly subsidized, related to the previous years and the previous months of the current year, must be provided as per the following chart:

<sup>24</sup> See SECEX Circular 50, of 16 December 2002.

<i>Company:</i> _____	\$	<i>Source and date of information</i>
<i>Amount/quantity:</i> _____		
(a) <i>CIF price to Brazil</i>		
(b) <i>Freight to Brazil</i>		
(c) <i>Insurance to Brazil</i>		
(d) <i>FOB price to Brazil (a-b-c)</i>		
(e) <i>Other exporting costs to Brazil (such as transportation factory-port and others – specify)</i>		
(f) <i>Ex-factory price of the product designed for export to Brazil (d-e)</i>		

### ***Injury***

Simple verification that imports are dumped or subsidized is not enough to reach the conclusion that imports must be surcharged with anti-dumping duties or countervailing measures. The Brazilian industry must also be shown to be suffering injury because of the dumped or subsidized imports.

In order to do that, the complaint must show evidence regarding:

- The amount of imports from the exporting country or countries at issue;
- The Brazilian market for the product at issue; and
- The production of the product at issue by the Brazilian domestic industry.

### ***Imports***

The complainant needs to show that imports of the product at issue from the exporting country or countries referred in the complaint have increased. The complaint must then describe the evolution of imports of the product at issue, amounts and values, over the previous five years and in the previous months of the current year, by country of origin. Names and addresses of the known importing companies of the product at issue must also be provided.

The average export price to Brazil, by country of origin, every month for the previous five years and the previous months of the current year, must be provided as follows:

	<i>Country A</i>	<i>Country B</i>	<i>Etc.</i>
(a) <i>FOB price</i>			
(b) <i>Freight</i>			
(c) <i>Insurance</i>			
(d) <i>CIF price (a+b+c)</i>			
(e) <i>Import tax</i>			
(f) <i>AFRMM (25% without freight)</i>			
(g) <i>Various expenses</i>			
(h) <i>Total (d+e+f+g)</i>			

The complaint must provide information regarding the potential for exports to Brazil, which includes the effective capacity of the exporting country or countries.

### ***The Brazilian market***

The complaint is required to provide information about the Brazilian market for the product allegedly dumped or subsidized. This includes:

- An estimation of the evolution of apparent consumption during the previous five years and the previous months of the current year (the methodology must be explained);
- The main competition scenario for this market (price, product differentiation, technical assistance, distribution network, advertisement, etc.);
- If the product at issue is an agricultural product, the governmental policies regarding policy prices for the product.

### ***The situation of the complainant***

Under this section, the complainant is required to present certain data for each company represented in the complaint, related to the previous five years and the current year. If an individual presentation is not possible, the complainant has to explain why.

The complainant must list each company's production lines and present the total invoiced revenue and revenue per production line. With regard to the product in question, as well as all relevant production lines (meaning the lines that, in conjunction with the production of the product at issue, represent at least 70% of the total invoiced revenue of the company), the complaint must indicate separately:

- The evolution of installed capacity, specifying the operating regime (1, 2 or 3 shifts) and the level of use; in the case of agricultural products, the cultivated area should also be included.
- Annual production (amount and value); in the case of agricultural products, the quantity of seeds and productivity should also be included.
- Annual sales for the Brazilian domestic market (amount and value); overall and also according to type of market (wholesale, retail).
- Annual exports (amount and value).
- Evolution of prices in the domestic market, per month.
- Evolution of stocks (amount), per year.
- Evolution of level of employment in production, administration and sales.

With regard to the like product, the complaint must also present the structure of costs in accordance with the following chart:

	<i>Technical coefficient</i>	<i>Price per unit</i>	<i>Total cost</i>
<i>(a) Raw material (specify)</i>			
<i>(b) Labour</i>			
<i>(c) Other costs</i>			
<i>(d) Total cost of production (a+b+c)</i>			
<i>(e) Administrative expenses</i>			
<i>(f) Selling expenses</i>			
<i>(g) Total cost (d+e+f)</i>			
<i>(h) Profit</i>			
<i>(I) Price ex-factory (g+h)</i>			

The complaint must provide information concerning:

- The conditions for supply of the main inputs, indicating the major suppliers per input;
- The main customers and their share in the total sales of the company, as well as their field of activity;
- The distribution channels and their share in the total sales of the company;
- The sales policies by customer, geographic region, etc.

Attached to the complaint, there must be the financial statements and audited balance sheets, and the results corresponding to the production line of the product at issue.

### ***Causal link***

The last element of the complaint, according to the Brazilian legislation, is information on the causal link between the imports of the dumped or subsidized product and injury to the Brazilian industry.

The complainant has to explain how the imports allegedly dumped or subsidized are causing injury to the Brazilian industry. All other known factors that may be causing injury to the Brazilian industry, apart from imports of the dumped or subsidized product, must be listed. This means information, among others, regarding:

- Volume and import prices of products that are not dumped or subsidized;
- Impact of changes in import tax on the domestic prices;
- Reduction in demand or change in consumption patterns;
- Restrictive trade practices adopted by foreign producers and competition among them;
- Technological advances;
- Export performance and productivity of the domestic industry.

### ***Evidence and documentation***

All documentation that provides evidence of data such as normal value, export price, evolution of prices charged in internal sales of domestic products, or any other information, must be attached to the complaint. Sources of data must be indicated.

### ***Currency***

In the complaint, values must be in United States dollars (unless all values refer to euros, for example). The complaint shall present the exchange rate and methodology for the currency conversion.

*Example: In the review regarding exports of jute bags from Bangladesh and India, the prices provided by the Brazilian industry in the request for review, regarding sales to the domestic market, were converted from Brazilian currency to dollars using the conversion rate of the date of each sale. The sum of the transactions, in United States dollars, was divided by the corresponding amount in kilos.<sup>25</sup>*

<sup>25</sup> See CAMEX Resolution 24, of 9 September 2004.

### ***Confidentiality***

According to SECEX Circular 59, of 28 November 2001, parties are allowed to submit confidential information to the investigating authorities. Confidential information must be identified as 'CONFIDENTIAL' at the top and bottom of each page, in a contrasting colour, and must be filed separately from non-confidential information. The confidential nature of the information has to be justified.

In such cases, the complainant has to present two different versions of the complaint, one including the confidential information, the other containing only non-confidential data (but still permitting a reasonable understanding of the information provided). A non-confidential summary of the confidential information must be presented as well. Justification is required if it is not possible to present this summary.

### **Preliminary analysis of the complaint**

The complaint undergoes a careful preliminary examination, by DECOM, in order to verify whether it contains all data and evidence required, or whether complementary information is needed. The result of this analysis is communicated to the complainant within 20 days from the date of submission of the complaint. SECEX establishes the deadline for presenting any complementary information required, according to the nature of the information, and notifies the complainant.

When the complementary information is provided, a new examination is carried out in order to verify whether it is enough, or whether further information is still necessary.

According to the law, the complainant shall be notified of the result of this examination within 20 days from the date of submission of the complementary information, whether the complaint is accepted or refused. If DECOM considers that the complaint is appropriate, the complainant is notified and has 10 days to present as many copies of the complete text of the complaint, including the confidential summary (where applicable) as there are known producers, exporters and governments of the listed exporting countries. If the number of interested parties is particularly high, copies of the complaint may be given to the governments of the listed exporting countries and to the representative associations involved.

### **Decision to start investigation**

#### ***Elements to be analysed***

DECOM analyses two elements in order to decide whether or not to initiate investigation:

- The accuracy of the information provided in the complaint;
- The level of support to the complaint by the Brazilian domestic industry.

The complainant has to be notified about the decision within 30 days from the date of the communication stating that the complaint is appropriate.

#### ***Accuracy of the information***

The information provided in the complaint constitutes the starting point for DECOM to decide whether or not to initiate the investigation. DECOM also consults other sources that are readily available.

However, it should be said that the level of accuracy necessary for opening an investigation is lower than the level of information necessary for a positive determination on the imposition of duties. Exporters will have the opportunity to present evidence in their defence, just as the complainant itself may need to provide further information.

*Example 1: According to the complainant in the review case concerning exports of jute bags from India, it was required to present only invoices related to regular commercial transactions between independent companies, substantially limiting the amount of evidence it should present. DECOM disagreed, stating that such evidence would be enough for the initiation of the investigation, but would be insufficient for a decision on whether to review the duty. DECOM decided that the information presented by the Indian companies was not representative of the production, sales and exports of jute bags by Indian producers.<sup>26</sup>*

*Example 2: In the anti-dumping investigation concerning imports of phenol (hydroxybenzene) from the United States and the European Union, after examining the complaint, DECOM requested the complainant to provide additional information. Since the additional information provided was not sufficient for DECOM to reach a conclusion on whether to initiate the investigation, it requested the complainant to provide further information, as well as to clarify some of the data already provided.<sup>27</sup>*

### **Level of support**

An anti-dumping or countervailing investigation can be initiated only if the complaint is supported by a certain portion of the Brazilian industry that produces the like product. This is because the imposition of anti-dumping duties or countervailing measures is intended to protect the Brazilian industry as a whole. Of course, because of a diversity of interests, it is not always possible to protect the interest of absolutely all Brazilian producers. However, as a matter of legitimacy, the Administration must be sure that not just a little share of the Brazilian production will benefit from a measure, and that most of the production is not against any investigations regarding the imports of the product at issue.

For this reason, the level of support or rejection of the complaint shown by other domestic producers of the like product is checked at this point, in order to verify whether the complaint was, in fact, submitted by the domestic industry or on its behalf.

A complaint is considered as being made by the domestic industry or on its behalf if it is supported by producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the complaint. The level of support is also considered to be verified if the Brazilian producers that support the complaint constitute more than 25% of the total production of the like product in Brazil.

In the case of a fragmented industry that involves a particularly large number of producers, support or rejection may be verified by using statistical sampling techniques.

<sup>26</sup> See SECEX Circular 20, of 18 April 2001, published on 19 April 2001.

<sup>27</sup> See SECEX Circular 14, of 11 May 2000, published on 15 May 2000.

**Example 1:** In the anti-dumping investigation concerning imports of semi-rigid cards, covered, duplex and triplex, from Chile, the complainants were Cia. Suzano de Papel e Celulose SA, Limeira SA Indústria de Papel e Cartolina and Madreira Miguel Forte SA and their collective output corresponded to 55.8% of the total production of semi-rigid cards for packaging, covered, duplex and triplex. The complainants were also formally supported by Associação Brasileira de Papel e Celulose (BRACELPA) and its associates, whose production corresponds to 80.9% of the total domestic production of the product concerned. DECOM concluded that the complaint was submitted in the name of the domestic industry.<sup>28</sup>

**Example 2:** In the anti-dumping investigation concerning imports of phenol (hydroxybenzene) from the United States and the European Union, the complainant (Rhodia Brasil Ltda) stated in the complaint that it was the only producer of the product at issue in Brazil. DECOM tried to confirm this information with the Associação Brasileira da Indústria Química (ABIQUIM), but it did not answer DECOM's official letters. DECOM identified in the annual report of ABIQUIM another producer of phenol and contacted this company in order to obtain further information on its production. This company stated that its products differed from the products of the complainant and, therefore, DECOM considered that the complaint had been submitted in the name of the domestic industry.<sup>29</sup>

**Example 3:** In the anti-dumping investigation regarding exports of glyphosate from China, the complaint was filed by two Brazilian companies, Monsanto do Brasil Ltda and Nortox SA. Together, they represented 100% and 64% of the Brazilian production of the like products to be investigated, meeting the legal requirement regarding level of support of a complaint to be accepted by the Brazilian investigating authorities. However, Nortox did not respond to the questionnaire. For this reason, DECOM had to redefine the domestic industry for the purposes of finding the level of support of the complaint. It was verified that Monsanto alone was responsible for more than 79% of the domestic production of the like product. In addition to this, although Nortox did not respond to the questionnaire, it did support the investigation.<sup>30</sup>

### *The case for rejection*

The complaint must be rejected in the following cases:

- ❑ There is insufficient evidence of the existence of dumping, subsidy or injury (or causal link) to justify any investigation;
- ❑ The complaint was not submitted by the domestic industry or on its behalf; or
- ❑ The domestic producers supporting the complaint account for less than 25% of the total production of the like product by the domestic industry.

If the complaint is rejected, the investigation is not initiated.

<sup>28</sup> See SECEX Circular 14, of 11 May 2000, published on 15 May 2000.

<sup>29</sup> See SECEX Circular 20, of 18 April 2001, published on 19 April 2001.

<sup>30</sup> See CAMEX Resolution 5, of 7 February 2003.

**Example:** In the anti-dumping investigation regarding imports of tubes for vacuum blood collection from Austria, the United Kingdom and the United States, the complainant (Labnew Indústria e Comércio Ltda) had identified itself as the only domestic producer of the product at issue, information taken for granted by DECOM based on the data gathered in previous investigations concerning tubes for vacuum blood collection. The company Becton Dickinson submitted a document requesting the termination of the investigation due to the fact that the complainant's operating licence from the Brazilian National Health Vigilance Agency (Agência Nacional de Vigilância Sanitária – ANVISA) and the Ministry of Health had expired in December 1999. This information was confirmed by ANVISA and by the Ministry of Health. Therefore, DECOM decided to terminate the investigation, since the complainant had no legitimacy to represent the domestic industry, and stated that if it had known that the complainant did not have operating licences when it was analysing whether the investigation should be initiated, the investigation would not had been initiated.<sup>31</sup>

### ***The case for a positive determination to initiate investigation***

A positive determination to initiate the investigation is a legal decision by SECEX (based on a report by DECOM), in the form of a SECEX Circular. The Brazilian AD Law and the Brazilian SCM Law contain measures on transparency, establishing that these decisions are common knowledge, and assuring that all interested parties are duly notified that an investigation will be carried out.

However, prior to the decision to initiate the investigation, the existence of a complaint cannot be made public. The only exception is the government of the exporting country or countries concerned, which must be notified of the existence of a complaint that has been considered adequate.

**Example:** In the anti-dumping investigation concerning imports of phenol (hydroxybenzene) from the United States and the European Union, the embassies of the European Union and the United States and the complainant were informed that the complaint was considered adequate through DECOM's official letters, dated 6 and 9 April 2001.<sup>32</sup>

### ***Content of the decision***

The SECEX Circular has to be published in the *Official Gazette (Diário Oficial)*, which gives the presumption of common knowledge of a governmental act in Brazil. The initiation of the investigation commences on the day of the publication of the notice.

The Circular contains information regarding:

- The decision to initiate the investigation, specifying the product and countries involved;
- The date of initiation (the date of publication of the SECEX Circular);
- The period under investigation regarding the practice of dumping or the existence of subsidy;
- The call to other interested parties to join the procedure, indicating legal representatives in 20 days.

It also says:

- That all known interested parties will be sent questionnaires;

<sup>31</sup> See SECEX Circular 36, of 18 June 2001, published on 20 June 2001.

<sup>32</sup> See SECEX Circular 14, of 11 May 2000, published on 15 May 2000.

- ❑ That the investigation will last 12 months from its initiation;
- ❑ That any duties in force will remain in force during the investigation (in case of reviews);
- ❑ That all information and documents must be provided in Portuguese;
- ❑ That all interested parties will have the opportunity to present written evidence to defend their interests;
- ❑ The arguments in the complaint that indicated that an investigation should be initiated, after a preliminary analysis.

***Notification of known interested parties and opportunity to join the procedure***

Apart from a general notice, the known involved parties (according to information provided by the complainant, and by the Secretariat of Internal Revenue Service) have to be directly notified. Known involved parties include:

- ❑ Domestic producers of the like product and the association that represents them: this includes the qualified Brazilian producers that support the complaint, those that reject it and those that are identified but have not given their opinion.
- ❑ Importers or consignees of the goods under investigation qualified in the complaint and the association that represents them.
- ❑ Foreign exporters or producers of the product in question qualified in the complaint and the associations that represent them. In general, the main exporters to Brazil are appointed in the complaint.
- ❑ The government of the exporting country of the product at issue. The notification is made through the embassy (or other diplomatic representation in Brazil) of the country whose companies will be investigated in Brazil.
- ❑ Other parties, either Brazilian or foreign, if SECEX considers that they are interested parties and that they should participate in the procedure.

Notification is made by registered mail.

Other companies considered by the Brazilian law as interested parties may participate in the procedure. They have 20 days from the date of publication to file an application to indicate their legal representatives.

As soon as the investigation is initiated, and taking into account the confidentiality issue, the complete text of the complaint is delivered to the known foreign producers and exporters, and to the government of the exporting country. The complaint must also be available to other interested parties, if required.

If the number of producers involved is particularly large, the complete text of the complaint may be delivered only to the government of the exporting country and to the associations that represent foreign producers.

*Example: In the anti-dumping investigation regarding exports of glyphosate from China, DECOM published notification of the initiation of the investigation, and sent copies of the SECEX Circular, to the Chinese Embassy, to importers, to the complainants, and to the known Chinese producers and exporters. Because of the great number of producers and exporters involved, the complete text of the complaint was sent only to the Chinese Embassy.<sup>33</sup>*

<sup>33</sup> See CAMEX Resolution 5, of 7 February 2003.

### ***Notification to the Secretariat of the Internal Revenue Service***

After initiating the investigation, SECEX notifies the Secretariat of the Internal Revenue Service (Ministry of Finance), so that it may take the appropriate steps to make possible the imposition of a definitive anti-dumping duty or countervailing measure on the imports of the product under investigation, should that be the case.

The Secretariat's database provides information regarding imports of the product at issue (quantities, origins, etc.) that is compared with information provided by the parties, and sometimes constitutes the only source of information.

Any measure adopted by the Internal Revenue Service cannot hinder the customs clearance procedure.

*Example: In the anti-dumping investigation regarding imports of tubes for vacuum blood collection from Austria, the United States and the United Kingdom, the Secretariat of the Internal Revenue Service was notified of the initiation of the investigation and received a copy of the SECEX Circular determining the initiation of the investigation (SECEX Circular 34, published in the Official Gazette on 1 September 2000).<sup>34</sup>*

### **The simultaneous examination of dumping or subsidy and injury: periods for analysis**

It is very important to note that, in Brazil, the same authority analyses the allegations of dumping or subsidy and injury. Examination of both elements occurs simultaneously, in general by the same group of three DECOM technicians (but not necessarily).

For investigations regarding subsidies, during the investigation, the governments of the countries involved have the opportunity to continue consultations, in order to clarify the facts and reach a solution that is mutually satisfactory. This prerogative is not applicable to dumping cases, because subsidies deal with public policies, which implies a more active role for the governments of the exporting countries whose exports are under investigation.

The period of investigation for ascertaining the existence of dumping or subsidy must include the 12 previous months as close as possible to the initiation of the investigation. Under exceptional circumstances, the period under analysis may be less than 12 months, but never less than 6 months. Sometimes it may be necessary to update the period of analysis.

*Example: In the anti-dumping investigation regarding exports of horseshoe nails from Finland and India, the period for dumping investigation indicated for the purpose of initiating the investigation was the year 2001. For the final determination, the period was updated to cover October 2001 to September 2002.<sup>35</sup>*

For investigations regarding subsidies, the period of investigation may be retroactive until the beginning of the beneficiary's most recent fiscal year, since financial information and data concerning accountability are available.

The period of investigation regarding the existence of injury must be sufficiently representative to verify the volume of dumped or subsidized imports, their effects on prices of the like product in Brazil and the consequent

<sup>34</sup> See SECEX Circular 36, of 18 June 2001, published on 20 June 2001.

<sup>35</sup> See CAMEX Resolution 14, of 2 June 2004.

impact of such imports on the domestic industry. Brazilian law determines that, in any event, this period cannot be less than three years, and it must include the period during which dumping or subsidy is investigated.

## Information gathering

### *Defense of the interests of the parties*

At this point, the exporter will be aware that an investigation was initiated against its exports to Brazil. Moreover, according to the Brazilian AD Law and the Brazilian SCM Law, all interested parties in an investigation shall be given notice of the information required and shall have large opportunity to submit, in writing, all evidence that they consider relevant with respect to the investigation in question. According to these laws, during the investigation the interested parties (and the governments involved, in cases related to subsidies) must have full opportunity to defend their interests.

In this sense, for example, the exporters involved in the investigation may defend their interests by:

- Preparing and submitting a detailed questionnaire response (together with the corresponding documentary evidence, in Portuguese);
- In addition, submitting comments on injury and other substantive aspects of the proceeding (including the fulfilment of the requirement of ‘domestic industry’), and encouraging their customers or users to submit comments.

Due consideration shall be given to any difficulties encountered by the interested parties, especially small companies, in providing requested information, and any possible assistance shall be given to them.

Any decision or determination by SECEX can only be taken based on information in written form or documented in the records, and that is available to the interested parties (safeguarding rights related to confidentiality). Oral information (given in consultations and meetings) must be put in writing and made available to the interested parties within the following 10 days. The interested parties may ask, in writing, to check the records (except confidential information and governmental internal documents). According to the law, the interested parties have the right to defend themselves against any information existing in the records.

*Example: In the anti-dumping investigation regarding imports of peach preserves from Greece, during the course of the investigation the interested parties submitted written requests to check the records. The authorities allowed the parties to check the records, except confidential information, and gave them opportunity to submit written information in order to defend themselves against the information in the records.*<sup>36</sup>

## Questionnaires

### *Who receives questionnaires*

All known interested parties receive questionnaires: exporters, importers, and Brazilian producers. Questionnaires for exporters may be sent directly to the known exporters, or through the embassy of the country involved in Brasília.

For investigations regarding dumping, the governments of the exporting countries involved do not receive questionnaires; for investigations regarding

<sup>36</sup> See CAMEX Resolution 5, of 25 April 2002.

subsidies, they do receive them. Even in cases where the exporter has a special relationship with a Brazilian importer or with a Brazilian producer (controls, is controlled by, is associated with, etc.), it is forbidden to submit joint responses.

It is important that the exporters answer the questionnaire correctly and on time, and provide as much information as they can, since this is a good opportunity to present evidence in their defence. If a company that did not export the product under investigation to Brazil during the investigation period receives the questionnaire, it can ask to be excluded from the investigation.

**Example 1:** *In the anti-dumping investigation concerning imports of phenol (hydroxybenzene) from the United States and the European Union, DECOM limited the injury assessment to industrial quality phenol. Questionnaires were sent to the importers of different types of phenol in order to obtain detailed information on the characteristics of the products imported by them. Therefore, the imports of phenol other than the industrial quality phenol would not be subject to anti-dumping duties, if duties were imposed on the imports of industrial quality phenol.*<sup>37</sup>

**Example 2:** *In the anti-dumping investigation regarding methyl methacrylate from France, Germany, Spain, the United Kingdom and the United States, Ineos Acrylics Inc., a company from the United States, received the questionnaire. The company did not answer the questionnaire. Instead, it asked to be excluded from the investigation, since it had not exported its products to Brazil from July 1998 to June 1999. After verifying that there were no registers of imports of methyl methacrylate from Ineos Acrylics Inc. in the investigation period, DECOM concluded that the company should be excluded from the investigation.*<sup>38</sup>

If there are many exporters of the product under investigation, the complainant and the investigating authorities may not be aware of all of them. However, SECEX can request the embassy of the country or countries of origin of the exports under investigation to forward copies of the questionnaires to other known exporters. Embassies may indicate other associations or companies to receive questionnaires, if they believe those companies may be helpful for the investigation.

**Example 1:** *In the anti-dumping investigation regarding malleable cast iron connections with BSP thread from China, SECEX asked the Chinese Embassy in Brazil to forward copies of the questionnaires to other known exporters which had not received the questionnaire.*<sup>39</sup>

**Example 2:** *In the anti-dumping investigation related to exports of magnesium powder from China, the Chinese Embassy received questionnaires to be sent to the Chinese producers and exporters indicated in a list, and to other companies the embassy found convenient. The embassy asked for the questionnaire to be sent as well to the Chinese Chamber for Import/Export of Metal and Chemical Products, and to the exporters Hebei Materials & Equipment Trade Enterprise Group Corp and Lesion International Co. Ltd.*<sup>40</sup>

37 See SECEX Circular 14, of 11 May 2000, published on 15 May 2000.

38 See CAMEX Resolution 3, of 22 March 2001.

39 See SECEX Circular 41, of 8 October 2002.

40 See CAMEX Resolution 28, of 5 October 2004.

*Example 3: In the anti-dumping investigation regarding exports of glyphosate from China, apart from sending questionnaires to the interested parties, DECOM requested assistance from the Chinese Embassy to tell producers and exporters in China about the initiation of an anti-dumping investigation in Brazil, and to send questionnaires to the known producers and exporters in China and to other producers and exporters known to the embassy. Afterwards, DECOM asked for a confirmation that the Chinese Embassy had sent the questionnaires. DECOM was informed that letters sent to four Chinese companies had been returned for incorrect address. The legal representative of the Chinese companies requested questionnaires to be sent to six other Chinese companies not listed by the complainant. The legal representative also requested that questionnaires be re-sent to the company Zhejiang Linghua Group Import & Export Co. Ltd indicated in the complaint but which alleged it had not received the questionnaire.<sup>41</sup>*

### *Content of the questionnaires*

DECOM sends questionnaires to all parties so it can collect enough information to better evaluate the existence of dumping or subsidy and the possibility that they are causing injury to the Brazilian industry. Questionnaires contain requests for several kinds of information from the interested party, but the party may present further information it considers relevant to defend its interests.

Brazil does not adopt a standard model of questionnaire. DECOM adapts the questionnaire according to the country, the type of industry involved, the product at issue, etc. For this reason, it is not useful to describe the questionnaires in detail.

In anti-dumping investigations, three kinds of questionnaires are prepared, for exporters, for importers and for the domestic producers. See appendices VII, VIII and IX for a sample of each type of questionnaire, and see below a brief description of their contents.

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<sup>41</sup> See CAMEX Resolution 5, of 7 February 2003.

### Questionnaires for exporters

Questionnaires for exporters are focused on the dumping and subsidy aspect of the investigation, and ask for the following kinds of information.

<p><b>Section A</b></p> <p><i>The company, accounting practices, markets and the product at issue</i></p>	<p><i>I. Quantities and value of sales: sales to Brazil, to the internal market and to the three major export markets during the period of analysis; reasons for not using sales to the internal market as normal value; sales to related companies.</i></p> <p><i>II. Structure of the company and affiliated: information on the corporate structure of the company, controls, plants, etc.</i></p> <p><i>III. Distribution process: distribution channels for sales to the internal market and to Brazil, list of buyers.</i></p> <p><i>IV. Sales process: distribution for sales, final user, packages, price lists for sales in the internal market and in Brazil.</i></p> <p><i>V. Sales to related companies in the market for comparison: sales by related companies, services rendered by them, etc.</i></p> <p><i>VI. Accounting practices and finances: documents related to finances and accountability related to the period under analysis.</i></p> <p><i>VII: The product at issue: description of the product produced for sales in each market referred to.</i></p> <p><i>VIII. Exports through third countries: if exports occurred through other countries.</i></p>
<p><b>Section B</b></p> <p><i>Sales to the market for comparison</i></p>	<p><i>Explains which data on sales of the product under investigation in the comparison market during the period of analysis are required and how to provide them.</i></p>
<p><b>Section C</b></p> <p><i>Sale to Brazil</i></p>	<p><i>Explains which data on sales of the product under investigation to the Brazilian market during the period of analysis are required and how to provide them.</i></p>
<p><b>Section D</b></p> <p><i>Cost of production and constructed value</i></p>	<p><i>I. Refers to annexes B and C. Annex B concerns the total cost of production (product under investigation sold in the benchmark market). Annex C is structured so as to allow the normal value to be determined, based on the constructed value. Annex C is like annex B, except for the inclusion of commercial expenses not included in annex B.</i></p> <p><i>II. General information: products and production process; practices of accountability and finance.</i></p> <p><i>III. Instructions for preparing table in annex B.</i></p> <p><i>IV. Instructions for preparing table in annex C.</i></p>

The questionnaire contains, in general, several annexes, with tables to be completed by the exporter.

## Annex A (section A) – Quantities and values of sales

<i>Market</i>	<i>Unit</i>	<i>Quantity sold</i>	<i>Value of sales in local currency</i>	<i>Exchange rate used</i>	<i>Value of sales (\$)</i>	<i>Sales terms</i>
<i>Brazilian market</i> 1 – <i>Non-related companies</i> 2 – <i>Related companies</i> <i>Total</i>						
<i>Domestic market</i> 1 – <i>Non-related companies</i> 2 – <i>Related companies</i> <i>Total</i>						
<i>External market</i> 1 – <i>Non-related companies</i> 2 – <i>Related companies</i> <i>Total</i>						

## Annex B (section D) – Composition of the cost of production

Ref: \_\_ / \_\_ (year / month)

<i>Composition of the cost of production</i>	<i>Unit</i>	<i>Consumption per unit</i>	<i>Price per unit (local currency)</i>	<i>Price per unit (\$)</i>	<i>Final cost (local currency)</i>	<i>Final cost (\$)</i>
<i>A – Variable costs</i> 1 – <i>Raw material</i> 2 – <i>Secondary materials</i> 3 – <i>Packages</i> 4 – <i>Utilities</i> • <i>Electric power</i> • <i>Steam power</i> • <i>Others</i>						
<i>B – Labour</i>						
<i>C – Indirect costs</i> • <i>Maintenance costs</i> • <i>Indirect labour</i> • <i>Depreciation</i> • <i>Other indirect costs</i>						
<i>D – Production costs (A+B+C)</i>						
<i>E – Expenses</i> • <i>Administrative</i> • <i>Financial</i> • <i>Others</i>						
<i>F – Total cost of production (D+E)</i>						
<b>TOTAL PRODUCTION</b>						

## Annex C (section D) – Constructed value – basis

<i>Composition of the cost of production</i>	<i>Unit</i>	<i>Consumption per unit</i>	<i>Price per unit (local currency)</i>	<i>Price per unit (\$)</i>	<i>Final cost (local currency)</i>	<i>Final cost (\$)</i>
<i>A – Variable costs</i> 1 – Raw material 2 – Secondary materials (specify) 3 – Packages 4 – Utilities • Electric power • Steam power • Others						
<i>B – Labour</i>						
<i>C – Indirect costs</i> • Maintenance costs • Indirect labour • Depreciation • Other indirect costs						
<i>D – Production costs (A+B+C)</i>						
<i>E – Expenses</i> • Administrative • Commercial • Financial • Others						
<i>F – Total cost of production (D+E)</i>						
<b>TOTAL PRODUCTION</b>						

**Questionnaires for importers**

Questionnaires for importers concentrate on import quantities. In brief, they request the following information:

- The importer:
  - Full qualification of the importer and its legal representative;
  - Relationship with any foreign producer or exporter of the product at issue, or with the complainant;
  - Imports of the product at issue during the period of analysis of dumping or subsidy, amounts and foreign producers, exporters or suppliers involved;
  - Distribution process, and customers;
  - Transformation, imports and re-exports of the product;
  - Average delay between imports of the product into Brazil and its availability for use or resale in the domestic market;
  - Reasons for the preference for the imported product;
  - Determinant elements that compose price of the imported product;
  - Differences in export prices;
  - Commercial policies in product purchase;
  - Financial cost and payment deadlines for imports;

- Post-sale services rendered by the exporter;
  - Trademark policies;
  - Location of storage centres and their distance to customers.
- ❑ Imports of the product:
    - Description of the product imported from all origins, except those involved in the investigation;
    - Differences in quality between imported and domestic product;
    - Monthly data related to imports by the importer, by country of origin, during the period of analysis, according to annex A.
  - ❑ Imports of the product under investigation:
    - Instructions for tables to be prepared with information regarding imports of the product under investigation from the investigated countries during the period of analysis (annex B);
    - Information on imports from investigated countries requested but not yet delivered.
  - ❑ The domestic product:
    - Purchases of the domestic product;
    - Instructions for presenting invoices regarding purchases of the domestic product according to annex C.
  - ❑ Resales of the imported product from investigated countries:
    - Reasons for resales;
    - Services provided by the exporter and services rendered by the importer itself;
    - Definition of final user or the market for the imported product.
  - ❑ Additional information.

The questionnaire contains, in general, several annexes, with tables to be completed by the importer.





### Questionnaires for Brazilian producers

Questionnaires for Brazilian producers concentrate on the existence and extent of injury to the domestic industry. In brief, they request the following information:

- ❑ The domestic producer:
  - Full qualification of the Brazilian producer and its legal representative;
  - Legal and operational structure of the company – shareholders, affiliated companies;
  - Distribution process and customers;
  - Practices related to accountability;
  - Revenue;
  - Capacity installed.
- ❑ The product and its production process:
  - Description of the product produced and sold by the company in the Brazilian market;
  - Description of the production process of the product which is like the imported product;
  - Historical background regarding the production of the like product by the company;
  - Differences between the product under investigation and the like product produced by the company in Brazil;
  - Composition of prices;
  - Possible reasons customers may prefer the imported product.
- ❑ Production, inventories, sales and employment (according to annexes A, B, C and D).
- ❑ Costs of production of the like product (according to annexes E and F).
- ❑ Information on imports of the product (if the company has also imported the product during the period of analysis, according to annexes G, H and I).
- ❑ Additional information.

The questionnaire contains, in general, several annexes, with tables to be completed by the Brazilian producer.

## Annex A – Production, stocks, sales and level of employment

	<i>Period</i>	<i>Period</i>
<i>1. Production</i>		
• <i>Quantity (tons)</i>		
<i>2. Stock (tons)</i>		
• <i>Initial</i>		
• <i>Final</i>		
<i>3. Sales</i>		
• <i>Domestic market</i>		
• <i>Quantity (tons)</i>		
• <i>Value (domestic currency)</i>		
• <i>Value (\$)</i>		
• <i>Foreign market</i>		
• <i>Quantity (tons)</i>		
• <i>Value (domestic currency)</i>		
• <i>Value (\$)</i>		
<i>4. Employment</i>		
• <i>Production</i>		
• <i>Fixed employees</i>		
• <i>Temporary employees</i>		
• <i>Administration</i>		
• <i>Sales</i>		

## Annex B – Production, turnover and sales

Product: \_\_\_\_\_ (NCM \_\_\_\_\_)

	<i>Month</i>	<i>Month</i>	<i>Month</i>	<i>Month</i>
<i>1. Production</i>				
• <i>Quantity (tons)</i>				
<i>2. Sales</i>				
• <i>Domestic market</i>				
• <i>Quantity (tons)</i>				
• <i>Value (domestic currency)</i>				
• <i>Value (\$)</i>				
• <i>Foreign market</i>				
• <i>Quantity (tons)</i>				
• <i>Value (domestic currency)</i>				
• <i>Value (\$)</i>				

**Annex C – Domestic sales**

Product: \_\_\_\_\_ (NCM \_\_\_\_\_)

Period: \_\_\_\_\_

Month/ year	Quantity (tons or kg)  (A)	Turnover R\$  (B)	Taxes R\$ – specify  (C)	Discounts/ rebates R\$ – specify (D)	Net turnover (E) = B (C+D)		Net price (F)	
					R\$	\$	R\$	\$

**Annex E – Annual average cost**

Product: \_\_\_\_\_ Commercial code: \_\_\_\_\_

Quantity produced (tons): \_\_\_\_\_

	Period:			
	Total cost		Average annual cost	
	\$	R\$	\$/ton	R\$/ton
1. Direct materials (specify)				
2. Direct labour				
3. General (fixed and variable) expenses (indirect materials, indirect labour, utilities, depreciation, etc.)				
A – PRODUCTION COSTS (1 + 2 + 3)				
B – OPERATIONAL EXPENSES (4 + 5 + 6 + 7)				
4. General and administrative				
5. Sales				
6. Financial results				
7. Other income and operational expenses (specify)				
TOTAL COST (A + B)				

## Annex F – Production cost

Ref.: \_\_\_\_/\_\_\_\_  
year/month

<i>Production cost</i>	<i>Units</i>	<i>Consumption per unit</i>	<i>Price per unit (local currency)</i>	<i>Price per unit (\$)</i>	<i>Final cost (local currency)</i>	<i>Final cost (\$)</i>
<b>A – VARIABLE COSTS</b>						
1 – Raw material						
• Specify	ton					
• Specify	ton					
• Specify	ton					
2 – Secondary materials						
• Specify	ton					
3 – Packages	unit					
4 – Utilities						
• Specify	kWh					
• Specify	ton					
• Specify	m <sup>3</sup>					
• Others (specify)						
<b>B – LABOUR</b>						
<b>C – INDIRECT COSTS</b>						
• Maintenance costs						
• Indirect labour						
• Depreciation						
• Other indirect costs (specify)						
<b>D – PRODUCTION COSTS (A+B+C)</b>						
<b>E – EXPENSES</b>						
• Administrative						
• Financial						
• Others (specify)						
<b>F – TOTAL COST OF PRODUCTION (D+E)</b>						
<b>TOTAL PRODUCTION</b>						

## Annex G – Global annual imports

Product: \_\_\_\_\_ (NCM \_\_\_\_\_)

Country of origin: \_\_\_\_\_ Year: \_\_\_\_\_

<i>Commercial code/ Identification of the product (A)</i>	<i>Name of the manufacturer (B)</i>	<i>Total quantity (tons or kg) (C)</i>	<i>Total value (\$)</i>	
			<i>FOB (D)</i>	<i>CIF (E)</i>





### ***Technical issues concerning questionnaires***

Responses to questionnaires must be submitted in four sets of copies of the public version (version without confidential information and documentation) and three of the version in full (with the confidential information and documentation). Questionnaires are filed at the clerk's office of DECOM in Brasília (and exceptionally in Rio).

Tables that constitute the annexes should be submitted in electronic form, according to the following technical specifications: software systems compatible with PC, software Microsoft Office Excel, Windows 2000 version (or version 98 or Microsoft Access), on 3.5-inch, double-sided, high-density disks (1.44 megabytes), or on CD-ROM. Hard copies of all data submitted electronically must also be submitted, to be attached to the records.

Names of electronic files must contain eight symbols. The first four identify the company, the following two indicate whether the file concerns sales to the internal market or sales to the Brazilian market; and the last two designate the sequential number of the file, as in XYZKBR01, XYZKBR02, etc.

In preparing the data, text fields must be left-aligned and numerical fields right-aligned. Dates related to sales, boarding and payment should not be put as alphabetical blanks, but as date. Years must contain four digits. Blanks which are not applicable to the case must be fulfilled with zero (if numerical) or left empty (if alphabetical).

Disks and CD-ROMs must be labelled with: the name of the company; the investigation; and the format and software used to create data. Disks must be appropriately packed, with the name and address of the company and must be submitted with the hard copies of the responses to the questionnaire.

Questionnaires may also be received by e-mail, if so requested, and submissions may be sent by e-mail. In this case, the date of filing the questionnaire is the date of the e-mail, but hard copies must be presented within five days from the date of the e-mail.

Queries concerning the completion of the questionnaires, and further requests for clarification, may be addressed to:

Phone: +55 61 2109-7770

Fax: +55 61 2109-7445

E-mail: [decom@desenvolvimento.gov.br](mailto:decom@desenvolvimento.gov.br)

### ***Possibility to extend the period***

Questionnaires must be completed and returned to DECOM within 40 days from the date they are sent out.

Interested parties may request an extension of 30 days. Such request must be made before the deadline. The interested party must justify the necessity for more time; DECOM tends to be rather flexible in accepting justifications such as lateness in appointing a legal representative.

Despite the flexibility shown by DECOM with regard to requests for additional time, questionnaires submitted after the deadline are not accepted and the answers are not considered in the investigation.

**Example 1:** In the anti-dumping investigation regarding malleable cast iron connections with BSP thread from China, six importers and the legal representative of four Chinese companies requested a 30-day extension to answer the questionnaires, which was granted by DECOM.<sup>42</sup>

**Example 2:** In the anti-dumping investigation regarding exports of stone cutting laminate (LCP) from Italy, the Brazilian producer Newport Steel submitted the questionnaire after the deadline. For this reason, information provided by that company was not taken into account in the investigation. In this same investigation, one of the associations representing consumers of marble, ABIROCHAS, also responded to the questionnaire after the deadline, and therefore its contribution was not considered in the process either.<sup>43</sup>

### **Additional information**

Additional or complementary information may be requested, in writing, by DECOM throughout the investigation. Interested parties may also present additional information during the investigation.

DECOM establishes the time period for providing the additional information requested, depending on the nature of the information. Requests for extension of the time period stipulated receive due consideration.

The time periods for the investigation itself must be taken into account both for the information that is requested and for consideration of additional information submitted.

**Example:** In the anti-dumping investigation regarding malleable cast iron connections with BSP thread from China, DECOM requested the legal representative of four Chinese companies to complement the information provided in the questionnaire, as well to provide additional data. The legal representative of the Chinese companies requested a 15-day extension to provide the information, given its complexity, the need for consular notification and the difficulty in finding sworn Portuguese translators in China. The time extension was granted by DECOM.<sup>44</sup>

### **Participation of users and consumers**

The industrial users of the product under investigation and representatives of consumer organizations (if the product at issue is sold on the retail market) have the opportunity to provide information relevant to the investigation. Their views should be considered in the decision.

**Example:** In the anti-dumping investigation regarding exports of stone cutting laminate (LCP) from Italy, after initiation of the investigation, the Brazilian Association of Industries of Ornamental Rocks (Associação Brasileira da Indústria de Rochas Ornamentais, ABIROCHAS), the Brazilian Association of Exporting Industries of Marble and Miner Granite (Associação Brasileira de Indústrias Exportadoras de Mármore e Granitos, ABIEMG) and the Trade Union of Industries of Ornamental Rocks, Lime and Limestone of the States of Espírito Santo (Sindicato da Indústria de Rochas Ornamentais, Cal e Calcários do Estado do Espírito Santo, SINDIROCHAS), all of them representing interests of the consumer companies of LCP, asked to participate in the investigation as interested parties. Their request was accepted and they received questionnaires to be responded in 40 days.<sup>45</sup>

<sup>42</sup> See SECEX Circular 41, of 8 October 2002.

<sup>43</sup> See CAMEX Resolution 30, of 9 October 2003.

<sup>44</sup> See SECEX Circular 41, of 8 October 2002.

<sup>45</sup> See CAMEX Resolution 30, of 9 October 2003.

### ***Best information available***

Once the investigation has been initiated, the interested parties are notified of the information required, with details, as well as the form in which such information must be structured in the responses to be submitted, and the deadlines for doing so.

DECOM bases the investigation on information from many sources, which obviously includes the information provided by the interested parties. The findings related to preliminary or final decisions are based on the best information available. There is no presumption of truthfulness if one side provides information while the other side remains silent. The accuracy of the information provided by the interested parties will be verified whenever possible. By the same token, however, there is no punishment for any interested party that denies or prevents access to information. However, the interested party at issue bears the burden of not seeing its interests well defended.

*Example 1: In the review regarding exports of steel helicoidal drill from China, even if Chinese exporters did not respond to the questionnaires sent to them, DECOM searched for information on the export capacity of the Chinese industry on the website of the company Jiansu Tiangong Group.<sup>46</sup>*

*Example 2: In the review regarding exports of jute bags from India, DECOM concluded that the anti-dumping duties would not be reviewed because very few Indian companies involved in the request for review provided information sufficient for a complete examination of the case.<sup>47</sup>*

*Example 3: In the anti-dumping investigation regarding exports of monoethyleneglycol butyl-ether from the United States (EBMEG), the United States producers and exporters did not respond to the questionnaires, except for Eastman Chemical Company, which responded partially. Eastman did not present information on prices and costs, not making possible calculation of the normal value. In addition to this, it was found that Eastman did not make sales in the ordinary course of trade, but only to affiliated companies. Eastman refused to provide additional information. Therefore, the normal value was based on the best information available, in this case information related to prices of the investigated product in the United States market, as indicated in the publication Tecnon OrbiChem, attached to the complaint, for the period under analysis.<sup>48</sup>*

### ***Confidentiality***

Information that is confidential by nature or that has been provided as confidential by the parties in the investigation shall be treated as such, upon good cause shown. The opinion of the interested party that provided the information considered in principle as confidential deserves respect, and reasonableness plays an important role in establishing which information must be treated as confidential.

This information cannot be disclosed without the specific permission of the party that provided it. In practice:

- Information and documentation to be treated as confidential must be marked 'CONFIDENTIAL' on all pages; and
- Such indications must be in colour, in the centre of the top and bottom of each page.

All information and documentation without the 'confidential' indication are attached to the records and are available for parties.

<sup>46</sup> See SECEX Circular 84, of 13 December 2004, published on 14 December 2004.

<sup>47</sup> See complete explanation on this issue in SECEX Circular 50, of 8 July 2003, published on 9 July 2003.

<sup>48</sup> See CAMEX Resolution 29, of 5 October 2004.

The interested party that provided confidential information must submit a non-confidential summary (indicated as ‘non-confidential’) thereof to permit a reasonable understanding of the information provided. When it is impossible to provide a summary, the party must justify this in writing.

It can happen that an interested party decides that certain information must be treated as confidential, and refuses even to provide a non-confidential summary of it, but is not successful in explaining why that information should be considered confidential. In this case, the information will not be considered in the investigation, unless it is demonstrated in a convincing manner and from reliable sources that such information is correct.

*Example: In the anti-dumping investigation regarding exports of stone cutting laminate (LCP) from Italy, the company Cittadella SpA did not attach a non-confidential summary to documents indicated as confidential, and did not provide justification for the confidential treatment requested. For these reasons, those documents were not attached to the records. The company requested the documents to be attached, and DECOM replied that it would be possible upon presentation of a non-confidential summary or the removal of the confidential label. Finally, the company removed the confidential label and the documents were considered in the process.<sup>49</sup>*

### **Translation and currency matters**

Questionnaires are sent to the interested parties in Portuguese. Questionnaires, and any information provided by any interested party, including foreign ones, must be presented to DECOM in Portuguese. Documentation used as evidence in the investigation has to be translated into Portuguese by a sworn translator.

*Example: In the anti-dumping investigation regarding exports of stone cutting laminate (LCP) from Italy, the company Cittadella SpA provided most of the information requested in the questionnaire in Italian and did not attach a translation into Portuguese. Afterwards, this company presented a translation of the documents, which was not attached to the records because the translation was not done by a sworn translator. In a later stage of the procedure, this company provided a sworn translation of the documents, which was attached to the records.<sup>50</sup>*

For practical reasons, all values must be indicated in United States dollars (or in euros, if the investigation deals only with imports from the European Union, for example). The complaint shall present the exchange rate and methodology for the currency conversion.

*Example: In the anti-dumping investigation regarding malleable cast iron connections with BSP thread from China, DECOM asked the legal representative of four Chinese companies to complement the information provided in the questionnaire, as well as to provide additional data. The legal representative of the Chinese companies submitted the additional information in Chinese, on 28 March 2002. On 5 April 2002 the exporters submitted the sworn translation into Portuguese of the documents of 28 March 2002, and on 12 April 2002 they submitted the conversion of the values into United States dollars. Some of those values did not correspond to the original values (in Chinese), so on 24 and 25 April 2002 the legal representative of the exporters submitted the corrections to the translation of those values, duly translated by sworn translators.<sup>51</sup>*

<sup>49</sup> See CAMEX Resolution 30, of 9 October 2003.

<sup>50</sup> See CAMEX Resolution 30, of 9 October 2003.

<sup>51</sup> See SECEX Circular 41, of 8 October 2002.

### ***The verification visit***

In order to confirm the accuracy of the information provided by the interested parties, DECOM technicians may carry out investigations by means of verification visits to offices and plants of companies involved. Visits may take place to the foreign companies, for assessments related to the dumping or subsidy aspect of the investigation; or to Brazilian companies, to verify the injury side of the process. Usually, on-site verifications related to injury occur before visits related to dumping or subsidy.

Visits take place, if necessary and feasible, and upon authorization by the company at issue, in Brazil or in other countries. Representatives of the government in question are notified of the names of the companies to be visited and the dates for the visits, and they must authorize, or not object to the visits.

Before a visit takes place, the company receives a copy of the ‘verification plan’ prepared by DECOM, containing information on the procedural aspects of the visit. The visits take place after questionnaires are returned to DECOM. DECOM must also inform the company of the general nature of the information required, and it may request clarifications during the visit.

DECOM technicians may also visit companies involved in order to explain the questionnaires, if interested companies so request. In exceptional circumstances, DECOM may wish to include experts from outside the Government in the visit. In this cases, countries and companies involved must be notified.

Reports on the outcome of verification visits are attached to the investigation procedure, always taking into account confidentiality issues.

Between 1996 and 2004, DECOM technicians made 100 visits to Brazilian companies, to verify the injury aspect of cases (including anti-dumping, subsidies and safeguards cases). In the same period, DECOM visited 17 foreign companies involved in anti-dumping investigations, to verify the dumping aspect of the cases.

***Example 1:*** In the anti-dumping investigation regarding exports of stone cutting laminate (LCP) from Italy, DECOM technicians visited the Brazilian companies Mangels and Metisa, according to the verification plan previously sent to the companies. Because of the on-site verification, DECOM could verify that all information provided by these two companies was in accordance with original documents and accounting records. Since the company Cittadella responded only partially to the questionnaire, and the producer and exporter Olifer Srl did not respond to the questionnaire, they were not visited.<sup>52</sup>

***Example 2:*** In the anti-dumping investigation regarding exports of glyphosate from China, the legal representative of the Chinese producers asked for the Chinese companies to be visited, so that DECOM could verify on-site that they acted according to market economy rules. This request was denied, because the on-site verification aims to confirm information and data contained in documents presented by the parties, and in that case the Chinese companies had not presented any evidence that they were following market economy rules.<sup>53</sup>

<sup>52</sup> See CAMEX Resolution 30, of 9 October 2003.

<sup>53</sup> See CAMEX Resolution 5, of 7 February 2003.

**Example 3:** In the anti-dumping investigation regarding imports of preserved peach from Greece, DECOM visited the complainant (Sindicato da Indústria de Doces e Conservas Alimentícias de Pelotas) and the plants of two companies that were part of the domestic industry (Geraldo Bertoldi Industria de Conservas Ltda and Indústria de Conservas Schramm Ltda). In Greece, DECOM visited the association representing the exporters and the plants of two exporters (Kronos SA and Prodromos Pavlides SA). In the verification visit to the complainant and to the association representing the exporters, DECOM requested further information.<sup>54</sup>

**Example 4:** In the anti-dumping investigation regarding exports of malleable cast iron connections with BSP thread from China, DECOM visited the plants of the complainant (Tupy Fundições Ltda), in order to confirm the information provided in the answers to the questionnaire. During the verification visit, DECOM obtained further information on the production process and had access to original documents such as income tax returns, financial statements, invoices and import licences. The visit followed the procedures set forth in the verification plan. In this same case, the legal representative of the Chinese exporters asked DECOM to visit the plants of the Chinese producers, in order to reach a conclusion on the market economy status of China. DECOM concluded that there was no point in visiting the plants of the Chinese companies, since the purpose of the verification visit is to verify the accuracy of the information provided by the interested parties, and not to allow companies to submit new information, to serve as a hearing, or to promote research to confirm the data previously submitted by the companies.<sup>55</sup>

### Hearings

The Brazilian AD Law and the Brazilian SCM Law establish two possibilities for hearings:

- Hearings requested by interested parties, at any time during the investigation;
- A mandatory final hearing.

#### Hearings on request

Because the Brazilian AD Law and the Brazilian SCM Law guarantee interested parties the possibility of defending their interests, an interested party may request a hearing within the time period of the investigation. Meetings of this kind offer the opportunity to bring face to face interested parties who have different interests, so that opposing views and rebuttal arguments may be presented. Requests are made by written submission, containing a list of specific point to be considered.

The known interested parties have to be notified, with at least 30 days' notice, of the meeting and the points to be considered during the hearing. The other interested parties are not obliged to attend the hearing, and the absence of any party cannot be prejudicial to its interests. Interested parties that intend to be at the hearing must appoint their legal representatives at least five days before the meeting.

At least 10 days beforehand, these interested parties have to submit, in writing, the arguments they intend to present at the hearing. Interested parties (including governments in the case of subsidies) may present additional information orally. This new information presented orally must then be submitted in writing, up to 10 days following the hearing, in order to be considered in the investigation, preserving the rights related to confidentiality.

<sup>54</sup> See CAMEX Resolution 5, of 25 April 2002.

<sup>55</sup> See SECEX Circular 41, of 8 October 2002.

It is important to underline that the holding of hearings does not hinder SECEX from reaching a preliminary or final determination, so a hearing cannot be requested as a way to postpone the procedure. It must also be said that, despite provision in law, hearings on request are not usual in Brazil.

### *Final hearing*

Before elaborating the report containing the final determination, SECEX convenes a hearing with all interested parties in the investigation. In some cases, this may be the only occasion when the interested parties meet.

The interested parties must be notified of the main facts under examination that form the basis for the findings by SECEX, by means of a technical note.

As in the hearings under request, there is no obligation to attend the final hearing. Again, although presence is not mandatory, it is an important opportunity for the exporters to present arguments to defend their interests. Interested parties that intend to be at the hearing must appoint their legal representatives at least 5 days before the meeting, and must submit, at least 10 days before the hearing, in writing, the arguments they intend to present at the hearing. The on-request hearing rules regarding oral arguments, the necessity to put them on paper, and confidentiality, are valid for the final hearing.

*Example: In the anti-dumping investigation regarding malleable cast iron connections with BSP thread from China, the legal representative of the Chinese companies requested that the investigated companies be informed about the date of the final hearing at least two months before the hearing, because of the work involved in obtaining Brazilian visas and scheduling the trip to Brazil. On 10 July 2002, the legal representative of the Chinese companies and the Chinese Embassy in Brazil were informed that the final hearing was scheduled for 20 August 2002, and that they were required to communicate this date to the 13 exporters. The interested parties were to indicate the name of their representatives for the final hearing up to five days before the hearing. On 11 July 2002, the legal representative of the Chinese companies requested the adjournment of the final hearing, because it was impossible to comply with all bureaucratic procedures for the trip of the representatives of the Chinese companies to Brazil until 20 August. SECEX refused to postpone the hearing in light of the deadlines previously established for the termination of the investigation. The legal representative of the Chinese companies submitted letters dated 30 July, 2 and 5 August, in which he reinforced its request.<sup>56</sup>*

The GTDC (CAMEX), the National Confederation of the Agriculture (*Confederação Nacional da Agricultura e Pecuária*, CNA), the National Confederation of the Industry (*Confederação Nacional da Indústria*, CNI), the National Confederation of the Commerce (*Confederação Nacional do Comércio*, CNC) and the Association of Brazilian Exporters (*Associação de Exportadores Brasileiros*, AEB) are also notified on the main facts under examination.

The interested parties have 15 days from the date of the hearing to submit comments on it and on the technical note. After this deadline, the evidentiary stage is over, the investigation is considered closed and information received later on cannot be used in the final decision.

<sup>56</sup> See SECEX Circular 41, of 8 October 2002.

**Example 1:** In the anti-dumping investigation regarding exports of stone cutting laminate (LCP) from Italy, DECOM received comments on the technical note from the following interested parties: Metisa, Mangels, ABIEMG, ABIROCHAS, SINDIROCHAS and Ferriera di Cittadella SpA. Papers submitted by the companies Olifer do Brasil and Olifer Srl were not accepted because they were signed by someone who was not identified as their legal representative.<sup>57</sup>

**Example 2:** In the anti-dumping investigation regarding exports of malleable cast iron connections with BSP thread from China, although all interested parties were informed that they could submit comments up to 15 days from the date of the hearing, only the legal representative of the complainant, the legal representative of the exporters and two importers submitted comments. The legal representative of the Chinese exporters submitted two requests for time extension to present the documents that could demonstrate the market economy status of China regarding the industry under investigation, 15 days after the final hearing. Both time extension requests were rejected by DECOM. In the opinion issued in response to the second request, DECOM stated that the approval of time extensions for the submission of additional information must take into account the nature of the information that is requested and must preserve the phases and deadlines established for the investigation.<sup>58</sup>

**Example 3:** In the anti-dumping investigation regarding exports of hexagonal metallic wire nettings from China, the parties that attended the final hearing received copies of DECOM Technical Note 156 and were allowed to submit their comments on it up to 15 days from the date of the hearing. The complainants submitted their final comments on time but the comments of two importers (Barter and Betra) were submitted after the 15-day deadline. Therefore, the comments submitted by Barter and Betra were disregarded and returned to the companies.<sup>59</sup>

## Provisional measures

### *Requirements for the imposition of a provisional measure*

Provisional anti-dumping duties and provisional countervailing measures may be requested by the complainant, if it demonstrates that the exports of the product under investigation are causing injury to the Brazilian industry of the like product during the investigation. Such request may be made in the complaint, when responding to questionnaire, or in a separate submission.

A provisional measure may be imposed only if all the following requirements are satisfied:

- ❑ An investigation has been initiated according to the law, the decision to initiate the investigation has been published and the interested parties have been given enough opportunity to submit information and make comments;
- ❑ A preliminary positive determination has been made regarding the existence of dumping or subsidy and consequent injury being caused during the investigation;
- ❑ CAMEX believes that the measure is necessary to prevent injury being caused during the investigation; and
- ❑ At least 60 days have passed since the date of the initiation of the investigation.

### *The decision to impose a provisional measure*

The decision on the application of provisional measure is taken by CAMEX, after a positive determination by SECEX, in the form of a CAMEX Resolution,

<sup>57</sup> See CAMEX Resolution 30, of 9 October 2003.

<sup>58</sup> See SECEX Circular 41, of 8 October 2002.

<sup>59</sup> See SECEX Circular 31, of 6 August 2002.

published in the *Official Gazette*. Interested parties, and the government involved (in the case of subsidies), must be notified of the decision. After publication of the decision, customs clearance of the product by the Brazilian importer will be subject to the provisional measure.

Although complainants frequently ask for imposition of provisional measures, SECEX usually determines that such measures are not necessary. On the other hand, a preliminary determination by SECEX may encourage exporters to engage in price undertakings.

### ***Quantitative and time limits for the provisional measure***

Provisional measures cannot exceed the margin of dumping or the amount of subsidy preliminarily determined. The provisional measure is paid in the form of a provisional cash deposit or bank guarantee.

Provisional duties shall be collected and bank guarantees shall be paid by means of a deposit or bank bond. The payment of provisional measures may remain suspended until the final decision, as long as the importer offers an equivalent bond equal to the total amount of the obligation. The Internal Revenue Service is in charge of taking all steps regarding the form of payment of the bond.

Anti-dumping provisional duties remain in force for a maximum period of four months. However, CAMEX may extend them to up to a total of six months if exporters that represent a significant share of the trade in question request the extension, in writing, within 30 days prior to the end of the period of validity of the measure. This provision, established in the WTO Agreements, is intended to protect exporters in investigations, so that they may have more time to submit new information in their defence before the investigation is terminated and definitive measures are imposed. In Brazil, there has never been such a request.

If, in the course of the investigation, it is decided that a provisional anti-dumping measure lower than the margin of dumping is sufficient to eliminate the injury (in accordance with the lesser duty rule), the standard period becomes six months, and the extended period nine months.

Provisional countervailing measures remain in effect for a maximum of four months.

## **Price undertakings**

### ***The case for proposing price undertakings***

The Brazilian AD Law and the Brazilian SCM Law authorize the suspension of the investigation, without imposition of provisional or definitive measures, if there are price undertakings.

For anti-dumping cases, the procedure is suspended if the exporter voluntarily assumes a satisfactory undertaking to revise exporting prices to Brazil, or to cease exports to Brazil at dumped prices. For cases related to subsidies, the procedure may be suspended if the exporter voluntarily assumes a satisfactory undertaking to revise exporting prices to Brazil; or if the government of the exporting country agrees to eliminate or reduce the subsidy, or to adopt other measures related to the effects of such subsidy. In both cases, SECEX and CAMEX accept the undertaking if they understand it eliminates the injury resulting from the subsidy.

Demonstrating that the Brazilian law is not protectionist, the law is clear in the sense that the increase in prices for the purpose of the undertakings cannot be

more than is necessary to eliminate the margin of dumping, or to compensate for the amount of subsidy. Prices are required to increase only to the extent needed to remove the injury caused to the domestic industry.

For the sake of legal certainty, the issue of price undertakings arises in the anti-dumping or countervailing proceedings only after a preliminary positive determination is reached regarding the existence of dumping or subsidy and injury. Exporters are entitled to present proposals regarding price undertakings, or to accept undertakings proposed by SECEX, only after the preliminary positive determination. In cases involving subsidies, the government of the exporting country involved must also approve the undertakings proposed by the exporters.

The proposal and acceptance of price undertakings depend on the convenience to both exporters and the Brazilian Government. Exporters involved in an investigation in Brazil do not have to propose undertakings, and they are not obliged to accept undertakings proposed by SECEX. By the same token, SECEX is not obliged to accept any undertaking if that undertaking is considered to be ineffective, or if, for instance, the exporter has breached previous undertakings.

In practice, it is very unlikely that SECEX will elaborate and propose price undertakings. In general, undertakings are proposed by a group of exporters or by the association representing exporters, after private negotiations with the Brazilian industry. In this sense, when the proposal for the price undertaking arrives at SECEX it has already been agreed by both sides of the 'dispute', which means that the proposal is likely to be considered as in the public interest.

In December 2004, eight price undertakings were in effect.<sup>60</sup>

*Example: In the review regarding the price undertaking related to exports of powdered milk from Argentina, the preliminary positive determination on the recovery of dumping and injury if the price undertaking in force was terminated encouraged Argentine exporters to engage in a new price undertaking, instead of a provisional measure. In February 2005, Centro de la Industria Lechera, the association representing Argentine producers and exporters of milk, on behalf of eight companies that had signed the price undertaking under review, presented the basis for a new price undertaking, which suspended the review process before SECEX. The price undertaking proposed was agreed by the Brazilian Government, which considered that it would prevent recurrence of the injury that had occurred in the past.<sup>61</sup>*

### **Rejection of the undertaking**

If SECEX refuses an undertaking, exporters (or the government, if applicable) must be informed of the reasons for the non-acceptance and have the opportunity to comment on the decision. CAMEX may also refuse a price undertaking for national interest, having to justify its decision.

In practice, as said before, SECEX generally has no reason to reject price undertakings seriously elaborated after agreement between exporters and the Brazilian industry.

<sup>60</sup> Please see CAMEX Resolution 2, published on 6 March 2001 (United States and France – insulin); CAMEX Resolution 1, published on 23 February 2001 (Argentina and European Union – milk); CAMEX Resolution 10, published on 4 April 2001 (Uruguay – milk); and CAMEX Resolution 34, published on 31 October 2001 (Chile – a kind of paper).

<sup>61</sup> See CAMEX Resolution 2, of 17 February 2005.

### Acceptance of the undertaking

If the price undertaking is accepted, a CAMEX Resolution containing the decision to accept the undertaking and to suspend or continue the investigation, must be published in the *Official Gazette*. The interested parties must be notified of the decision.

**Example 1:** In the anti-dumping investigation regarding exports of drugs containing insulin from Denmark, the United States and France, after the publication of the positive preliminary determination, the companies Eli Lilly and Company (United States) and Lilly France SA (France) submitted a price undertaking proposal and requested the suspension of the investigation. SECEX considered the proposal satisfactory and accepted it. In order to give the same opportunities to all the exporters under investigation, SECEX gave the opportunity to the other investigated company (Novo Nordisk A/S, from Denmark) to submit a price undertaking proposal. Since Novo Nordisk did not submit a proposal, and there was no indication that the exports of drugs containing insulin from other companies in the United States and France were being dumped, SECEX decided to terminate the investigation relating to those countries and to continue the investigation with regard to Denmark.<sup>62</sup>

**Example 2:** The Argentine companies Manfrey Cooperativa de Tambeiros de Comercializacion e Industrializacion Ltda, Mastellone Hermanos SA, Milkaut SA, Molfino Hermanos SA, Nestlé Argentina SA, Sancor Cooperativas Unidas Ltda, Sucesores de Alfredo Williner SA and Veronica SA, producers and exporters of powdered milk, proposed and signed a new price undertaking with the Brazilian Government, suspending review investigation.

The undertaking stipulated that the export price would be the one published by the Dairy Market News, of the United States Department of Agriculture (USDA), corresponding to the minimum listed FOB price Oceania; and that if the minimum listed price was lower than \$1,900/ton, the export price would be adjusted by a gradual and cumulative coefficient of 2% every \$50, to a maximum of 10%, according to the chart below.

Minimum listed price – USDA Oceania  
Adjustment (%)  
FOB/FCA export price (\$/ton)

Minimum listed price – USDA Oceania	Adjustment (%)	FOB/FCA export price (\$/t)
2300	0	2300
2250	0	2250
2200	0	2200
2150	0	2150
2100	0	2100
2050	0	2050
2000	0	2000
1950	0	1950
1900	0	1900
1850	2	1887
1800	4	1872
1750	6	1855
1700	8	1836
1650	10	1815
1600	10	1760
1550	10	1705
1500	10	1650

<sup>62</sup> See SECEX Circular 5, of 9 February 2001.

*In addition, the undertaking stated that prices would be established in accordance with the simple average of the last two quotations. The adjustment factor of 10% resulted from the addition of one percentage point to the factor of 1.09, the result of the ratio between 1.27 (exceptional tariff to the External Common Tariff, applied by Brazil) and 1.16 (Mercosur's External Common Tariff). Any change in import taxes in force would result in the modification of the adjustment coefficient, which could not be greater than the 1.10 factor.*

*The duration of the price undertaking was three years, with the possibility of review, under negotiation between companies involved and the Brazilian Government, if substantial changes in market conditions occurred.<sup>63</sup>*

If the investigation is suspended because of a price undertaking, engagement in the undertaking does not imply any assumptions related to the existence of dumping, subsidy or injury, on the part of the exporter.

*Example: In the review regarding the price undertaking related to exports of powdered milk from Argentina, the investigation was suspended by the new undertaking. The exporters that signed the price undertaking declared that, despite the price undertaking, they did not recognize that exports were dumped, or were causing injury to the Brazilian industry.<sup>64</sup>*

### **Continuation of the investigation**

The exporting producers may prefer not to suspend the investigation, if they believe a final determination would find a lower margin of dumping or a lower subsidy, for example. If so they wish, they may request SECEX to continue the investigation, despite the price undertaking in effect. If the investigation continues and SECEX reaches a final negative determination on the existence of dumping, subsidy or injury, the undertaking is automatically terminated.

However, in some cases, the negative conclusion may result, in large part, from the very existence of the price undertaking. In these cases, the undertaking may be required to be maintained for a reasonable period of time.

On the other hand, if the investigation continues and reaches a final positive determination on the existence of dumping or subsidy and the resulting injury, the imposition of a definitive duty is suspended while the undertaking is in effect (under the established terms).

*Example: In the anti-dumping investigation regarding exports of whole and skimmed milk powder packaged for retail consumption from Argentina, Australia, the European Union, New Zealand and Uruguay, CAMEX suspended the application of the definitive anti-dumping duties concerning the imports of whole and skimmed milk powder from Uruguay, because of the approval of a price undertaking proposed by the Uruguayan exporters (Cooperativa Nacional de Productores de Leche, Parmalat Uruguay SA, Cerealín SA and Cooperativa Agraria Suplementada de Productores de Leche de Tarariras).<sup>65</sup>*

### **Presentation of reports**

If requested, exporters with whom a price undertaking was agreed must present, periodically, a report with information regarding the fulfilment of the undertaking. They must also allow the relevant data to be verified. Non-respect of this obligation is considered as breach of the undertaking.

<sup>63</sup> See CAMEX Resolution 2, of 17 February 2005.

<sup>64</sup> See CAMEX Resolution 2, of 17 February 2005.

<sup>65</sup> See CAMEX Resolution 10, of 3 April 2001, published on 4 April 2001 (Uruguay – milk).

### *The case of breach of the undertaking*

If the exporter breaches an undertaking, two situations are possible:

- ❑ If the investigation was terminated and the amount of anti-dumping or countervailing measures was calculated, the measure is imposed on imports;
- ❑ If the investigation was suspended, a provisional measure is normally applied, based on the best information available, and the investigation recommences.

In any case, the interested parties must be notified of the termination of the undertaking, and of the imposition of a measure, and a CAMEX Resolution must be published in the *Official Gazette*.

*Example: In the review regarding the price undertaking related to exports of powdered milk from Argentina, the investigation was suspended by a new undertaking. SECEX declared that, once the investigation was suspended at a later stage (after the final hearing), in case of breach of the undertaking, it would be able to apply anti-dumping measures immediately, based on the best information available. In case of breach of the undertaking, the continuation of review would not imply the possibility to update data or present new information, because the investigation was suspended after the end of the evidentiary stage.<sup>66</sup>*

### *Exporters out of the price undertaking*

If not all of the exporters enter into a price undertaking agreement, investigation continues with regard to those exporters, or anti-dumping measures are applied immediately, depending on the stage at which the investigation was suspended.

*Example: In the review regarding the price undertaking related to exports of powdered milk from Argentina, the Brazilian investigating authorities stated that any exports by Argentine companies that did not sign the price undertaking would be subject to immediate application of anti-dumping duties, based on the best information available, and that such duties would be charged retroactively until 90 days before the date of application of the preliminary anti-dumping measures.<sup>67</sup>*

## **Termination of the investigation**

### *Time limit for investigations*

According to the law, anti-dumping and countervailing investigations must terminate within one year from the initiation. In exceptional circumstances, SECEX Circulars may extend the investigations for 6 months, for a total of 18 months. In practice, statistics show that the average period for investigations is 13.9 months.

*Example: In the anti-dumping investigation regarding exports of portland cement from Mexico and Venezuela (Bolivarian Republic of), SECEX decided to extend the deadline to terminate investigation for 6 months, because of exceptional circumstances. SECEX gave public notice of this decision in a SECEX Circular.<sup>68</sup>*

<sup>66</sup> See CAMEX Resolution 2, of 17 February 2005.

<sup>67</sup> See CAMEX Resolution 2, of 17 February 2005.

<sup>68</sup> See SECEX Circular 23, of 10 July 2000, published on 11 July 2000.

### ***Termination under request by the complainant***

The complainant may request the termination of the procedure at any time. This request must be communicated in writing. If the request is approved, investigation is terminated. However, SECEX can refuse the request.

*Example 1: In the anti-dumping investigation regarding imports of polycarbonate resin from the European Union (exclusively Germany) and from the United States and review regarding exports of the same product from Germany, possibly because of a judicial process started by a Brazilian importer of the product at issue, the complainant requested termination of the investigation and the review. SECEX issued a Circular terminating investigations.<sup>69</sup>*

*Example 2: In the anti-dumping investigation regarding exports of polyethylene terephthalate (PET films) from India, the complainant requested the termination of the investigation after the final hearing, within the period for comments on the technical note. The complainant argued that injury caused by imports from India was minimized because of currency devaluation, some governmental measures, an increase in exports from Brazil, and a previous countervailing investigation on the same product from the same country of origin, reducing substantially imports from India. SECEX agreed with the request.<sup>70</sup>*

*Example 3: In the anti-dumping investigation regarding exports of low linear density polyethylene resins from the United States, Canada and Argentina, on 14 December 2001, during the period for submitting answers to the questionnaires, the complainants submitted a request for the termination of the investigation and did not submit answers to the questionnaires. The complainants stated that the initiation of the investigation had positively altered the behaviour of the exporters. DECOM declared that the non-submission of the answers to the questionnaires was sufficient evidence of the lack of interest of the complainants in the continuation of the investigation. Nevertheless, although the complainants had requested the termination of the investigation, the decision on whether the investigation should be terminated belonged to SECEX. In this case, considering that the complainants had not submitted the answers to the questionnaires, the authorities would not be able to reach a conclusion on existence of injury. Therefore, SECEX decided to terminate the investigation.<sup>71</sup>*

### ***Termination without imposition of duties***

Investigations are terminated, in Brazil, without imposition of measures, in the following cases:

- There has not been sufficient evidence of the existence of dumping or subsidy, injury, or causal link between them;
- The margin of dumping, or the amount of subsidy, found is *de minimis*;
- The amount of existing or potential dumped or subsidized imports, or the injury caused, are negligible.

*Example: In the anti-dumping case regarding exports of acrylonitrile from the United States, DECOM recommended termination of the investigation without imposition of duties because of lack of causal link between the dumping practised by the United States exporter and the injury suffered by the Brazilian producer.<sup>72</sup>*

<sup>69</sup> See SECEX Circular 46, of 28 July 2004, published on 30 July 2004.

<sup>70</sup> See SECEX Circular 48, of 8 July 2003, published on 9 July 2003.

<sup>71</sup> See SECEX Circular 12, of 22 March 2002, published on 25 March 2002.

<sup>72</sup> See SECEX Circular 7, of 16 February 2004, published on 18 February 2004.

## Termination with imposition of duties

Investigations terminate with imposition of measures when SECEX reaches a final positive determination on the existence of dumping or subsidy on the exports of the product at issue to Brazil, on the existence of injury to the Brazilian industry of the like product, and on the existence of causal link between them.

The CAMEX Resolution containing the decision, including duties, must be published and the interested parties must be notified. The decision must appoint the supplier or suppliers in question, with the corresponding measures.

## Collecting the duties

### Imports subject to duties

As a general rule, provisional and definitive measures can be imposed only on imported products that were shipped for consumption after the date of publication of the CAMEX Resolution that contains the decision to impose the measures.

### Differences between the amount of provisional duties and definitive duties and reimbursements

When the amount of the definitive duty is equal to the provisional duty, the first is automatically converted into the second.

However, in many cases, the margin of dumping or the amount of subsidy found in a preliminary analysis, leading to a certain level of anti-dumping or countervailing provisional measures, is different from the results of deeper analysis, reached at the end of the investigation.

*Example: In the anti-dumping case regarding stainless steel, provisional measures were imposed that differed from the final duties, as follows.<sup>73</sup>*

<i>Country</i>	<i>Exporter</i>	<i>Provisional measure</i>	<i>Definitive measure</i>
<i>South Africa</i>	<i>Columbus Stainless</i>	<i>11.5%</i>	<i>6%</i>
	<i>Others</i>	<i>19.2%</i>	<i>16.4%</i>
<i>Germany</i>	<i>Thyssenkrupp Nirosta</i>	<i>4.7%</i>	
	<i>Others</i>	<i>11%</i>	
<i>Spain</i>	<i>Acerinox and others</i>	<i>20%</i>	<i>78.2%</i>
<i>France</i>	<i>Ugine and others</i>	<i>6.4%</i>	<i>30.9%</i>
<i>Japan</i>	<i>Kawasaki Steel, Nippon Yakin Kogyo, Nisshin Steel, Nippon Metal, Nippon Steel, Sumitomo Metal and others</i>	<i>44.2%</i>	<i>48.7%</i>
<i>Mexico</i>	<i>Mexinox and others</i>	<i>42.2%</i>	<i>44.4%</i>

<sup>73</sup> See Interministerial Administrative Rule MICT/MF 18, published on 23 December 1999, and Interministerial Administrative Rule MICT/MF 34, published on 26 May 2000.

Sometimes, a provisional measure is in effect, but at the end of the investigation, it may be concluded that dumping or subsidy and/or injury do not exist. In this case, the amount of provisional measures collected must be returned. The amount secured by a deposit has to be returned as well. Any bank guarantees must be cancelled.

The investigation may indicate, in some cases, a threat of material injury, or of significant retardation in establishing an industry in Brazil, but no material injury actually occurring at that moment. In these cases, provisional measures must be returned, unless SECEX verifies that the dumped or subsidized imports, in the absence of the provisional measures, would have caused material injury.

If the amount of the definitive duty imposed is lower than the amount that has been provisionally collected, the excess amount must be returned. If, on the other hand, the definitive duty is higher than the provisional duty, payment of the difference is not required.

In the specific case of the use of bank guarantees, if the bank bond is more than or equal to the amount that has provisionally established, the amount corresponding to the secured amount has to be collected immediately. If the amount is lower than the amount of the provisional measure, only the amount equivalent to the one established by the final decision can be collected. The collection of the amounts leads to the termination of the bank guarantee. In case of non-payment, the bank bond is automatically executed, independently of any judicial or extra-judicial notice.

## **Retroactivity of the definitive measure**

Although, as a general rule, definitive measures are imposed on the products shipped for consumption in Brazil only after the publication of the final decision, in some cases definitive measures may be charged on imports that entered Brazil for consumption up to 90 days before the imposition of the provisional duties.

Measures cannot be imposed on products that were shipped for consumption prior to the date of the initiation of the investigation.

### ***Retroactivity in a dumping case***

In a dumping case, retroactivity may be applied in two situations. The first concerns the existence of precedents regarding dumped imports from a given exporter causing injury, or cases where the Brazilian importer was aware, or should have been aware, that the exporter was practising dumping and that dumping was causing injury.

The second situation is when injury is caused by massive dumped imports of the product at issue in a relatively short time. This situation, considering the period of time in which the damage occurs, as well as the amount of dumped imports and the rapid build-up of inventories of the imported products, is likely to seriously undermine the remedial effect of the definitive anti-dumping measure. The importers involved should have the opportunity to comment on the decision.

### ***Retroactivity in a subsidy case***

In a subsidy case, retroactivity is possible if injury is being caused by massive subsidized imports of the product at issue in a relatively short time, potentially undermining the remedial effect of the definitive countervailing duty measure.

### *Retroactivity in case of breach of a price undertaking*

In case of violation of a price undertaking, the Administration is allowed to charge definitive measures on imported products that have entered Brazil for consumption up to 90 days prior to the imposition of the provisional measures. Measures cannot be imposed on products that were shipped before the undertaking was violated.

## **Duration and review**

### *Duration of the measure*

Anti-dumping and countervailing duties (and price undertakings) may remain in force only as long as there is a need to neutralize a dumping practice or a subsidy that has caused injury to the Brazilian industry of the like product.

A definitive anti-dumping or countervailing measure must be terminated within five years from its imposition, or five years from the date of conclusion of the most recent review concerning dumping or subsidy and injury.

The law allows suspension of the duty if there are exceptional circumstances and if suspension is in the national interest.

The law also establishes three types of reviews:

- Expiry, or ‘sunset’, review;
- Interim, or ‘mid-term’, review;
- Newcomer, or ‘new shipper’, review.

### *Expiry review*

#### *Who may request the review*

The maximum period of five years for the imposition of a duty may be extended, as may the period for price undertakings. Extension takes place upon request (containing all the reasons and documentation) by the Brazilian domestic industry or on its behalf, by Federal Administration’s agencies and bodies, or by SECEX.

*Example 1: A review of the price undertaking regarding exports of powdered milk from Argentina was requested by CNA.<sup>74</sup>*

*Example 2: A review of the anti-dumping duties applied on the imports of low carbon iron-chromium from Kazakhstan, the Russian Federation and Ukraine was requested by FEBRASA – Companhia de Ferro Logas da Bahia.<sup>75</sup>*

### *Notice of the end of the imposition of duties*

Six months before the end of the enforcement period of an anti-dumping or countervailing duty, SECEX issues a SECEX Circular informing publicly that the measure will be applied until a certain date. This Circular says that if the Brazilian domestic industry is interested in extending the measure, it should request a review (and a hearing, if necessary), in writing, before a date corresponding to five months prior to the end of the enforcement period. The parties that request the review must submit a complaint for review, within 90 days prior to the end of the enforcement period.

<sup>74</sup> See SECEX Circular 9, of 18 February 2004, published on 20 February 2004.

<sup>75</sup> See SECEX Circular 12, of 17 April 2000, published on 18 April 2000.

### *Proceedings*

The complainant, in case of a request for review, must demonstrate that the expiry of the measure would very likely lead to a continuation or recurrence of dumping or subsidy and injury.

*Example:* After a preliminary analysis of the data on the export capacity of Argentina, and the productivity of the Brazilian industry provided by CNA in the request for review of the price undertaking regarding exports of powdered milk from Argentina, SECEX concluded that the extinction of the price undertaking could lead to the recurrence of dumping, which could cause injury to the Brazilian industry, and decided to open an investigation.<sup>76</sup>

The expiry review is carried out as an investigation subject to the same principles and rules regarding the original procedure. Questionnaires are sent to interested parties, hearings take place, and the investigation must be concluded within 12 months from the date of its initiation.

If during the period of analysis there have been no exports of the product to Brazil from countries under investigation, the export price and, consequently, dumping margin, cannot be calculated. The possibility of recurrence of dumping is verified by comparing the normal value (plus expenses related to internalization in Brazil, such as freight from the producer to the port in the exporting country, international freight and insurance, import tax and expenses related to customs clearance in Brazil) with the price charged by the Brazilian industry in the same period. Such comparison is intended to check whether foreign producers or exporters, in order to be competitive in the Brazilian market, would need to practise export prices below their normal value, which characterizes dumping practice.

The SECEX Circulars for the initiation of the proceeding must be published in the *Official Gazette*, and the interested parties must be notified.

Reviews may be terminated without imposition of duties, and a SECEX Circular for this purpose must be published. If the review concludes that the anti-dumping or countervailing measure must continue to be applied, the CAMEX Resolution imposing the measure must also be published in the *Official Gazette*.

Note that the measures remain in effect throughout the review. This means, in principle, a burden for the exporters, because their exports to Brazil become more expensive because of the duties, for up to a year or longer. This situation is ameliorated by the application of the rules regarding reimbursement explained above.

*Example 1:* In the anti-dumping review regarding exports to Brazil of PVC-S from the United States and Mexico, DECOM found that, although in the absence of anti-dumping duties, dumping would recur for the exports to Brazil, the review should be terminated without imposition of duties. This was because the situation of the Brazilian industry had improved substantially, and the export prices from the United States and for Mexico were higher than the average price charged by the Brazilian domestic industry, indicating a negative determination for injury.<sup>77</sup>

<sup>76</sup> See SECEX Circular 9, of 18 February 2004, published on 20 February 2004.

<sup>77</sup> See SECEX Circular 85, of 13 December 2004, published on 14 December 2004.

**Example 2:** In the review of the anti-dumping duties applied on the imports of low carbon iron-chromium from Kazakhstan, the Russian Federation and Ukraine, DECOM concluded that the imports of low carbon iron-chromium from the Russian Federation were being dumped and that there was a possibility of exporters in Kazakhstan and Ukraine recommencing this practice. However, DECOM was against the extension of the duties, since it was not likely that the imports would cause injury to the domestic industry.<sup>78</sup>

**Example 3:** The review regarding exports of steel helicoidal drill from China was terminated without imposition of duties because the Brazilian industry could not demonstrate that the expiry of the measure would probably lead to a recurrence of dumping. It was found that the average price of the Chinese product resold in Brazil, calculated based on the prices charged by the Danish company in the European Union, was lower than the average price charged by the Brazilian domestic industry, indicating that the product at issue could enter in Brazil without dumping.<sup>79</sup>

**Example 4:** The review regarding exports of tyres for bicycles from India, Thailand, China and Chinese Taipei, was terminated with imposition of duties for the first three countries mentioned. Chinese Taipei was excluded from the extension.<sup>80</sup>

### **Interim review**

A second kind of review concerns the possibility of reviewing the original decision on the imposition of anti-dumping duties or countervailing measures, or the agreement on price undertakings. This review is possible after at least one year after the imposition of the definitive measure.

Any interested party, which includes the Brazilian domestic industry and exporters, Federal Administration agencies and bodies, and SECEX, is entitled to request the review, upon submission of a complaint with evidence that supports their views.

This is the best opportunity for exporters to demonstrate that their exports to Brazil are not dumped or subsidized anymore, that there is no more injury to the Brazilian industry, or that the measures should be different than they currently are. This is also the occasion for the Brazilian industry to request higher duties.

Any request must show that:

- The imposition of the duty is no longer necessary to neutralize dumping or subsidy;
- It is unlikely that the injury would continue or recur if the duty were revoked or altered; or
- The actual duty is not, or is no longer, sufficient for the purpose of neutralizing the dumping or subsidy that is causing injury.

The interested party, agencies or bodies of the Administration, or SECEX may request an interim review earlier than one year, if it demonstrates an exceptional case, involving substantial changes in the circumstances, or that a review is in the national interest.

<sup>78</sup> See SECEX Circular 12, of 17 April 2000, published on 18 April 2000.

<sup>79</sup> See SECEX Circular 84, of 13 December 2004, published on 14 December 2004.

<sup>80</sup> See CAMEX Resolution 37, of 18 December 2003.

***Example 1:** In the case of the anti-dumping review regarding exports of nitrate of ammonium from the Russian Federation, SECEX agreed that the change in status of the Russian Federation was an exceptional circumstance that allowed a review before one year following imposition of duties.<sup>81</sup>*

***Example 2:** A review regarding exports of polycarbonate resin from Germany was requested based on the argument that the anti-dumping duty in force was not sufficient to neutralize the dumping that was causing injury. In the previous year, dumped products had been exported to Brazil and the price of the German product had decreased more than the products from other origins. In that case, the investigation was terminated upon request by the complainant.<sup>82</sup>*

If SECEX considers that there are elements that justify a review, the review is initiated. The SECEX Circulars containing the decisions to initiate and terminate the review must be published in the *Official Gazette*, and the interested parties must be notified.

The interim review must be concluded within 12 months from its initiation, and must respect the rules related to reimbursement described above. No changes to the amount of duties may be made before the end of the procedures regarding the review. Upon termination of the review, CAMEX, based on the SECEX report on the outcome of the review, may maintain, eliminate or change the duty. If the measure in force is higher than is necessary to neutralize the injury to the Brazilian industry and is no longer justified, due restitution shall be made.

Note that interim reviews based on the argument that exporters from a given country are not, or have ceased, practising dumping, are done only with regard to the exporters that effectively participated in the review (provided enough information, responded to questionnaires, etc.). Exporters that did not cooperate remain subject to the original measure.

***Example:** SECEX agreed to initiate a review concerning the anti-dumping measure imposed on exports of nitrate of ammonium from the Russian Federation, but only with respect to those exporters that had provided the information requested in the questionnaires for the investigation. Exporters that had not responded to questionnaires or had provided partial information would not have their duties of 32.1% reviewed.<sup>83</sup>*

### ***Newcomer review***

The third kind of review concerns companies from countries whose exporters are subject to anti-dumping duties or countervailing measures, but that were not themselves exporting the product under investigation to Brazil at the time of the investigation.

When a product is subject to an anti-dumping or countervailing measure, exporting producers that were not previously exporting the product at issue to Brazil may request a summary and expedited review, which must be held immediately, in order to determine individual margins of dumping or individual amounts of subsidy. The rationale of this review is not to be unfair to exporters that did not contribute to the injury to the Brazilian industry, and to ensure individual margins of dumping or amount of subsidy for each supplier whenever possible.

81 See SECEX Circular 41, of 5 July 2004, published on 7 July 2004.

82 See SECEX Circular 46, of 28 July 2004, published on 30 July 2004.

83 See SECEX Circular 41, of 5 July 2004, published on 7 July 2004.

These ‘newcomer’ exporters must demonstrate that they were not exporting to Brazil in the course of the original investigation period and that they have no relationship with the exporters of the exporting country that are subject to duties on their products.

During this summary review, anti-dumping or countervailing measures cannot be charged on imports originating from the ‘new exporters’. But the Secretariat of the Internal Revenue Service must be notified so that it may take the necessary steps, should a case of dumping or subsidy be determined, to charge measures on imports originating from the exporting producers in question, starting with the date on which the review is initiated.

### ***Suspension of the imposition of measures due to exceptional circumstances***

Anti-dumping and countervailing measures may be suspended for one year, which can be extended to one more year. This is possible in cases of provisional changes in the Brazilian market conditions, and as long as injury does not continue or recur because of the suspension and the domestic industry is consulted. Measures can be reimposed at any time if the suspension is no longer justified.

*Example: CAMEX decided to suspend the anti-dumping duties regarding peach preserves from Greece while that product was listed in the List of Exceptions to the Mercosur Common External Tariff. In this case, CAMEX considered that, in spite of the fact that the dumped imports of peach preserves had caused injury to the domestic industry, the import tax (55%) was already protecting the domestic industry. Nevertheless, CAMEX determined that the duties would be re-established as soon as the peach preserves were excluded from the List of Exceptions to the TEC.<sup>84</sup>*

### ***Suspension of the imposition of measures due to national interest***

In some cases, even if dumping or subsidy, injury and causation have been demonstrated, CAMEX may decide, for reasons related to the national interest, to suspend the imposition of duties. In this case, CAMEX determines the monitoring of imports.

*Example 1: Imposition of anti-dumping duties on imports of tyres for bicycles from China was suspended for indeterminate period in January 2004, just one month after the imposition of the duty. The measure continued to be in force with regard to imports from India and Thailand.<sup>85</sup>*

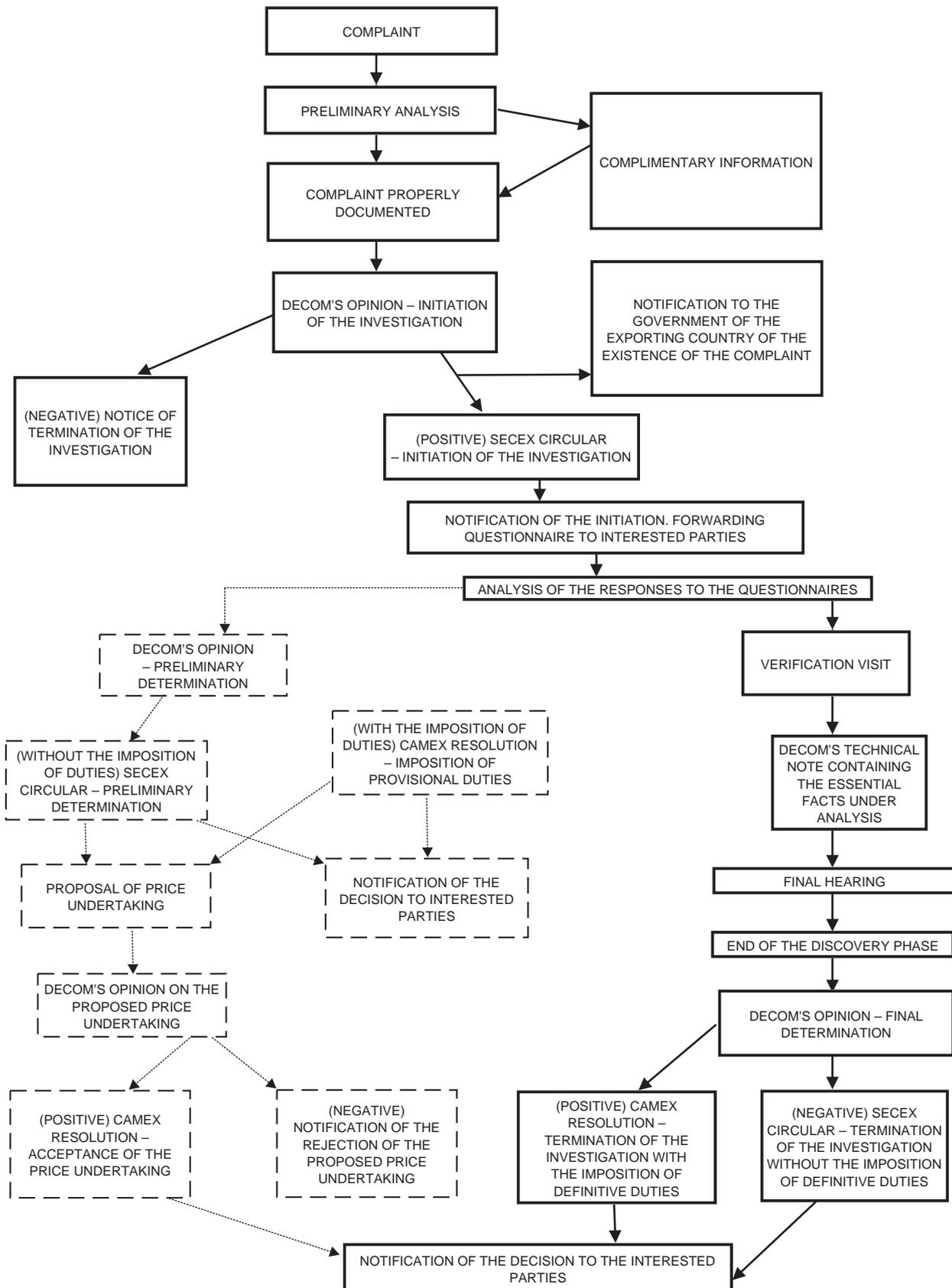
*Example 2: Imposition of anti-dumping duties on imports of high carbon iron-chromium from South Africa, Kazakhstan and the Russian Federation was suspended in December 2004, soon after the imposition of the duty in October 2004.<sup>86</sup>*

84 See CAMEX Resolution 11, of 22 May 2002.

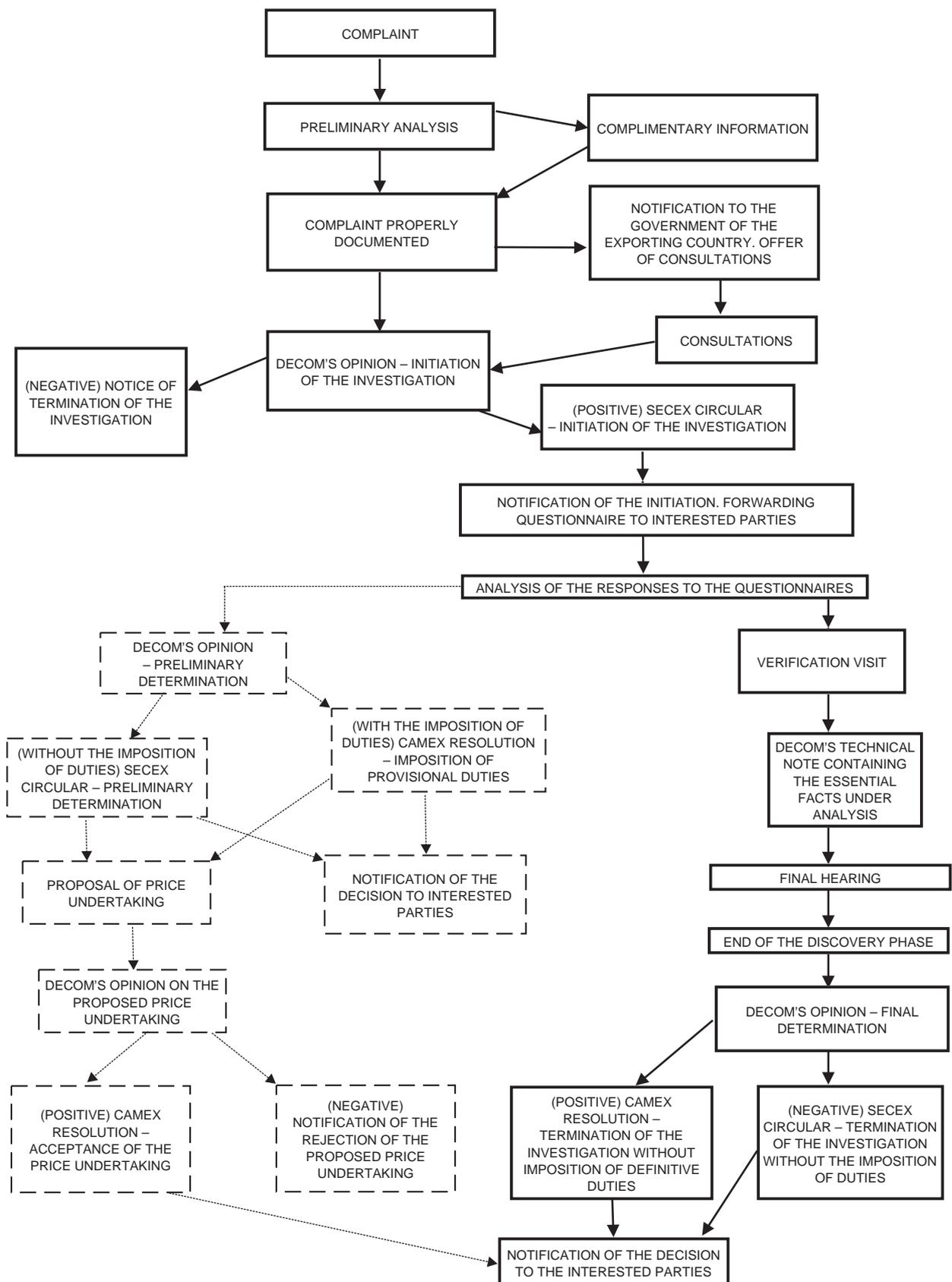
85 See CAMEX Resolution 2, of 16 January 2004.

86 See CAMEX Resolution 36, of 13 December 2004.

Flowchart of anti-dumping investigations in Brazil



Flowchart of countervailing investigations in Brazil



## Chapter 3

# Anti-dumping and countervailing investigations in Brazil – Substantive aspects

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WTO Members have adopted different approaches in their trade remedies; all must be compatible with WTO rules. Brazil has adopted a conservative approach, in order to avoid inconsistencies between Brazilian laws and the international legal framework.

This chapter provides an overview of the substantive elements involved in anti-dumping and countervailing investigations, as established by the Brazilian AD and SCM Laws. The following group of elements will be covered:

- Dumping issues;
- Subsidy issues;
- Issues related to the calculation of the anti-dumping and countervailing measures;
- Issues related to injury, applicable to both anti-dumping and countervailing investigations;
- Issues related to like product; applicable to both anti-dumping and countervailing investigations; and
- Issues related to the domestic industry, applicable to both anti-dumping and countervailing investigations.

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## Dumping

This section highlights the substantive aspects of a dumping determination. The Brazilian investigating authorities will assess these elements in order to verify the existence of dumping and determine the dumping margin.

Dumping is a form of price distortion, in which the export price for a product is lower than its value in the domestic market in which it is manufactured. According to the Brazilian AD Law, there is dumping whenever a product is introduced into the domestic market at an export price lower than the normal value.

The Brazilian AD Law indicates that the following elements have to be analysed:

- The normal value;
- The export price;
- A comparison between the export price and the normal value; and
- The dumping margin.

## Normal value

Normal value is the price that is actually being charged for the product like the one exported to Brazil sold for internal consumption in the exporting country. The complainant has to present evidence concerning sales in the country of origin, which may be contested by other interested parties in the investigation. This might sound simple, but discussions involving the elements employed in the due calculation of the normal value are rather common.

In fact, the determination of the normal value is of utmost importance in an anti-dumping investigation, because the price found as the normal value is compared with the export price (more easily found) to calculate the dumping margin.

The elements to be assessed regarding the normal value are the following:

- ❑ The notion of exporting country;
- ❑ The notion of ordinary course of trade;
- ❑ The level of sales for consumption in the domestic market of the exporting country;
- ❑ Alternative ways to calculate the normal value;
- ❑ The case of non-market economy countries, economies in transition, and the specific cases of the Russian Federation and China.

### *Exporting country*

The Brazilian AD Law considers ‘exporting country’ as the country of origin and of exportation. The country of origin is the country in whose territory the product was manufactured. In most export transactions, the product is exported to Brazil from its country of origin, so that the exporting country coincides with the country of origin of the product.

When the product is not imported directly from the country of origin, but is exported to Brazil from a third intermediary country, all rules regarding anti-dumping investigations apply as well. Moreover, in these cases, the price at which the product is sold to Brazil by the exporting country shall be compared with the comparable price in the exporting country, except if: (I) the product is merely transshipped through the exporting country; (ii) the product is not produced in the exporting country; or (iii) there is no comparable price for the product in the exporting country.

*Example: In the anti-dumping investigation regarding exports of nitrate of ammonium from the Russian Federation, Estonia and Ukraine, the investigation related to Estonia was terminated without imposition of duties because the Estonian Government stated that Estonia did not produce the product under investigation, and statistical data on imports from Estonia referred to the Russian Federation, as questionnaires provided by the Brazilian importers clarified.<sup>87</sup>*

### *Ordinary course of trade*

The requirement that the sales must be made in the ordinary course of trade is intended to preserve the conditions for due comparison between prices. The Brazilian AD Law does not contain a definition of ‘ordinary course of trade’, but it gives directions to what must be disregarded in the determination of the normal value.

<sup>87</sup> See CAMEX Resolution 29, of 18 November 2002; and SECEX Circular 41, of 5 July 2004, published on 7 July 2004.

First, there must be disregarded sales of the like product in the domestic market of the exporting country or sales to a third country at prices below the per unit costs of production (fixed and variable), including administrative and selling costs.

Transactions between parties who are considered associated or that have agreed a compensatory arrangement among themselves may be considered as not being in the ordinary course of trade and those transactions cannot be taken into account in determining the normal value. This applies unless it is proved that the related prices and costs are comparable to those of operations among parties that are not so related.

Sales may be considered as not being in the ordinary course of trade only when they are:

- ❑ Made over a long period (normally one year, but never less than six months);
- ❑ In substantial quantities (considered as such transactions made at a weighted average price for sales below the weighted average unit cost, or a sales volume below the unit cost corresponding to 20% or more of the amount sold in transactions considered for determining normal value); and
- ❑ At prices that do not permit covering all costs within a reasonable period of time (except if the prices below the unit cost, at the moment of sale, are above the weighted average unit cost found in the course of the investigation).

### ***The level of sales for consumption in the domestic market of the exporting country***

Even if it is verified that sales in the domestic market occur in the ordinary course of trade, the use of the prices charged for sales in the domestic market of the exporting country gives rise to the question: ‘What if there are no sales of the like product in the domestic market of the exporting country?’ Indeed, it is possible that a producer makes a given product only for export, or that it sells to the domestic market in very small quantities. In both cases, an appropriate comparison would be difficult to reach.

For this reason, the Brazilian AD Law establishes that a good comparison using the normal value as defined above must be based on a sufficient level of sales to the domestic market. The level of sufficiency is a minimum of 5% of the amount of exports to Brazil. A lower percentage is allowed if it is demonstrated that the domestic sales at such lower percentage do occur in sufficient quantity as to permit adequate comparison.

### ***Alternative ways to calculate the normal value***

If the product is not sold in the ordinary course of trade or if, for reasons of special market conditions or low sales volumes an appropriate comparison is impossible, the Brazilian AD Law establishes that the normal value shall be based:

- ❑ On the price of the like product being charged in exports to a third country, as long as this price is representative; or
- ❑ On the value as determined in the country of origin, taking into account the cost of production in the country of origin plus a reasonable amount for selling, cost and profit (based on exporter’s records).

It is the party in the investigation that chooses which of the alternatives above to use. The findings will be based on the best information available.

In case of constructed prices, adequate adjustments must be made for those non-recurring cost items that benefit present and/or future production; or in cases where the costs observed in the course of the investigated period are affected by start-up operations. Such adjustments made due to start-up operations must reflect the costs verified at the closing of the start-up period or should such period extend beyond the period covered by the investigation, the most recent costs can be considered in the course of the investigation.

Moreover, the constructed normal value must be based on effective production and sales data of the like product, done by the exporter under investigation, during the ordinary course of trade. When calculation of the amount cannot be done based on this, it has to be done by means of:

- ❑ The actual amounts incurred and realized by the exporter or producer in question, relative to production and sale of products of the same category, in the domestic market of the exporting country;
- ❑ The weighted average of the actual amounts incurred and realized by other exporters under investigation, in relation to the production and selling of the like product in the domestic market of the exporting country; or
- ❑ Any other method, as long as the amount stipulated for profit does not exceed the amount of profit normally made by other exporters from sales of products of the same general category, in the domestic market of the exporting country.

***Example 1:** In the anti-dumping investigation regarding the imports of methyl methacrylate (MMA) from France, Germany, Spain, the United Kingdom and the United States, the information provided by the exporters of Germany, Spain and the United Kingdom were not satisfactory for the determination of the normal value. Therefore, the normal value of the exports of methyl methacrylate from Germany, Spain and the United Kingdom was determined based on the best information available, namely the prices published in ICIS LOR.<sup>88</sup>*

***Example 2:** In the anti-dumping investigation regarding tyres for bicycles from China, India, Chinese Taipei and Thailand, DECOM could not obtain the representative price of the product concerned in the market of origin and the data obtained did not allow an adequate price comparison. Therefore, DECOM decided to determine the normal price based on the price of the like product charged in exports to a third country, namely Argentina. However, since there was a suspicion that the imports of tyres for bicycles from China, Indonesia and Thailand to Argentina were being dumped and were under investigation, this possibility was disregarded. Therefore, DECOM decided to construct the price of the product in the countries of origin for the three market economy countries (India, Chinese Taipei and Thailand), because there were similarities in the technology and production process used in the countries being investigated and in Brazil, and there were no significant differences in the non-special tyres and the diversity of tyres produced. With respect to China, DECOM adopted the normal value constructed for Chinese Taipei, since it was a third market economy country and the major worldwide producers have plants in both countries. Provided that there were no significant changes in the production process, the normal value was constructed based on the structure of the production cost at the headquarters used for the determination of the constructed value in the investigation.<sup>89</sup>*

88 See CAMEX Resolution 3, of 22 March 2001.

89 See Interministerial Administrative Rule MICT/MF 19, of 12 December 1997, published on 2 January 1998.

**Example 3:** In the anti-dumping investigation regarding exports of horseshoe nails from Finland and India, the normal value for Finland was calculated based on the exports from Finland to Uruguay during the period under investigation, and the normal value for India were based on the exports from India to Egypt during the investigated period.<sup>90</sup>

**Example 4:** In the anti-dumping investigation regarding exports of magnesium in powder from China, many factors were considered for the decision concerning the construction of the normal value. Firstly, China was not considered as a market economy country. Second, there were no publications available containing international prices for the product. Third, it was not possible to obtain the normal value based on the price charged or on the constructed value for the like product in a third market economy country, or on the price charged in exports to other countries (excluding Brazil). Therefore, the normal value was constructed based on the structure of costs in the domestic industry, corresponding to \$2,764.48 per ton.<sup>91</sup>

**Example 5:** In the anti-dumping investigation regarding exports of glyphosate from China, the complainants appointed India as a benchmark for the purposes of obtaining the normal value. In short, the normal value for acid glyphosate was constructed based on the production factors used by a major Chinese producer, as indicated by Monsanto. Those factors were transferred to India, which means that prices charged (for the factors referred to) in a market economy country were applied to those factors. This methodology for the construction of the normal value considered prices charged in the Indian market and the costs for use of raw materials and inputs, indicated by Monsanto for a Chinese producer, whose production process was based on glycine, the most used in China. The other costs and expenditures (labour, general costs of production, general expenditures, finance, etc.) and profit, were expressed as a percentage of input costs, based on data provided by a major producer of glyphosate in India.<sup>92</sup>

### ***The case of non-market economy countries***

In non-market economy countries, it is presumed that prices and costs are influenced by interference of the State. With regard to the determination of the normal value in an anti-dumping investigation, this means it is not appropriate to establish as normal value the sales price in the domestic market of the exporting country.

In practice, this means alternative manners to calculate the normal value will be used. Investigating authorities shall use the prices and costs of companies in a third country that is a market economy country in order to verify whether dumping is taking place (comparing prices with the export price to Brazil).

The choice of the third country with an adequate market economy must take into account any reliable information presented at the time of selection. The normal value may be determined based on the price charged by the latter country for its exports to other countries, excluding Brazil. If this is not possible, the normal value shall be based on any other reasonable price, namely the price paid or to be paid for the like product in the Brazilian market, duly adjusted, if necessary, to include a reasonable margin of profit. Interested parties will be informed on the choice of the third country through the questionnaires and may present their point of view in the response to the questionnaire.

It is not up to the party to argue that a given country is or is not a non-market economy. The Brazilian AD Law establishes that the following countries are considered non-market economy countries: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, China, Croatia, Cuba, the Democratic People's Republic of Korea, Estonia, Georgia, Kazakhstan, Kyrgyzstan,

<sup>90</sup> See CAMEX Resolution 14, of 2 June 2004.

<sup>91</sup> See CAMEX Resolution 28, of 5 October 2004.

<sup>92</sup> See complete explanation in CAMEX Resolution 5, of 7 February 2003.

Latvia, Lithuania, Moldova, Mongolia, Serbia and Montenegro, Tajikistan, the former Yugoslav Republic of Macedonia, Turkmenistan, Ukraine, Uzbekistan and Viet Nam.

Nevertheless, during the investigation, the exporters under investigation and the government of the country classified as a non-market economy country can submit further information to SECEX – such as exchange rates, interest rates, salaries, prices, capital control, stock market and investments – in the hope that their sector's status will be re-evaluated.

*Example: In the anti-dumping investigation regarding malleable cast iron connections with BSP thread from China, three Chinese exporting companies were against the use of a third country with an adequate market economy for the determination of the normal value. The exporters stated that the sales of the investigated product were made following economy market rules and that the Chinese Government had not influenced such sales. DECOM allowed the exporters to prove the market economy status of China concerning the industrial sector under investigation by presenting documents that could demonstrate this condition until 18 April 2002.<sup>93</sup>*

### ***The case of economies in transition***

Some countries that used to be considered by SECEX as non-market economy countries have eliminated monopolies and the interference of the State in prices and costs and, consequently, should be classified as economies in transition. According to SECEX Circular 59, of 28 November 2001, the following former non-market economy countries should be considered as economies in transition: Bulgaria, the Czech Republic, Hungary, Romania, Slovakia and Slovenia.

When imports from the countries listed above are under investigation, SECEX assumes that these countries are economies in transition. However, in the course of the investigation SECEX may conclude that market economy rules do not prevail in the country of origin of the imports for the sector under investigation.

In order to confirm whether these former non-market economy countries are economies in transition, DECOM sends questionnaires to the exporters requesting information on normal value and export price. If the information provided by the exporters is complete, they may be subject to a verification visit. If the information provided is incomplete, the findings will be based on the best information available.

The analysis of the market economy condition will take into consideration the following factors:

- The degree of governmental control over companies and means of production;
- The level of governmental control over resource allocation, prices and decisions on the production of private companies;
- Legislation concerning ownership, investments, taxation and insolvency and restructuring;
- The degree of independence in the negotiations among employers and employees for the establishment of salaries;
- The degree of distortion inherited from the centralized economy system regarding amortization of assets, asset deductions, direct exchanges and payments under the form of debt compensation; and
- The level of State interference in currency exchange transactions.

<sup>93</sup> See SECEX Circular 41, of 8 October 2002.

If the authorities conclude that the country is a transitional economy, the rules for calculating the normal value will be the same rules as when the product at issue is from a market economy country. On the other hand, if the authorities conclude that market economy rules do not prevail in the country of origin of the imports for the sector under investigation, the rules for the calculation of the normal value are the same rules used in case of non-market economies. In this scenario, the authorities will ask the exporters for additional information on prices or constructed value in a third market economy country.

### *The case of the Russian Federation*

The Russian Federation was considered as a non-market economy country until 2003. SECEX Circular 33, of 9 May 2003, established that the Russian Federation should be deemed a market economy country for the purposes of anti-dumping and countervailing investigations, and that this change in status was considered to be an exceptional circumstance, allowing an interim review before one year after the imposition of the duty.

This means that normal value should be in principle the price charged in sales in the Russian market. Russian exporters still have to show evidence that they are not practising dumping, just like exporters from market economy countries. In other words, the recognition of the Russian Federation as a market economy country does not exempt Russian exporters from the rules or facilitate their situation in investigations.

*Example: Brazilian importers of nitrate of ammonium requested a review of duties imposed to exports from the Russian Federation. The complainant argued that Russian exporters were not practising dumping. The change in status would provide the opportunity for an investigation based on sales prices in the Russian domestic market. The normal value used in the investigation was the prices charged in the domestic market of the United States, since the Russian Federation was then considered a non-market economy country. SECEX agreed that the change in status of the Russian Federation was an exceptional circumstance that allowed a review before one year of imposition of duties. Exporters that provided enough information would have duties reviewed.<sup>94</sup>*

### *The case of China*

The Brazilian AD Law included China in the list of non-market economies. However, on 12 November 2004, the Chinese Minister of Commerce, Bo Xilai, and the Brazilian Minister for External Relations, Celso Amorim, signed the *Memorandum of Understanding on Trade and Investment Cooperation Between the People's Republic of China and the Federative Republic of Brazil*. In the memorandum, the Brazilian Government officially recognized China's market economy status.

This recognition means Brazil will have to apply to investigations involving Chinese exporters the same rules for market economy countries. It is no longer possible to use, for example, prices charged in exports to third countries as normal value. Normal value is now the prices charged in the Chinese market for comparison. This could pose problems, since the State still has a strong influence on prices in China.

There is no SECEX Circular or CAMEX Resolution or any other legal regulation that establishes how investigations involving exports from China should be treated. It is likely that a SECEX Circular similar to the one that changed the status of the Russian Federation will be issued. In practice, Chinese exporters will have to respond to questionnaires and provide evidence that support their

<sup>94</sup> See SECEX Circular 41, of 5 July 2004, published on 7 July 2004.

interests. Moreover, Chinese exporters involved in an investigation in Brazil already receive questionnaires (either direct or through the Chinese Embassy in Brasília). In this sense, there is no indication that China's change in status would create a burden on Brazilian producers.

The status of China is relevant. In 2004, Brazil had 11 anti-dumping duties in force against China, which makes China the country with the highest number of anti-dumping duties imposed by the Brazilian authorities.

*Example 1: In the review regarding exports of steel helicoidal drill from China, the normal value was based on the prices charged by the Danish company in the European Union. In that case, it was found that the normal value was lower than the average price charged by the Brazilian domestic industry, indicating that the product at issue could enter Brazil without dumping.<sup>95</sup>*

*Example 2: In the review regarding exports of barium carbonate from China, the normal value was based on the sales of a German company to the German market. In that case, the review resulted in an anti-dumping duty of \$105.17 per ton.<sup>96</sup>*

*Example 3: In the review regarding exports of ferrite magnetic ring from China, prices charged in exports from a Korean company to the United States were considered the best information available for determining the normal value.<sup>97</sup>*

*Example 4: In the anti-dumping investigation regarding exports of glyphosate from China, the complainants appointed India as benchmark for the purposes of obtaining the normal value. Some Chinese companies, in response to questionnaires, opposed this choice, arguing that the Chinese market for the product investigated followed market economy rules and prices were not subject to State intervention. DECOM requested evidence of this. Documents related to Chinese legislation attached to the records dated from the 1980s, a period in which China was clearly a closed and non-market economy, and did not contribute at all to the Chinese allegation. The legal representative of the Chinese producers asked that the Chinese companies to be visited, so that DECOM could verify on-site the economy market conditions. This request was denied, because on-site verification aims to confirm information and data contained in documents presented by the parties, and the Chinese companies had not presented any evidence that they were following economy market rules.<sup>98</sup>*

## Export price

In principle, the export price is the actual price paid or to be paid for the product exported to Brazil, free of taxes, discounts and reductions effectively granted and directly related to the sales at issue.

In cases where there is no export price or where this appears unreliable, by virtue of an association or compensatory arrangement between the exporter and an importer or a third party, the export price may be constructed.

The export price can be constructed using the price for which imported products have been resold for the first time to an independent buyer. If the product at issue is not to be resold to independent buyers, or it is to be resold in the same condition as when it was imported, the export price may be constructed on a reasonable basis.

In reviews where there were no exports of the product under investigation during the period of analysis, the export price cannot be calculated. The possibility of recurrence of dumping that causes injury to the Brazilian industry

<sup>95</sup> See SECEX Circular 84, of 13 December 2004, published on 14 December 2004.

<sup>96</sup> See SECEX Circular 19, of 30 June 2004.

<sup>97</sup> See CAMEX Resolution 15, of 2 June 2004.

<sup>98</sup> See CAMEX Resolution 5, of 7 February 2003.

is verified by comparing the normal value plus expenses for internalization in Brazil with the prices charged for the like product by the Brazilian industry in the internal market.

### Comparison between normal value and export price

The cornerstone of the comparison between the export price and the normal value is that it must be fair. A fair comparison includes, apart from an appropriate determination of the normal value and the export price, a comparison between prices at the same level of trade (preferably the ex factory level) and must take into consideration sales made at as nearly as possible the same time (for this reason, the date of each sale is important).

*Example: In the anti-dumping investigation regarding exports of acrylonitrile from the United States, for one of the companies investigated evidence was provided of only one export transaction of the product at issue to Brazil, on 6 April 2001. In principle, DECOM should use as the normal value sales that occurred for consumption in the United States on the same day. Nevertheless, after analysing characteristics of sales of acrylonitrile in the United States, DECOM decided that a fair comparison would be to use prices of sales during the whole month of April 2001.<sup>99</sup>*

### Adjustments

For adjustment purposes, where applicable, differences affecting price comparability must be examined, such as differences in the conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics and any other differences that could affect price comparability. When some of these factors overlap, duplication of adjustments already made shall be avoided.

Where applicable, adjustments are also admitted relating to costs incurred between importation and resale, including import measures, other taxes and profits accounted for. If the comparison is affected in these cases, the normal value must be established on a trade level equivalent to the constructed export price.

The amount of the adjustment must be calculated based on relevant data corresponding to the period under investigation, or on data from the previous available fiscal year.

In the case of a product not being imported directly from its country of origin, but exported to Brazil from a third intermediary country, the price for which the product is sold to Brazil shall be compared with the price in the exporting country.

### Currency issues

Comparison between prices often involves currency issues. The Brazilian AD Law provides a set of rules for this purpose.

First, the applicable exchange rate is the rate in effect on the day of the sale. If there is a foreign currency sale in futures markets which is directly related to the export at issue, the exchange rate corresponds to the day of the future sale.

The day of the sale is normally the contract date, the purchase order date or the date of confirmation of the order or of the invoice, whichever establishes the terms of the sale.

<sup>99</sup> See SECEX Circular 7, of 16 February 2004, published on 18 February 2004.

Finally, fluctuations in exchange rates must be ignored. For the purposes of the investigation, the period of 60 days is considered necessary for the exporters' adjustment of their export prices, so as to demonstrate relevant changes during the period under investigation.

## Dumping margin

The dumping margin is the difference between the normal value and the export price. The absolute dumping margin is expressed in United States dollars. The ratio between the absolute dumping margin and the export price results in the relative dumping margin.

$$\text{Absolute dumping margin} = \text{normal value} - \text{export price}$$

$$\text{Relative dumping margin} = \frac{\text{absolute dumping margin}}{\text{export price}}$$

*Example:* In the anti-dumping investigation regarding exports of acrylonitrile from the United States, the normal value found was \$611.89. The export price was \$518.99.

$$\text{Absolute dumping margin: } 92.90 = 611.89 - 518.99$$

$$\text{Relative dumping margin: } 17.9\% = \frac{92.90}{518.99^{100}}$$

## Prices for comparison

The existence and calculation of a dumping margin are determined based on a comparison between:

- The weighted average normal value and the weighted average of the prices of all comparable export transactions; or
- The normal value and the export prices, on a transaction to transaction basis.

A normal value determined by means of a weighted average can be used for comparison with the prices of specific export transactions. This provided that the export price pattern differs significantly among buyers, regions or periods of time, and provided that explanation is presented, regarding the reasons why such differences cannot be appropriately considered by means of comparison between averages or transaction to transaction.

Normal value and export price may be calculated through sampling techniques, by using prices that appear more frequently or that are the most representative, as long as the samples include a significant amount of the transactions under examination.

## Individual dumping margins

In the Brazilian AD Law, the general rule is that an individual margin of dumping must be determined for each of the known exporters or producers of the product under investigation. The law says that if the number of known exporters, producers and importers of types of products being investigated in a specific case is so large that it becomes impractical to proceed with the determination, the investigating authorities may limit the investigation to a reasonable number of interested parties or products, by means of valid statistical sampling based on information available at the time of selection. It is also possible to limit the investigation to the largest percentage of the amount of exports from the country in question that can reasonably be investigated.

<sup>100</sup> See SECEX Circular 7, of 16 February 2004, published on 18 February 2004.

The selection of exporters, producers, importers or types of products by the investigating authorities is subject to the approval of the exporters, producers or importers, based on the necessary information that has been provided for selecting the representative sample.

If a selected company does not provide the information requested, another selection must be made. If there is not enough time to make a new selection or if the new firms selected also fail to provide the requested information, the determination or decision shall be based on the best information available.

Except in situations in which the number of exporters or producers is so large that analysis of individual cases implies a disproportionate burden and impedes conclusion of the investigation on time, individual dumping margins shall also be determined for exporters or producers that have not been included in the selection but that have provided the necessary information in the course of the investigation process. Voluntary replies are encouraged.

Despite these provisions in law, in order to be consistent with WTO Agreements the reality in Brazil is rather different. As said earlier, questionnaires are sent to all known parties; there is no selection in Brazil. All known parties that submit responses to questionnaires in full have individual dumping margins. Of course, given the size and importance of the Brazilian market, in general the number of exporters is not very large. In most investigations, only three or four exporters submit questionnaires completed in full so that an individual dumping margin can be established.

For exporters that do not submit information, the margin of dumping is calculated based on the best information available.

### **De minimis margin**

The dumping margin is considered *de minimis* when it is less than 2% of the export price. When a *de minimis* margin is found, the Brazilian AD Law establishes that the anti-dumping investigation must be terminated without imposition of duties, even if injury is found.

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## **Subsidies and countervailing duties**

This section contains the following substantial elements related to subsidies and countervailing measures in the application of the Brazilian SCM Law:

- Defining countervailable subsidies;
- Determining the amount of subsidy.

### **Countervailable subsidies**

#### ***Notion of subsidy***

There is a subsidy when a financial contribution is made by the government or by a public organ within the territory of the exporting country or there is any form of income or price support that contributes to the increase or decrease of exports of any product and, as a consequence, a benefit is conferred.

According to the Brazilian SCM Law, a financial contribution is made by the government or by a public organ whenever:

- The practice of the government involves a direct transfer of funds, potential direct transfers of funds or liabilities;

- ❑ Government revenue that is otherwise due is foregone or not collected;
- ❑ The government provides goods or services other than general infrastructure or purchases goods; or
- ❑ The government makes payments to a funding mechanism, entrusts or directs a private body to carry out one or more of the type of functions which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments.

Concerning the second item above, it is important to note that the exemption of an exported product from duties or taxes which apply to the like product destined for internal consumption and the remission of such duties or taxes in amounts that do not exceed the due amount must not be considered to be subsidies.

Not all subsidies are subject to an investigation and to countervailing measures.

### ***Specificity***

A subsidy subject to countervailing duties must be specific. A subsidy is specific if it is limited to certain enterprises located inside a geographic region situated inside the jurisdiction of the granting authority.

Specificity does not occur when the granting authority, or the legislation pursuant to which this authority operates, establishes objective conditions or criteria determining eligibility for subsidies and the amounts to be granted, by law, regulation or other normative act. The determination of specificity must be clearly based on positive proof.

In cases where apparently there is no specificity but there are reasons to believe that the subsidy in question is specific *de facto*, other factors may be taken into consideration, such as the use of a subsidy programme by a limited number of companies, the predominant use of a subsidy programme by certain companies, disproportionately large amounts of subsidy granted to certain companies and the discretionary character of a decision granting a subsidy. In order to reach a conclusion on the existence of specificity, analysis is needed of the frequency with which applications for subsidies are refused or approved and the reasons that led to such decisions, the diversification of economic activities within the jurisdiction of the granting authority and the period of time during which the subsidy programme was in force.

### ***Actionable and non-actionable subsidies***

The Brazilian SCM Law distinguishes three categories of subsidy programmes: prohibited subsidies, actionable subsidies and non-actionable subsidies. Prohibited subsidies and actionable subsidies are countervailable.

#### ***Non-actionable subsidies***

The Brazilian SCM Law establishes that there are subsidies that are non-actionable. Non-actionable subsidies are either non-specific subsidies or subsidies that, although specific, are not subject to countervailing duties, even if they cause injury to the Brazilian industry. Despite the expiry of the equivalent provisions in the WTO SMC Agreement on 31 December 1999, the provisions in the Brazilian SCM Law remain in force.

These subsidies are those granted for research activities and related costs, for regional development and for the adaptation of plants to environmental regulations.

### *Actionable subsidies*

The category of actionable subsidies concerns all specific subsidies that are not classified as non-actionable subsidies. This means they are countervailable if they cause injury or retardation to the domestic industry.

Actionable subsidies include the category of prohibited subsidies, relevant for WTO purposes. For investigation purposes, subsidies are considered to be specific *per se* if they fall within the definition of prohibited subsidies. According to the Brazilian SCM Law, prohibited subsidies can be either export subsidies or subsidies contingent on the use of domestic over imported goods.

Export subsidies are those contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance of products other than certain primary products. It must be demonstrated that the granting of a subsidy that is not legally contingent upon export performance is in fact tied to actual or anticipated exportation or export earnings. The mere fact that subsidies are granted to export enterprises is not sufficient to consider those subsidies as export subsidies. Annex I to the Brazilian SCM Law provides an extensive illustrative list of possible forms of export subsidies.

Subsidies contingents, in law or in fact, whether solely or as one of several other conditions, upon the use of domestic over imported goods, are also prohibited under the Brazilian legislation.

*Example: In the countervailing investigation regarding exports of stainless steel bars from India, the existence of actionable subsidies was verified based on the Indian rule EXIM 2002-2007, as well as the Five-year Plan 1997-2002 (since some benefits granted in a previous period could last until the period of analysis). Characteristics of the subsidies were examined based on questionnaires completed by Indian exporters and by the Indian Government. Five subsidy programmes were analysed:*

- *The passbook scheme;*
- *Duty entitlement passbook schemes – DEPB*
- *The export promotion capital goods scheme – EPCG;*
- *Export processing zones/export-oriented units – EPZ/EOU*
- *Income tax exemption.*

*To refer to just one of them, we will describe in brief the DEPB, in force since 7 April 1997. This regime was constituted in two forms: (1) a regime of import duty credits granted before export; and (2) a regime of import duty credits granted after export. Both were available to export producers and to traders related to producers.*

*Regime 1 enabled the benefited company to import, exempted of duties, inputs to manufacture products to be exported.*

*According to regime 2, the Indian exporter could request credit corresponding to a percentage of the value of the exported finished products (the Indian authorities determined the percentages for most products). This regime permitted the use of credits to compensate for duties due on future imports of any goods, except those listed in a 'negative import list'. The regime was considered to be based on value, and not on quantity. The tax credit for exemption of duty was not controlled with regard to quantities of goods consumed in the production process. There was no system for verifying quantities of imported inputs actually used in the process of producing the exported products, meaning it was not a drawback regime.*

*Since this regime involved financial contribution from the Indian Government, generating benefit in the form of import duties foregone, regime 2 was considered a subsidy, specific, actionable (because it was directly subject to the export performance of the company) and countervailable in the terms of the Brazilian law.<sup>101</sup>*

<sup>101</sup> See CAMEX Resolution 2, of 17 February 2005.

## Determining the amount of actionable subsidies

The amount of the actionable subsidy shall be calculated per unit of subsidized goods exported to Brazil, based on the benefits conferred during the investigation period.

### *Benefit*

A benefit is conferred when the financial contribution gives the recipient better conditions than those available in the market. A benefit can be a simple amount of money received in the case of a direct transfer of funds, or special interest rates for the payment of a loan to a State Bank, lower than the interest rate available from commercial banks.

The Brazilian SCM Law establishes that the following practices shall not be considered as conferring benefits:

- ❑ Government provisions of equity capital, unless this decision is inconsistent with the usual investment practice in the exporting country;
- ❑ Loans received from the government, unless the rate is lower than the firm would pay on a commercial loan obtained on the market;
- ❑ Loan guarantees conferred by a government, unless this amount is lower than the rate the firm would pay on a commercial loan obtained on the market without the government guarantee; and
- ❑ Provision of goods or services or purchase of goods by the government, unless provision is made for less than adequate remuneration or the purchase is made for more than adequate remuneration, when compared to market conditions prevailing for the good or service under consideration.

*Example: In the countervailing investigation regarding exports of stainless steel bars from India, the import duty credit granted after export, a part of the duty entitlement passbook scheme (DEPB), was calculated in two forms, according to the use by each company of the DEPB licence. If the company used its licence to import so as to compensate for import duties, the benefit was calculated based on the amount of unpaid import duties over the import transactions effectuated in the scope of the regime.*

*If the company preferred to sell the licence, benefit was calculated based on the total price of the sale, independent of the amount of credits granted in the licence. The value of the licence could be higher or lower than its nominal value, according to the market, but the calculation was based on the value of the sale, that value expressed the exact benefit obtained.*

*Purchasing licences from other exporters was not considered as a benefit, because the benefit was granted to the company that originally received the licence (and benefited from tax compensation or sale of the licences).<sup>102</sup>*

### *Calculation of the amount of subsidy for the countervailing duty*

From the total amount of the subsidy, the authorities may deduct the expenses incurred by the company in order to qualify for the subsidy or to benefit from it and the taxes to which the product has been submitted upon exportation to Brazil, if specifically designed to neutralize subsidies. When an interested party or government requests a deduction, it has to present proof that the deduction is justified.

<sup>102</sup> See CAMEX Resolution 2, of 17 February 2005.

*Example:* In the countervailing investigation regarding polyethylene terephthalate (PET films) from India, in order to determine the total value of the benefit conferred under the import tax credit system, DECOM added to the amount of the subsidy half of the average commercial interest rate paid by each company, and excluded the amount paid by the company in order to qualify for the subsidy (0.5% of the value of the credit of the licence). With respect to the total value of the benefit conferred under the export system, DECOM added to the amount of the subsidy the annual interest rate paid by each company and, in the case of products sold during the investigation period, half of the commercial interest rate. Only one company (Éster) provided information on the amount paid by the company in order to qualify for the subsidy, which was discounted from the subsidy amount calculated for this company.<sup>103</sup>

When the subsidy is not granted on the basis of the quantities manufactured, produced, exported or transported, the amount of actionable subsidy shall be calculated by dividing the total value of the subsidy by the amount manufactured or produced, for sale or for export of the product to which it refers, during the investigation period.

When the subsidy is granted for a present or future acquisition of fixed assets, the amount of the actionable subsidy shall be calculated and pro rated for a period that corresponds to the normal depreciation of such assets in the industry under consideration. The amount related to the investigation period for subsidization, including the amount derived from the acquisition of fixed assets in previous periods, shall be divided accordingly. If the subsidy is not related to the acquisition of fixed assets, the total value of the subsidy shall be divided by the amount manufactured or produced, for sale or for export of the product concerned, unless exceptional circumstances justify its attribution to a different period.

### *Individual amounts of subsidy*

The general rule is the determination of an individual amount of actionable subsidy for each one of the known exporters, or producers of the product under investigation.

It is likely that the number of known exporters, producers and importers or types of products being investigated in a specific case will be so large that it becomes impractical to proceed with the determination. In such cases, the investigating authorities may limit the investigation to a reasonable number of interested parties or products, according to a statistically valid sample available at the time of selection; or to the largest amount of production, sale or exportation that is representative and may be investigated, taking into account the determined deadlines.

The selection of exporters, producers, importers or types of products by the investigating authorities is subject to the approval of the exporters, producers or importers, based on the necessary information that has been provided for selecting the representative sample. If one or more of the selected enterprises does not provide the information requested, another selection shall be made. If there is not enough time to make a new selection or if the new firms selected also fail to provide the requested information, the determination or decision shall be based on the best information available.

The individual amount of subsidy must be determined for each exporter or producer not included in the selection, but that presents the necessary information in time for consideration during the investigation, except if the

<sup>103</sup> See SECEX Circular 50, of 16 December 2002.

number of exporters or producers is so expressive that the analysis of individual cases would result in a disproportionate burden that would impede the conclusion of the investigation within the designated time limit.

As for individual dumping margins, in practice, given the size of the Brazilian market, the number of exporters is usually not very large, and not many exporters submit enough information to allow the calculation of individual amounts of subsidy.

**Example:** In the countervailing investigation regarding exports of polyethylene terephthalate (PET films) from India, DECOM calculated the subsidy amount based on the benefits granted by the Indian Government and enjoyed by the companies that answered the questionnaire, per unit of product. The subsidy amount was calculated separately for each subsidy programme (the import tax credit system and the export of capital goods system). The relative subsidy amount was obtained by dividing the subsidy amount, per unit of product, by the export price given by the investigated companies, as follows: Éster 4.6%; Flex 2.3%; and Polyplex 5.2%.<sup>104</sup>

### De minimis margin

Countervailing duties can be imposed only if the subsidy exceeds a *de minimis* margin. The amount of the actionable subsidy shall be considered as *de minimis* when it is lower than 1% *ad valorem*.

The amount of the actionable subsidy shall be considered as *de minimis* for developing countries when the global level of actionable subsidies granted for the product in question does not exceed 2% *ad valorem*. The *de minimis* margin is 3% *ad valorem* for those countries referred to in Annex IV of the Brazilian SCM Law, which includes: (I) LDCs; and (ii) Bolivia, Cameroon, Congo, Côte d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, the Philippines, Senegal, Sri Lanka, Zimbabwe – while their annual GDP per capita is below \$1,000.

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## Calculation of anti-dumping and countervailing duties

### Nature of the measures

In Brazil, anti-dumping duties, countervailing and safeguard measures are not considered as taxes. This means they can be charged over imports not subject to import taxes, or special customs regimes such as the drawback.

The Administration is forbidden to impose anti-dumping duties or countervailing measures that exceed the margin of dumping or amount of subsidy found in the investigation. Moreover, the duties can be imposed only on products that are destined for final consumption in the Brazilian territory, or in a portion of the Brazilian territory (according to the prerogative to divide the territory in order to determinate the domestic industry).

'Anti-dumping duty' is understood as the amount of money that is equal to or less than the dumping margin found in the investigation, calculated and applied according to the law, with the sole intention of neutralizing the harmful effect caused by dumped imports.

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<sup>104</sup> See SECEX Circular 50, of 16 December 2002.

In the same manner, ‘countervailing measure’ is understood as the amount of money that is equal or less than the amount of subsidy found in the investigation, calculated and applied according to the law, with the sole intention of neutralizing the harmful effect caused by subsidized imports.

Since anti-dumping and countervailing duties are not considered taxes, they are due independently of any obligation of a fiscal nature relative to importation. Customs clearance is subject to the payment of the duty.

Anti-dumping duties and countervailing measures are calculated and applied in the form of *ad valorem* or specific duties. They may be fixed or variable,<sup>105</sup> or a combination of both. *Ad valorem* duties correspond to a percentage of the customs value of the goods, on a CIF basis, and vary according to the price.

*For example, the duty on a product X is 25% ad valorem. If it is imported at R\$ 4.00 per unit, the importer has to pay R\$ 5.00 for it; if it is imported at R\$6.00, the importer has to pay R\$ 7.50; if it is imported at R\$ 1.00, the importer has to pay R\$ 1.25, and so on.*

Specific duties, on the other hand, are fixed amounts in United States dollars to be added to the import price, whatever the price is.

*For example, the specific anti-dumping duty on a product X is \$2.00. If it is imported at \$4.00 per unit, the importer has to pay \$6.00 for it; if it is imported at \$6.00, the importer has to pay \$8.00; if it is imported at \$1.00, the importer has to pay \$3.00, and so on.*

**Example 1:** The anti-dumping investigation regarding exports of horseshoe nails from Finland and India was terminated with the imposition of specific duties of \$2.82/kg for imports from Finland and \$0.67/kg for imports from India.<sup>106</sup>

**Example 2:** In the review regarding exports of jute bags from India and Bangladesh, the original *ad valorem* anti-dumping duties of 38.9% (for India) and 64.5% (for Bangladesh) were replaced by a specific duty of \$0.22/kg (for companies from Bangladesh and companies from India that had not provided information).<sup>107</sup>

## Calculation of the undercutting margin and the lesser duty rule

In principle, anti-dumping duties are based on the dumping margin. Countervailing duties must be calculated based on the benefit conferred on each recipient during the investigation period for subsidization (the amount of subsidy).

However, Brazil adopts the lesser duty rule. This means that for every investigation, apart from the dumping margin, DECOM also calculates the undercutting margin. The lowest margin is the base for the anti-dumping or countervailing duty, since it is understood that the non-protectionist use of trade remedies requires that the measure intends to neutralize injury.

The absolute undercutting margin is calculated by comparing the average sales price charged by the Brazilian industry in the internal market with the CIF price (for internalization in the Brazilian territory) of imports from the countries involved in the investigation.

<sup>105</sup> Variable duties are *ad valorem* or specific duties that vary according to the price, and are not used in practice.

<sup>106</sup> See CAMEX Resolution 14, of 2 June 2004.

<sup>107</sup> See CAMEX Resolution 24, of 9 September 2004.

$$AUM = ASP - CIF \text{ import price}$$

*AUM* = absolute undercutting margin

*ASP* = average sales price charged by the Brazilian industry in the internal market

**Example 1:** In the anti-dumping investigation regarding exports of horseshoe nails from Finland and India, the dumping margin found was \$2.82/kg for Finland and \$0.67/kg for India. The undercutting margins found were \$4.08/kg and \$7.32/kg respectively. As the dumping margins were considered lower than the undercutting margins, the anti-dumping duty applied corresponded to \$2.82/kg for imports from Finland, and \$0.67/kg for imports from India.<sup>108</sup>

**Example 2:** In the anti-dumping investigation regarding exports of magnesium in powder from China, the dumping margin found was \$1,218.70 per ton and the absolute undercutting margin found was \$0.99/kg. Since the dumping margin was higher than the undercutting margin, application of an anti-dumping measure based on the undercutting margin was recommended, in the form of a specific rate corresponding to \$0.99/kg.<sup>109</sup>

### Measure that neutralizes injury

The non-protectionist application of trade remedies in Brazil implies the more general use of the notion that the measure serves to neutralize injury. In this sense, if it is found that a duty which is lower than the dumping margin found is sufficient to nullify injury caused to the Brazilian industry, it will be applied.

**Example 1:** In the anti-dumping investigation regarding exports of drugs containing insulin from Denmark, the United States and France, from January 1998 to June 1999, the average relative dumping margin of drugs containing insulin from Denmark was 200.2%. Nevertheless, the anti-dumping duty applied to the imports of drugs containing insulin from Denmark was 76.1%. Although duty imposed was much lower than the dumping margin, the authorities considered that such duty was sufficient to nullify injury caused by the dumped imports from Denmark.<sup>110</sup>

**Example 2:** In the review regarding exports of ferrite magnetic ring from China, DECOM found rates from 67% to 205%. However, it opted to maintain the anti-dumping rate of 43%, determined in accordance with the original investigation, because this lower rate was found to protect the Brazilian industry against the dumped imports while it was in force. For DECOM, a stronger anti-dumping measure would mean a too heavy burden on imports.<sup>111</sup>

### Calculation of individual duties

As a general rule, duties must be calculated for each known exporter. Since all known exporters have the same opportunity to respond to questionnaires despite the number of exporters involved, duties for exporters that provide enough information will be based on that information. Exporters that do not provide enough information will have their duties calculated based on the best information available.

The law also regulates the case, not applied in practice in Brazil, where the number of suppliers is particularly high. In such cases, a selection of exporters is made, and the decision must contain the name of the countries involved, with the respective measures. SECEX and CAMEX must calculate an individual duty for imports from any exporter not included in the selection that submits the

<sup>108</sup> See CAMEX Resolution 14, of 2 June 2004.

<sup>109</sup> See CAMEX Resolution 28, of 5 October 2004.

<sup>110</sup> See SECEX Circular 5, of 9 February 2001.

<sup>111</sup> See CAMEX Resolution 15, of 2 June 2004.

requested information in the course of the investigation. In any case, measures imposed on imports from known exporters that have not been included in the selection but that have submitted the information requested, may not exceed the weighted average of the margin of dumping or amount of subsidy established for the group of exporters selected. For this purpose, zero or *de minimis* margins are not taken into account, nor the margins obtained by means of best information available because the party at issue denied access or put obstacles to information.

SECEX presents the recommendations in terms of the duties, based on this calculation. CAMEX is the authority competent to impose them. In general, CAMEX adopts the duties proposed by SECEX, but it may choose to adopt a different duty for reasons of national interest. This discretionary component is attenuated by the obligation to justify the choice.

*Example 1: In the review regarding exports of jute bags from India and Bangladesh, the original ad valorem anti-dumping duties of 38.9% (for India) and 64.5% (for Bangladesh) were replaced by a specific duty of \$0.22/kg (for companies from Bangladesh and companies from India that had not provided information). This amount was calculated by comparing the probable export price (corresponding to the lower normal value found) of \$0.69/kg, ex-factory, with the normal value calculated for the other companies from India and Bangladesh, of \$0.91/kg, also ex-factory. The amount of \$0.22/kg corresponds to an ad valorem rate of 27.8%, found by dividing that amount by the CIF price of \$0.79/kg.<sup>112</sup>*

*Example 2: In the countervailing investigation regarding exports of stainless steel bars from India, the amount of benefit obtained by each company that benefited from the regime of import duty credits granted after export, a part of the duty entitlement passbook scheme (DEPB) was calculated based on the total value of the licences granted to a given export company, independent of whether the company used or sold the licence, and deducted 0.5% of that value, paid as an application fee. The amount of subsidy per unit of product under the regime, being the total amount of duties that were not paid, plus interest rate, was divided by the amount in tons of the total sales made by each Indian company during the period of analysis of the subsidy, since the advantage in non-payment of taxes benefited the company as a whole and all products benefited from the non-payment. From the subsidy margin in sales to Brazil, DECOM divided the amount of subsidy per unit of product by the export price charged by each company in sales of stainless steel bars to Brazil.*

*As there was a positive determination on injury, the countervailing measure was calculated taking into account the lesser duty rule. Because of the drop in prices in that case, the undercutting margin for the same period of analysis as the existence of subsidy was adjusted. This adjustment considered the price-cost relation to be 20.3%, and the average price of the industry, cash, without freight and taxes, was adjusted from \$1,170.00 per ton to \$1,839.00. The undercutting margin found was 12.7%. The subsidization margin calculated previously had been 4.1% for the company Chandan Steel Ltd and 17.1% for the other Indian companies. Taking into consideration the lesser duty rule, the countervailing duty for the Indian companies was 12.7%, and 4.1% for Chandan Steel.<sup>113</sup>*

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## Injury

The Brazilian AD Law and the Brazilian SCM Law refer to ‘injury’, and state that this must be understood as ‘material injury’ or ‘threat of material injury’ to the Brazilian domestic industry. Determination of injury must be based on positive evidence and shall include an objective examination of:

<sup>112</sup> See CAMEX Resolution 24, of 9 September 2004.

<sup>113</sup> See CAMEX Resolution 2, of 17 February 2005.

- ❑ The amount of dumped or subsidized imports;
- ❑ Their effect on prices of the like product in Brazil; and
- ❑ The impact of such imports on the domestic industry.

### Amount of imports

Concerning the amount of dumped or subsidized imports, the investigating authorities must determine whether such amount is not insignificant and whether there has been a substantial increase in imports under such conditions, both in absolute terms and in relation to production or consumption in Brazil.

A negligible amount of imports exists when imports are lower than 3% of Brazilian total imports of the like product. This amount ceases to be negligible if the countries that individually contribute to less than 3% of Brazilian total imports are collectively responsible for more than 7% of the total imports of the product at issue.

With respect to countervailing investigations only, for developing countries, a negligible amount of imports represents less than 4% of the total imports of the like product, unless those developing countries at issue that individually contribute less than 4% are collectively responsible for more than 9% of the total imports of the product at issue.

*Example 1: In the anti-dumping investigation regarding exports of benzothiazole from Belgium and the United States, it was found that the amount of exports from the United States was 750 kg, corresponding to 0.1% of the total amount of Brazilian imports of the product at issue, a negligible amount.<sup>114</sup>*

*Example 2: In the anti-dumping investigation regarding whole and skimmed milk powder packaged for retail consumption from Argentina, Australia, the European Union, New Zealand and Uruguay, SECEX terminated the investigation relating to the imports from Australia, because those imports accounted for 2% of the total amount of Brazilian imports of the product at issue, a negligible amount.<sup>115</sup>*

### The effect on prices in Brazil

Regarding the evaluation of the effect that dumped imports have on prices, it must be taken into account whether there has been a significant price undercutting for dumped or subsidized products in relation to the price of the like product in Brazil, or whether such imports have had the effect of significantly depressing prices or impeding price increases that would have occurred in the absence of such imports.

However, it is important to note that none of these factors alone, nor several of them together, are necessarily decisive factors. Sometimes the Brazilian domestic industry is being injured by dumped or subsidized imports from more than one country. All those imports are put together in the same investigation with regard to injury verification. In this case, the effects of such imports must be assessed cumulatively, if it is verified:

- ❑ That the dumping margin established for each country is higher than *de minimis*;
- ❑ That the volume of imports from each country is not negligible;

<sup>114</sup> See SECEX Circular 57, of 17 July 2003, published on 18 July 2003.

<sup>115</sup> See SECEX Circular 9, of 21 February 2001.

- ❑ That the cumulative assessment of the effects of those imports is appropriate in light of the competitive conditions between imported products and the competitive conditions between the imported product and the domestic like product.

### The impact of imports on the domestic industry

The impact of imports on the domestic industry must take into consideration all relevant economic factors and indices that illustrate the state of the industry. These include:

- ❑ Actual or potential decline in sales, profits, output, market share or productivity;
- ❑ Return on investments or utilization of capacity;
- ❑ Factors affecting domestic prices;
- ❑ The size of the margin of dumping;
- ❑ Actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

This list is not exhaustive, and the indicated factors do not give decisive guidance to the investigating authorities.

*Example: In the countervailing investigation regarding polyethylene terephthalate (PET films) from India, DECOM evaluated the following factors in order to decide whether the subsidized imports caused injury to the domestic industry: (i) the amount of imports; (ii) evolution of the imports; (iii) prices of the imports; (iv) share of the imports in the apparent consumption; (v) share of the imports compared to domestic production; (vi) share of the domestic industry in the apparent consumption; (vii) installed capacity and production of PET films; (viii) sales of the domestic industry; (ix) gross revenue of the domestic industry; (x) the final stock of the domestic industry; (xi) evolution of employment levels; (xii) evolution of salaries; (xiii) evolution of prices in the domestic industry; (xiv) evolution of production costs; (xv) evolution of prices versus production costs; (xvi) profit and loss statements; and (xvii) effects of the prices of subsidized imports and prices of the domestic industry. The analysis of those factors and of the statements submitted by the interested parties led to the conclusion that, despite the increase in subsidized imports of PET films from India, those imports had not caused injury to the domestic industry.<sup>116</sup>*

Injury may be found to exist even when a major portion of domestic production is not being injured, provided there is a concentration of dumped imports in a market and these imports are causing injury to the producers of all or almost all of the production of that market.

### Threat of injury

The determination of existence of a threat of injury cannot be merely based on allegation, conjecture or remote possibilities, but on facts and on a convincing reason. It is also important that any changes in circumstances that could result in a situation in which dumping or subsidy would cause injury must be imminent and clearly foreseen.

The verification of threat of injury must consider, *inter alia*, the following factors:

- ❑ A significant rate of increase of dumped or subsidized imports, indicating a probability of substantial increase in imports;

<sup>116</sup> See SECEX Circular 50, of 16 December 2002.

- ❑ In the case of subsidies, the nature of the subsidies at issue and their likely effects on trade;
- ❑ Sufficient idle capacity, or an imminent, substantial increase in the capacity of the exporter, indicating a probability of substantial increase in imports;
- ❑ Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and that are likely to increase demand for further imports; and
- ❑ Inventories of the product under investigation.

None of the factors is decisive by itself or gives definitive guidance. But the totality of these factors should lead to the conclusion that further dumped imports are imminent and that, unless protective action is taken, material injury would occur.

### Causal link

The Brazilian AD Law and the Brazilian SCM Law require the existence of a causal link between the dumped imports and the injury or threat of injury to the domestic industry to be demonstrated, if anti-dumping duties or countervailing measures are to be applied. The existence of this causal link can be demonstrated only after the examination of relevant evidence and other known factors, besides the dumped or subsidized imports, that could be causing injury to domestic industry simultaneously.

Injury caused by factors other than the dumped or subsidized imports cannot be attributed to those imports. The law gives a list of such factors:

- ❑ Amount and prices of imports not sold at dumping or subsidized prices;
- ❑ Impact of the process of liberalization of imports on domestic prices;
- ❑ Reduction in demand;
- ❑ Changes in consumer patterns;
- ❑ Restrictive trade practices taken by domestic and foreign producers;
- ❑ Competition between domestic and foreign producers;
- ❑ Developments in technology;
- ❑ Export performance and productivity of the domestic industry.

The assessment of the effect of dumped or subsidized imports on the domestic industry production is based on the productive process and producers' sales and profits, among other factors. This evaluation is made only if the data available permit identification of such production individually. If individual identification is not possible, the effects of dumped or subsidized imports can be assessed by examining the production of the narrowest group or range of products (which includes the like product), for which the necessary information can be provided.

*Example 1: In the anti-dumping case regarding exports of acrylonitrile from the United States, DECOM found that exporters were practising dumping, and that the Brazilian industry was suffering injury, but concluded that the injury was not caused by dumping. In fact, DECOM found that, during the period under investigation, imports of the dumped product had decreased (the Brazilian producer increased its market share in Brazil from 91.7% to 95.1%, demonstrating reduction in imports). Injury was caused by reduction in demand from the main Brazilian buyers, and revenue had decreased because of the lower international price for the product at issue.<sup>117</sup>*

<sup>117</sup> See SECEX Circular 7, of 16 February 2004, published on 18 February 2004.

**Example 2:** In the anti-dumping investigation regarding exports of malleable cast iron connections with BSP thread from China, DECOM concluded that there was no causal link between the dumped imports and the injury caused to the domestic industry, as long as there was no connection between: (I) the evolution of the imports of malleable cast iron connections with BSP thread from China and their share in the apparent consumption; and (ii) the evolution of the underpricing margins and the maintenance of the pricing policy of the domestic industry, which allowed the domestic industry to have profits during the investigation period.<sup>118</sup>

**Example 3:** In the anti-dumping investigation regarding exports of benzothiazole from Belgium and the United States, DECOM found that dumped imports from Belgium were not causing injury to the Brazilian industry. Very briefly, conclusions were as follows:

With regard to dumped imports:

- Imported amounts oscillated: they increased 2.1% in P1; decreased 38.6% in P2; increased 49.3% in P3; decreased 7.2% in P4. DECOM found an overall decrease over the period under analysis.
- Belgium was the main exporter of the product at issue (50% to 69% in P1, P2 and P3; 83% in P4).
- With regard to the domestic industry, imports under investigation decreased in P1 and P2 (9.9%); they were 15% in P3, decreasing again to 13.5% in P4.
- During the period under investigation, any increase in imports from Belgium did not cause loss in market share for domestic consumption for the Brazilian industry. Participation of the Brazilian industry increased 5.5%, reducing market share for foreign suppliers.
- The average FOB price for the Belgian product was lower than export price from other origins.

With regard to the impact on the domestic industry:

- Production increased: it increased 9.6% in P1; increased 4.3% in P2; decreased 1.3% in P3; increased 2.8% in P4, reaching the highest amount. During the whole investigated period, production increased 16.1%.
- Installed capacity remained stable, and the level of occupation of the capacity installed had a good performance, increasing 11.8% between P1 and P3, and 2.3% in P4.
- Sales to the internal market by the domestic industry decreased 2.5% in P1, increased 15.1% in P2 and 6% in P3, decreasing again to 3.2% in P4.
- Imports under investigation, in relation to sales by the domestic industry in the domestic market, represented 26.5% in P1 and decreased to 20% in P4.
- Exports by the domestic industry decreased 4.4% in P1, increased 15.7% in P2, decreased 8.1% in P3 and decreased again to 10.2% in P4.
- Stock performed badly: it increased 53.6% in P1; decreased 7.4% in P2; increased 1.6% in P3; increased 69% in P4. The increase in P4 was a result of expansion in production (+16.1%) and reduction of the market (-9.6%) and does not refer to dumped imports (which decreased 7.2%).
- The number of employees directly related to rubber production lines increased 2.5% in P1, was stable in P2, increased 3.2% in P3 and was stable in P4.
- Revenue increased from P2 onwards. In Brazilian currency, revenue decreased 9.2% in P1, increased 27.5% in P2, decreased 1.4% in P3 and increased 6.9% in P4. The overall increase was 22.1%.
- Prices followed revenue. The average price increased 6% during the whole period of investigation.
- Costs were stable between P1 and P3, then increased 17.2% in P4 because of the higher prices for the raw material and the increase in administrative and sales expenses.
- Profitability decreased between P1 and P4.
- In P4 undercutting was found, but in very low levels.<sup>119</sup>

<sup>118</sup> See SECEX Circular 41, of 8 October 2002.

<sup>119</sup> See SECEX Circular 57, of 17 July 2003, published on 18 July 2003.

**Example 4:** In the review regarding exports of ferrite magnetic rings from China, it was verified that no exports from China had occurred during the period under analysis. In that case, DECOM was investigating whether there would be a recurrence of the injury suffered by the Brazilian industry if the anti-dumping duties were terminated. In brief, it was found that during the period the duty had been in force internal sales had increased, participation of the Brazilian producers in internal consumption had increased, production had increased, capacity installed and number of employees had also increased. During the period, imports from China had been substantially reduced.

In order to assess whether imports from China still constituted a threat of injury to the Brazilian industry, it was considered that, if exports occurred to Brazil at the prices normally charged by the Chinese companies in China, and expenses related to internalization of the Chinese product in Brazil were added, the resulting prices would be higher than prices charged by the Brazilian industry.

To be competitive, Chinese companies interested in exporting to Brazil would have to practice dumping. Since it was verified that China had a capacity installed larger than needed for internal consumption, and that China had been adopting an aggressive strategy for conquering international markets, there was a high probability that Chinese companies would practice dumping continuing to cause injury to the Brazilian industry if anti-dumping measures were removed.<sup>120</sup>

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## Like product

The Brazilian AD Law and the Brazilian SCM Law consider the like product as an identical product, equal in all aspects to the product under investigation. In the absence of such a product, the like product is a product that has characteristics closely resembling those of the product under consideration.

The notion of like product is important to qualify the legitimacy of the domestic industry and determine the injury to that industry. Only Brazilian producers of the product that is like the product exported to Brazil under dumping or subsidy may be suffering injury because of the unfair practices.

Moreover, dumping is found by comparing prices charged for like products. The product under investigation is the one exported to Brazil; the product that must be ‘like’ it is the one sold in the domestic market of the exporting country.

**Example 1:** In the countervailing investigation regarding polyethylene terephthalate (PET films) from India, before the decision on whether the complaint was properly documented, the complainant requested that two other tariff classification items be added to the list of items presented in the complaint. Because of the complexity of the product concerned, DECOM held two meetings with the complainant to present information on the technical characteristics of the product.<sup>121</sup>

**Example 2:** In the dumping case regarding stainless steel from South Africa, Germany, Japan, Spain, France, Italy and Mexico, the description of the product at issue and the like product produced in Brazil was challenged by the exporters. DECOM decided, in that case, that the exported product and the product produced in Brazil were like products, because both were compatible with international standards, and had the same chemical composition, same physical and mechanical properties, and same final uses.<sup>122</sup>

<sup>120</sup> See CAMEX Resolution 15, of 2 June 2004.

<sup>121</sup> See SECEX Circular 50, of 16 December 2002.

<sup>122</sup> See Interministerial Administrative Rule MICT/MF 18, published on 23 December 1999, and Interministerial Administrative Rule MICT/MF 34, published on 26 May 2000.

**Example 3:** In the anti-dumping investigation related to exports of powdered milk from Argentina, the milk in natura produced in Brazil was considered like the powdered milk [packed for industrial consumption (packages of 25 kg), not for retailing]. The market was the same for the imported and the Brazilian products since both were for industrial consumption. The only difference found between milk in natura and powdered milk is the water content; all other physical characteristics are the same (any chemical products in the powdered milk were added for preservation purposes).<sup>123</sup>

**Example 4:** In the anti-dumping investigation regarding exports of drugs containing insulin from Denmark, the United States and France, DECOM stated that the existing physical differences between the drugs containing insulin should not be interpreted so restrictively that they were considered to be distinct products. According to DECOM, such differences should be weighed only if it could be demonstrated that the use, the application or the perception of the users of the different kinds of drugs containing insulin were different, which was not the case. Even if the differences among the insulin preparation were taken into consideration for a price comparison, based on the information submitted by the interested parties and on the concept of like product established by the Brazilian AD Law, DECOM considered that the product produced in Brazil was similar to the products under investigation.<sup>124</sup>

**Example 5:** In the anti-dumping investigation regarding exports of stone cutting laminate (LCP) from Italy, the associations representing consumer companies of marble raised the issue of similarity between the Italian product and the Brazilian product. They argued differences in production processes, resistance to traction and adaptation of the LCP to various machines for cutting marble. DECOM considered the Brazilian product similar to the Italian product.<sup>125</sup>

## Domestic industry

### Ordinary definition

The Brazilian AD Law and the Brazilian SCM Law establish that the term ‘domestic industry’ may have two interpretations. The first, and more intuitive one, is the domestic industry as the whole group of domestic producers of like products. The second meaning is the producers whose output of the like products constitutes a major proportion of the total domestic production of those products. (The term industry includes agricultural products.)

**Example 1:** In the review regarding exports of tyres for bicycles from China, India, Chinese Taipei and Thailand, DECOM considered the domestic industry to be the production lines of tyres for bicycles of the Brazilian companies Pirelli and Levorin.<sup>126</sup>

**Example 2:** In the price undertaking review regarding exports of powdered milk from Argentina, DECOM considered that the complaint was made by the domestic industry because CNA was the association that represents all Brazilian agricultural producers in the whole Brazilian territory (as established by law).<sup>127</sup>

<sup>123</sup> See CAMEX Resolution 1, of 2 February 2001, published on 23 February 2001.

<sup>124</sup> See SECEX Circular 5, of 9 February 2001.

<sup>125</sup> See complete explanation in CAMEX Resolution 30, of 9 October 2003.

<sup>126</sup> See CAMEX Resolution 37, of 18 December 2003.

<sup>127</sup> See SECEX Circular 9, of 18 February 2004, published on 20 February 2004.

**Example 3:** In the anti-dumping investigation regarding exports of acrylonitrile from the United States, the domestic industry was defined as the totality of the production of acrylonitrile by Acrilonitrila do Nordeste SA. The complainant identified itself as the only producer of acrylonitrile in Brazil and this information was confirmed by the Brazilian Chemical Industry Association (Associação Brasileira da Indústria Química – ABIQUIM).<sup>128</sup>

The laws also establish exceptions to the definitions of ‘related companies’ and ‘competing markets in Brazil (regional dumping)’.

### Exception for related companies

The first exception concerns cases where producers are related to exporters or importers, or are themselves importers of the allegedly dumped or subsidized product. In these cases, the term ‘domestic industry’ may be interpreted as referring to the rest of the producers.

Producers shall be considered as related to the exporters or the importers only in the following situations:

- One of them controls the other, directly or indirectly;
- Both are controlled directly or indirectly by a third party; or
- Both control a third party, directly or indirectly.

In order to avoid protectionism, the Brazilian AD Law and the Brazilian SCM Law limit subjectivity regarding this different interpretation of ‘domestic industry’. Two companies are ‘related’ if there are reasons to believe or suspect that the relationship may lead the producer in question to act in a manner different from those who are not part of such relationship.

There is a ‘control’ when one company is legally or operationally able to exercise restraint or direction over the other.

### Exception for competing markets in Brazil

The second exception to the ordinary definition of domestic industry involves the exceptional circumstance where Brazil is divided into two or more competing markets. In this cases, the term domestic industry shall be interpreted as the group of producers in one of those markets.

Producers in each market may be considered as a distinct domestic industry if the producers within such market sell all or almost all of their production of the product in question in that market, or if the demand in that market is not substantially supplied by producers located elsewhere in the Brazilian territory. If the domestic industry is defined for a regional market (so-called regional dumping), injury determination will clearly refer only to that portion of the Brazilian producers.

**Example:** In the anti-dumping investigation on exports of portland cement from Argentina and Uruguay, ‘domestic industry’ was defined as the cement producers in the Brazilian State of Rio Grande do Sul.<sup>129</sup>

<sup>128</sup> See SECEX Circular 26, of 11 July 2002, published on 17 July 2002.

<sup>129</sup> See Circular DECEX 99/90, published on 10 October 1990.

## Chapter 4

# The safeguard process in Brazil: procedural and substantive aspects

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As well as anti-dumping and countervailing duties, the Brazilian trade remedy system establishes that domestic producers may request protection through the imposition of trade remedies when faced with a surge of imports that cause them injury. These remedies are the safeguard measures.

Safeguard measures are applied on an emergency basis, against increased imports of a particular good that is causing or threatening to cause serious injury to the domestic industry that produces a like or directly competitive product. Unlike anti-dumping and countervailing duties, which affect the price of dumped or subsidized products exported from given countries, safeguard measures affect imports of a certain product irrespective of the source, in a non-discriminatory way.

This chapter provides an overview of safeguard measures in Brazil, covering both substantive and procedural aspects. Much of what has been said about anti-dumping and countervailing investigations applies to safeguards. All of them constitute administrative procedures with all principles and prerogatives applicable; and all of them are under the same legal and institutional framework. The same authorities are involved, and the role of the Administration is the same.

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## Procedural aspects

The Brazilian SG Law does not establish disciplines on the procedural aspects of safeguard proceedings in the same level of detail as the Brazilian AD Law establishes procedures for anti-dumping investigations, for example. This is because the WTO SG Agreement is also less detailed than the WTO AD Agreement. Since safeguard investigations are administrative processes, rights and prerogatives established for anti-dumping and countervailing investigations are also applicable to safeguard investigations, respecting the safeguard disciplines and adapted to the characteristics of safeguard investigations.

Apart from Decree No. 1488 (the Brazilian SG Law), safeguard procedures are also governed by rules established in the scope of Mercosur. Brazil, Argentina, Uruguay and Paraguay signed the 19 Additional Protocol to the Economic Complementation Agreement No. 18, of 17 December 1997 on this issue. Brazil incorporated this Additional Protocol into the Brazilian legal system as Decree No. 2667, of 10 July 1998.<sup>130</sup>

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<sup>130</sup> Note that Brazil was the only Mercosur Member State to incorporate the Additional Protocol. Argentina, Paraguay and Uruguay did not, which might indicate that this set of rules would not be in force in the region. However, the Decree contains no current exceptions, meaning that the Decree is law in Brazil. Therefore, Mercosur rules related to safeguard procedures are effectively applied by the Brazilian Government.

Brazil has little experience with safeguard investigations, as shown in chapter 2 (involving only two products, toys and coconuts).

## The Brazilian Safeguards Law

### *The complaint*

In order to initiate a safeguard proceeding, a complaint requesting the initiation of the investigation and the application of safeguard measures on the imports of a certain product must be filed according to the rules set forth in the Brazilian Safeguards Law (SG Law) and SECEX Circular 19/96.

The SG Law establishes that the complaint can be submitted by:

- SECEX;
- Any other interested governmental body; or
- Companies or associations representing the domestic producers of the object of the complaint.

The complaint must be written and delivered to the clerk's office of DECOM, in four copies, accompanied by documentation evidencing the information presented in the text of the complaint. Information provided otherwise is not considered in the investigation. The Brazilian SG Law is strict regarding the information that the complaint must contain. The complaint must contain the information described below, without prejudice to other information SECEX might request from the complainant.

### *Qualification of the complainant*

First, the complainant has to present itself and provide its corporate name and contact details (address, telephone and facsimile numbers).

The complaint must also indicate the legal representative or representatives of the complainant who will act before SECEX and provide their names, addresses and telephone and facsimile numbers. They may be members of the board of directors of the company or lawyers. Documents that prove the power of the representatives, such as articles of association, minutes of shareholders or quota holders meetings, or powers of attorney must be provided.

*Example 1: In the safeguard investigation regarding imports of toys, the complaint requesting the initiation of the investigation was submitted by the Brazilian Association of Producers of Toys (Associação Brasileira dos Fabricantes de Brinquedos – ABRINQ).<sup>131</sup>*

*Example 2: In the safeguard investigation regarding dried and unpeeled coconuts, rasped or not, the complaint requesting the initiation of the investigation was submitted by the Brazilian Association of Coconut Producers (Sindicato Nacional dos Produtores de Coco do Brasil – SINDCOCO).<sup>132</sup>*

### *The product to be investigated*

The complainant has to provide the following information regarding the product that is object of the request for initiation of a safeguard investigation:

131 See Interministerial Administrative Rule MICT/MF 21, of 19 December 1996, published on 30 December 1996.

132 See SECEX Circular 42, of 30 July 2001, published on 10 August 2001 and CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

- ❑ Identification of the product and tariff classification (according to the Mercosur Common Nomenclature – NCM);
- ❑ Evolution of imports, over the previous five years, until the month in progress;
- ❑ Detailed description of the imported product concerned, including information on the technical characteristics of the product, indicating, where applicable, model, type, dimensions, power, chemical composition and/or any other particularity;
- ❑ Detailed description of the like or competitive product produced domestically, including information on the technical characteristics of the product, indicating, where applicable, model, type, dimensions, power, chemical composition and/or any other particularity; and
- ❑ Indication of main uses and applications of the product.

The complaint must provide documents, catalogues, and any other material that indicates the technical characteristics of the product.

#### ***Domestic production and representativeness of the complainant***

Under this item of the complaint, the complainant shall indicate the name and contact details of all domestic producers of the product concerned and identify which of those producers are represented in the complaint. The complainant shall also provide estimates of the amount and value of the domestic production of the like product and estimate the percentage of the domestic production (in quantities and value) attributed to the producers represented in the complaint.

If the complaint is submitted by an association or class entity, it is important to present the names of the producers represented by the complainant and information on their share of the domestic production of the product concerned (amount and value).

The information presented in this section must refer to the previous 12 months, and should allow the authorities to conclude whether the safeguard petition has been submitted by the domestic industry that produces goods like or directly competitive with the imported goods, or on its behalf. The Brazilian SG Law, like the WTO SG Agreement, contains no requirement of representativeness in terms of level of support to the complaint, unlike anti-dumping and countervailing investigations. However, it is clear that the complaint has to represent a substantial portion of the Brazilian production of the like or directly competitive product.

#### ***Increased imports***

In order to attest that there has been an increase in imports of a certain product in the Brazilian territory, the complainant must provide information on the evolution of imports:

- ❑ First, the estimated amount and value of the imports must be indicated, per country of origin, for the last five years up to two months prior to the date the complaint was submitted.
- ❑ Second, the names of the main importing companies of the product at issue must be provided.
- ❑ Third, the complainant must present the monthly average price (in United States dollars) of the product exported to Brazil, per country of origin, in the last five years up to two months prior to the date the complaint was submitted, as shown below:

	<i>Country A</i>	<i>Country B</i>	<i>Etc.</i>
<i>(a) FOB price</i>			
<i>(b) Freight</i>			
<i>(c) Insurance</i>			
<i>(d) CIF price</i>			
<i>(e) Import tax</i>			
<i>(f) Other import expenses (specify)</i>			
<i>(g) Total</i>			

- Finally, the complainant must provide data regarding the export potential to Brazil for each country listed in the chart. Such data shall include the effective or potential production capacity of the exporting countries. The source used to obtain this information must be mentioned in the complaint.

*Example: In the review for the extension of the safeguard measures regarding imports of toys, the quantity and value of the imports used by the authorities were obtained from the Alice and Lince Fisco Systems.<sup>133</sup>*

#### ***Serious injury or threat of serious injury***

The determination that the imports of a certain product to Brazil have increased in the previous five years is not enough for the application of safeguard measures. The complainant must also endeavour to prove that those imports are causing injury or are threatening to cause injury to the domestic industry producer of the like or directly competitive product.

In this section, the complainant is also required to present a number of data concerning the companies represented in the complaint, as well as information about the domestic production of the like product or product directly competitive to the imported one.

Regarding the domestic production of the like or directly competitive product, the complainant must inform the amount and value of:

- Annual production;
- Annual stock;
- Annual exports;
- Annual sales to the domestic market; and
- Annual apparent consumption.

The complainant is also required to provide information on production lines and revenue (total revenue and per production line) for all companies represented in the complaint.

Regarding the product in question and all relevant production lines (meaning the lines that, in conjunction with the production of the product at issue, represent at least 70% of the total invoiced revenue of the company), the complaint must indicate, separately:

- The evolution of installed capacity, specifying the operational regime (1, 2 or 3 shifts) and the level of use; in the case of agricultural products, the cultivated area should also be included.

<sup>133</sup> See SECEX Circular 76, of 2 October 2003, published on 6 October 2003.

- Annual production (amount and value); in the case of agricultural products, the quantity of seeds and productivity should also be included.
- Annual sales for the Brazilian domestic market (amount and value); overall, and also according to type of market (wholesale, retail).
- Annual exports (amount and value).
- Evolution of prices in the domestic and foreign markets, per month.
- Evolution of stocks (amount), per year.
- Evolution of level of employment in production, administration and sales.

Concerning the domestic like or directly competitive product, the complaint must also present the structure of costs, as described in the following chart:

	<i>Technical coefficient</i>	<i>Price per unit</i>	<i>Total cost</i>
<i>(a) Raw material (specify)</i>			
<i>(b) Direct labour</i>			
<i>(c) Other costs (specify)</i>			
<i>(d) Total cost of production (a+b+c)</i>			
<i>(e) Administrative expenses (specify)</i>			
<i>(f) Selling expenses (specify)</i>			
<i>(g) Total cost (d+e+f)</i>			
<i>(h) Profit</i>			
<i>(I) Ex-factory price (g+h)</i>			

With respect to the product at issue, the complaint must provide information on the technological method of production and the technological differences in the production of the domestic and the imported product.

Information on the evolution of loans taken by the company, according to the nature of the source (internal or external, public or private), is also required, as well as investments made by the company, in conformity with the chart below:

<i>Items</i>	<i>Total</i>	<i>A</i>	<i>B</i>	<i>C</i>	<i>Products concerned</i>
<i>(a) Employee training</i>					
<i>(b) Maintaining costs</i>					
<i>(c) Increase in capacity</i>					
<i>(d) Technological improvement</i>					
• <i>Product</i>					
– <i>Acquisition of technology</i>					
– <i>Development of technology</i>					
• <i>Process</i>					
– <i>Acquisition of technology</i>					
– <i>Development of technology</i>					
<i>(e) Management techniques</i>					
<i>(f) Distribution network</i>					
<i>(g) Consumer assistance</i>					
<i>(h) Others (specify)</i>					

All information requested in this section must be provided for the last five years, up to two months prior to the date the complaint was submitted, in amount and value. If the product concerned is a seasonal product, the complainant must present the information listed above according to the relevant periods.

Attached to the complaint, there must be the financial statements and audited balance sheets, and the results corresponding to the production line of the product at issue and to the other relevant production lines.

#### ***Characteristics of demand and supply***

Under this section, information on the demand for, and the supply of, the like or directly competitive product must be provided regarding each company.

Concerning the demand for the product, the complainant must indicate:

- The main clients and their respective shares in the total sales of the company, as well as their field of activity;
- The distribution channels and their respective shares in the total sales of the company; and
- The sales policies (by client, by geographic region, etc.).

Concerning supply, the complainant must present the following information:

- Forms of competition (prices, product differentiation, technical assistance, distribution network, advertising etc.);
- The minimum investment necessary to operate the plant;
- The minimum scale of efficiency;
- Existence of patents, concessions etc.;
- Access to product and process technology; and
- Conditions for the supply of the main inputs, indicating the major suppliers per input and the concentration of capital of the major suppliers.

#### ***Government policies***

This section requires the complainant to describe the government policies that have negatively affected the domestic production of the like or directly competitive product in the previous years, such as foreign exchange policies and tax policies. The complainants have to evaluate those policies, highlighting the negative and positive effects they have had on the domestic production of the like or directly competitive product.

Furthermore, the complainant has to indicate measures that could have been adopted by the Government during the period under investigation that might have helped to avoid the alleged injury to the domestic industry.

#### ***The adjustment undertaking***

The ultimate goal of the investigating authority in applying a safeguard measure is to facilitate the adjustment of the domestic industry. As a consequence, the complainant must present a programme for the adjustment of the domestic industry and the deadline for its implementation in the complaint, for each of the companies represented in it. The complainant must present information on the following items:

- Rise in productivity;
- Update of production techniques;
- Update of the product;

- ❑ Update of management techniques;
- ❑ Expenses for research and acquisition of technology;
- ❑ Product requirements (quality, design, packaging and security);
- ❑ Improvement of delivery deadlines, technical assistance service, etc.;
- ❑ Investment programmes;
- ❑ Work force training; and
- ❑ Programme for reducing costs.

*Example 1: In the safeguard investigation regarding imports of toys, ABRINQ presented a programme for adjustment of the domestic industry, to be implemented from 1996 to 2000. It contemplated the following aspects: (a) increase in productivity and quality; (b) production techniques update; (c) product update; (d) research and development, and acquisition of technology; (e) product qualification, quality, design, packaging and security; (f) improvement of delivery and technical assistance; and (h) an investment programme.*

*In the course of the investigation, a working group composed of members of SECEX, the Secretariat of Industrial Policy (Secretaria de Política Industrial – SPI), the Secretariat of Economic Monitoring (Secretaria de Acompanhamento Econômico – SEAE) and the National Bank for Economic and Social Development (Banco Nacional de Desenvolvimento Econômico e Social – BNDES) was created in order to evaluate the proposed adjustment undertaking. After analysing the dynamics of the sector, the working group concluded that the undertaking was satisfactory.<sup>134</sup>*

*Example 2: In the safeguard investigation regarding imports of dried and unpeeled coconuts, rasped or not, the complainant (SINDCOCO) presented an adjustment proposal involving felling and replanting of coconut trees, which would lead to an increase in productivity, as well as qualifications in technological production and management for producers, rural employees and people rendering technical assistance services to the coconut business. The Interministerial Group in charge of analysing the proposal considered it to be satisfactory, since the goals established by SINDCOCO were realistic and consistent with the technical research carried out by EMBRAPA.<sup>135</sup>*

### ***Preliminary analysis of the complaint***

The Brazilian SG Law is silent with regard to the preliminary analysis of the complaint, but in practice the same rules applied to anti-dumping and countervailing investigations are applied to safeguards.

The complaint undergoes a careful preliminary examination by DECOM, in order to verify whether it contains all data and evidence required, or whether complementary information is needed. The result of this analysis is communicated to the complainant within 20 days from the date of submission of the complaint. SECEX establishes the deadline for presenting any complementary information required, according to the nature of the information, and notifies the complainant. When the complementary information is provided, a new examination is carried out in order to verify whether it is enough, or whether further information is still necessary.

According to the law, the complainant shall be notified of the result of this examination within 20 days from the date of submission of the complementary information, whether the complaint is accepted or refused.

<sup>134</sup> See Interministerial Administrative Rule MICT/MF 9, of 21 June 1996, published on 4 July 1996 and Interministerial Administrative Rule MICT/MF 21, of 19 December 1996, published on 30 December 1996.

<sup>135</sup> See SECEX Circular 42, of 30 July 2001, published on 10 August 2001; and CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

**Example:** In the safeguard investigation regarding dried and unpeeled coconuts, rasped or not, the complaint was submitted on 27 March 2001 and the complainant was informed that the complaint was properly documented on 10 July 2001.<sup>136</sup>

### ***Decision to start investigation***

#### ***Elements of analysis***

DECOM analyses whether the elements for requesting an investigation are presented and the information provided is accurate. DECOM is also allowed to consult other sources that are readily available. As for the representativeness of the complaint, as mentioned earlier, the law does not establish a level of support, but it is clear that DECOM checks whether the complaint has some degree of support from the domestic industry.

The complaint must be rejected by DECOM if:

- Evidence of the increase in imports or of the existence of serious injury or threat thereof or a causal link between them is not sufficient to justify the initiation of an investigation; or
- The complaint has not been submitted by the domestic industry or on its behalf.

If the complaint is rejected, the investigation is not initiated.

#### ***The case for a positive determination to initiate an investigation and notifications***

A positive determination to initiate the investigation is a legal decision by SECEX (based on the report by DECOM), made public through a SECEX Circular published in the *Official Gazette*. The Brazilian SG Law is silent concerning notifications to interested parties, but in practice the complainant and all known Brazilian producers and importers (as well as the associations representing them) are notified about the decision to initiate the investigation, within 30 days from the date of the communication of SECEX stating that the complaint is appropriate. Notification is made by registered mail.

The WTO SG Committee must be notified of the initiation of a safeguard investigation. This notification is made by the Ministry of Foreign Affairs and satisfies the requirement of notifying all countries involved in the investigation, since safeguard measures apply *erga omnes* (it would be impossible to notify each and every country).

**Example:** In the safeguard investigation regarding dried and unpeeled coconuts, rasped or not, apart from notifying the WTO SG Committee of the decision to initiate an investigation, DECOM notified the complainant and the Ministry of Foreign Affairs of this decision through official letters (DECOM/GEMAC 1.586 and 1.588, of 16 August 2001), and forwarded a copy of DECOM's opinion containing the decision to initiate the investigation.<sup>137</sup>

<sup>136</sup> See CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

<sup>137</sup> See CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

Other companies considered by the Brazilian Law as interested parties may participate in the procedure, having 20 days from the date of publication of the SECEX Circular to file an application to indicate their legal representatives.

*Example:* In the safeguard investigation regarding imports of toys, the following bodies asked to participate in the investigation as interested parties: (I) Mattel Inc., a North American producer of toys; (ii) the Brazilian Association of Resellers of Toys (Associação Brasileira dos Revendedores de Brinquedos – ABREB), representing resellers of domestic and imported toys; and (iii) Toy Manufacturing of America, Inc. (TMA), the association representing the manufacturers and sellers of toys in the United States.<sup>138</sup>

### ***The simultaneous examination of increase in imports and injury, and period of analysis***

In Brazil, the same authority analyses the allegations of serious injury and increase in imports. The examination of all elements occurs simultaneously, in general by the same group of DECOM technicians (but not necessarily).

The minimum period of analysis for ascertaining the existence of increase in imports and the existence of serious injury is three years.

*Example 1:* In the safeguard investigation regarding imports of toys, DECOM used the period of investigation of January 1992 to December 1995 for ascertaining the existence of increase in imports and serious injury or threat of injury.<sup>139</sup>

*Example 2:* In the safeguard investigation regarding imports of dried and unpeeled coconuts, rasped or not, the complainant informed that the coconut harvest time was from November to October. Therefore, the period of investigation was established by DECOM as the harvest time (November to October) from 1997 to 2000, segmented as follows: P1 (1997-1998); P2 (1998-1999); P3 (1999-2000).<sup>140</sup>

### ***Information gathering***

#### ***Questionnaires***

Although the WTO SG Agreement and the Brazilian SG Law are silent about information gathering, questionnaires are sent to known Brazilian importers of the product under investigation and to known Brazilian producers of the like or directly competitive product. Questionnaires must be completed and returned to DECOM within 40 days from the date of expedition.

*Example 1:* In the safeguard investigation regarding imports of dried and unpeeled coconuts, rasped or not, the complainant, 8 dried coconut processors and 88 known importers received questionnaires to be answered within 40 days from the date of expedition. The questionnaire sent to the complainant was replaced by a new questionnaire, to be answered within 40 days from the date of expedition of the new questionnaire.<sup>141</sup>

<sup>138</sup> See Interministerial Administrative Rule MICT/MF 21, of 19 December 1996, published on 30 December 1996.

<sup>139</sup> See Interministerial Administrative Rule MICT/MF 9, of 21 June 1996, published on 4 July 1996 and Interministerial Administrative Rule MICT/MF 21, of 19 December 1996, published on 30 December 1996.

<sup>140</sup> See CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

<sup>141</sup> See CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

*Example 2: In the safeguard investigation regarding toys, 42 domestic companies received questionnaires but only 31 submitted answers. Of those 31 companies, 21 submitted consistent information and, consequently, only their responses were taken into consideration by the authorities.<sup>142</sup>*

Interested parties may request an extension of 30 days. Such request must be made before the expiry of the original deadline for submitting the response to the questionnaire. The interested party must justify the necessity for more time, but DECOM tends to be rather flexible about accepting justifications.

Additional or complementary information may be requested, in writing, by DECOM throughout the investigation. Interested parties may also present additional information.

In any case, measures related to transparency, legal certainty and the right of defence are always present in any administrative process. Any decision or determination by SECEX can only be taken based on information in written form or documented in the records, and that are available to the interested parties (safeguarding rights related to confidentiality). Oral information (given in consultations and meetings) must be put in writing and made available to the interested parties within the following 10 days. The interested parties may request, in writing, to check the records (except confidential information and internal government documents). According to the law, the interested parties have the right to defend themselves against any information existing in the records.

*Example: In the safeguard investigation regarding dried and unpeeled coconuts, rasped or not, four importers submitted requests for an extension of the period for submitting the answers to the questionnaire. Their requests were granted by DECOM.<sup>143</sup>*

### **Best information available**

The Brazilian SG Law is silent on the issue of best information available and, in practice, the best information available rule is less important than in anti-dumping or countervailing cases, since only the situation and behaviour of the domestic industry are examined.

In any event, DECOM bases its findings on many sources of information, apart from information provided by the interested parties. The findings related to preliminary or final decisions are composed based on the best information available in the sense that the accuracy of the information provided by the interested parties will be verified whenever possible.

### **Confidentiality**

Information is confidential by nature, or if it has been provided as confidential by the parties in the investigation, upon good cause shown. The opinion of the interested party that provided the information considered in principle as confidential deserves respect, and reasonableness plays an important role in establishing which information must be treated as confidential.

<sup>142</sup> See Interministerial Administrative Rule MICT/MF 21, of 19 December 1996, published on 30 December 1996.

<sup>143</sup> See CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

This information cannot be disclosed without the specific permission of the party that provided it. In practice:

- ❑ Information and documentation to be treated as confidential must be marked 'CONFIDENTIAL' on all pages; and
- ❑ Such indications must be in colour, in the centre of the top and bottom of each page.

All information and documentation without the 'confidential' indication are attached to the records and are available for parties.

The interested party that provided confidential information must submit a non-confidential summary (indicated as 'non-confidential') thereof that permits a reasonable understanding of the information provided. When it is impossible to provide a summary, the party must justify this in writing.

It can happen that an interested party decides that certain information must be treated as confidential, and refuses even to provide a non-confidential summary of it, but is not successful in explaining why that information should be considered confidential. In this case, the information will not be considered in the investigation, unless it is demonstrated in a convincing manner and from reliable sources that such information is correct.

### *Translation*

The Brazilian SG Law contains no provisions relating to translation. Clearly, however, since safeguard investigations are administrative processes, all information must be in Portuguese. Questionnaires are sent in Portuguese. Parties are supposed to send replies in Portuguese, since only Brazilian companies receive questionnaires.

In any case, any information provided by any interested party, including foreign ones, must be presented to DECOM in Portuguese. Documentation used as evidence in the investigation have to be translated into Portuguese by a sworn translator.

### *The verification visit*

The Brazilian SG Law says nothing on the issue of on-site verification, but in practice DECOM may carry out investigations by means of verification visits to offices and plants of Brazilian companies involved, in order to confirm the accuracy of the information provided by the domestic industry. Visits aim to verify the injury caused by the increase in imports.

Visits take place if necessary and feasible, and upon authorization by the company at issue.

Before a visit takes place, the company receives a copy of the 'verification plan' prepared by DECOM, containing information on the procedural aspects of the visit. The visits take place after questionnaires are returned to DECOM. DECOM must also inform the company of the general nature of the information required, and it may request clarifications during the visit.

DECOM technicians may also visit companies involved in order to explain the questionnaires, if interested companies so request. In exceptional circumstances, DECOM may wish to include experts from outside the Government in the visit. In this cases, countries and companies involved must be notified.

Reports on the outcome of verification visits are attached to the investigation procedure, always taking into account confidentiality issues.

**Example 1:** In the investigation for the extension of the safeguard measures applied to the imports of toys, the investigating authorities visited four companies representing 60.2% of the net turnover of the domestic industry. During the visits, DECOM had the opportunity to confirm information regarding production, quantities sold in the domestic market, turnover and stocks, as well as to verify whether the adjustment undertaking was being implemented.<sup>144</sup>

**Example 2:** In the safeguard investigation regarding imports of dried and unpeeled coconuts, rasped or not, DECOM contacted the Brazilian Agricultural Research Corporation (Empresa Brasileira de Pesquisas Agropecuárias – EMBRAPA) in order to obtain information on the structure of the giant coconut business. DECOM technicians visited EMBRAPA in Aracaju (SE) and Maceió (AL) and participated in a workshop about the coconut business. DECOM technicians also visited a cooperative and a company which produces dried coconut and related products in Maceió (AL), and held a meeting with the coconut producers of the region.<sup>145</sup>

### **Consultations with the governments of the exporting countries**

Consultations between the Brazilian Government and the governments of exporting countries may take place. The governments have the opportunity to examine the information supplied by the complainant, to exchange views on the application of the safeguard measure, and to reach an agreement on the measures to be taken in order to maintain a level of rights and obligations equivalent to the level settled in GATT 1994. Consultations usually take place in Geneva, within the scope of the SG Committee.

**Example:** In the safeguard investigation regarding imports of toys, consultations between the Brazilian Government and the governments of exporting countries took place twice. After the notification to the SG Committee of the decision to apply provisional safeguard measures, the European Union requested consultations with the Brazilian Government, which took place on 12 August 1996, in Geneva. The second request for consultations occurred after the notification to the SG Committee of the decision to apply definitive safeguard measures. On this occasion, the EU and the United States requested consultations with the Brazilian Government, which took place on 4 and 5 December 1996 in Geneva.<sup>146</sup>

### **Hearings**

The Brazilian SG Law does not provide for a mandatory final hearing. It establishes that interested parties may submit requests for hearings to SECEX, and must be heard in 30 days. On this occasion, interested parties may present their arguments and exchange views.

**Example:** In the safeguard investigation regarding imports of toys, three interested parties (Mattel, ABREB and TMA) submitted requests for hearings, which took place in DECOM on 10 and 18 July and 23 August 1996. During the hearing, although TMA demonstrated its intention to present studies on the international market for toys, it did not submit such studies. Mattel, ABREB and TMA submitted further information on 11 October, 19 July and 23 August, respectively.<sup>147</sup>

<sup>144</sup> See CAMEX Resolution 47, of 29 December 2003, published on 30 December 2003.

<sup>145</sup> See CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

<sup>146</sup> See Interministerial Administrative Rule MICT/MF 21, of 29 December 1996, published on 30 December 1996.

<sup>147</sup> See Interministerial Administrative Rule MICT/MF 21, of 19 December 1996, published on 30 December 1996.

### *Provisional safeguard measures*

By means of a CAMEX Resolution, provisional safeguard measures may be applied in critical circumstances in which any delay is likely to cause damage to the domestic industry and this would be difficult to repair. The investigating authority can apply provisional safeguard measures only after a preliminary determination based on clear evidence and that leads to the conclusion that increased imports have caused or are threatening to cause serious injury to the domestic industry.

Immediately after imposition of the provisional measure, the governments of the exporting countries affected must be contacted, and consultations must take place.

According to Law 1936, which amends the Brazilian SG Law, provisional safeguard measures shall be applied as an increase in the import tax (TEC) and shall take the form of *ad valorem* duties, specific duties or a combination of both. Provisional safeguard measures must be applied only for the period necessary to prevent or remedy the serious injury and to facilitate adjustment. The maximum period of duration of the provisional measure is 200 days and it may be suspended prior to the final date established, through a CAMEX Resolution.

It is important to notice that if the authorities decide to apply a definitive safeguard measure, the duration of the provisional measure will be counted as part of the total time of duration of the definitive measure.

The amount corresponding to the provisional safeguard measure may be collected or remain on deposit as a guarantee.

If the investigation terminates with a definitive negative determination as to the necessity of a safeguard measure, the amounts paid as provisional measure must be immediately refunded.

*Example 1: In the safeguard investigation regarding dried and unpeeled coconuts, rasped or not, the preliminary determination led to the conclusion that increased imports of the product at issue had caused serious injury to the domestic industry. Based on this positive preliminary determination and in view of the fact that delay was likely to cause damage to the domestic industry and be difficult to repair, the investigating authority decided to apply provisional safeguard measures on imports of dried and unpeeled coconuts.<sup>148</sup>*

*Example 2: The provisional safeguard measures applied on the imports of toys consisted in an increase of 50% in the import tax (TEC), resulting in an ad valorem duty of 70% on toys under classifications 9501, 9502, 9503 and 9504.10.<sup>149</sup> However, the definitive safeguard duties fixed by CAMEX (43% in 1997, 29% in 1998, and 15% in 1999) were lower than the provisional duties.<sup>150</sup>*

### *Final determination and termination of an investigation*

Investigations involving provisional measures are supposed to terminate within 200 days. This deadline is advisable, since provisional safeguard measures may remain in force for only 200 days, definitive measures can be imposed only after a definitive determination, and there should be no gap between provisional and definitive measure (which could be ruinous for the Brazilian industry). In cases where provisional measures are not imposed, safeguard investigations usually last 12 months from the date of initiation.

<sup>148</sup> See SECEX Circular 42, of 30 July 2001, published on 10 August 2001.

<sup>149</sup> See Interministerial Administrative Rule MICT/MF 9, of 21 June 1996, published on 4 July 1996.

<sup>150</sup> See Interministerial Administrative Rule MICT/MF 21, of 19 December 1996, published on 30 December 1996.

The investigation can be terminated with the imposition of duties or without the imposition of definitive duties.

*Example 1: The safeguard investigation regarding toys was initiated on 19 July 1996 and was terminated on 30 December 1996.<sup>151</sup>*

*Example 2: The safeguard investigation regarding imports of dried and unpeeled coconuts, rasped or not, was initiated on 10 August 2001 and was terminated on 31 July 2002.<sup>152</sup>*

### ***Termination without imposition of duties***

The investigating authorities can terminate a safeguard investigation without the imposition of safeguard measures at any point during the investigation when it decides there is insufficient evidence of serious injury or threat thereof caused by increase in imports to justify continuing with the case.

### ***Termination with the imposition of duties***

If it is found that information collected during the investigation confirmed that the increase in imports of a certain product have caused or threaten to cause serious injury to the domestic industry producer of a like or directly competitive product, SECEX terminates investigation with a positive determination on the imposition of definitive safeguard measures.

Once determination regarding injury is reached, WTO is notified and consultations may take place in Geneva.

The final determination of the authorities will be the subject of a CAMEX Resolution, which must be published in the *Official Gazette* and shall contain the decisions of fact and of law, with a detailed analysis of the case and a demonstration of the relevance of the factors that have been examined.

*Example: In the safeguard investigation regarding imports dried and unpeeled coconuts, rasped or not, the investigation was terminated with the imposition of definitive safeguard measures. The final determination of the authorities is set forth in CAMEX Resolution 19, of 30 July 2002, published in the Official Gazette on 31 July 2002.<sup>153</sup>*

### ***Definitive safeguard measures***

Definitive safeguard measures are applied as an increase in the import tax (TEC) and take the form of *ad valorem* duties, specific duties, a combination of the two, or quantitative restrictions (quotas). The measures are applied to all imports from all exporting countries, on a non-discriminatory basis.

Those measures shall be applied only to the extent necessary to prevent the threat of injury or to remedy the injury and facilitate adjustment of the Brazilian domestic industry.

A safeguard measure in the form of a quantitative restriction (a quota) cannot result in reduction of Brazilian imports to an amount below the level of imports in a recent period. Such level is calculated from the average of imports in the previous three years (for which statistic data are available), unless another level is justifiably necessary to prevent threat of serious injury or to compensate serious injury.

151 See Interministerial Administrative Rule MICT/MF 21, of 19 December 1996, published on 30 December 1996.

152 See CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

153 See CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

Quotas may be allocated among the various exporting countries. In order to allocate quotas, the Brazilian Government may seek agreements with the governments of the countries directly interested in supplying the product. Should an agreement not be feasible, quotas are allocated for countries having substantial interest, in proportion to their share of exports to Brazil of the product concerned, in terms of value or quantity of the product. The authorities must take into consideration a representative period and other factors which may be affecting trade of the product concerned.

Other criteria may be adopted to allocate quotas, through consultations with the governments of the interested countries under the auspices of the SG Committee. This situation is possible in cases where the SG Committee concludes that the imports from certain countries have increased in greater proportion than the total increase of imports of the product concerned, in the representative period, and that the conditions for application of these criteria are equitable to all suppliers of the product concerned.

*Example 1: The safeguard measures applied on the imports of toys consisted in an increase in the import tax (TEC), resulting in an ad valorem duty of 43% in 1997, 29% in 1998 and 15% in 1999 on the toys in classifications 9501, 9502, 9503 and 9504.10.<sup>154</sup>*

*Example 2: In the safeguard investigation regarding dried and unpeeled coconuts, rasped or not, the authorities decided to apply definitive measures in the form of quotas. It was considered that the calculation of the quotas from the average of imports in the previous three years would result in an innocuous measure, because of the high rate of increase in imports (170.9%) and the fact that several economic factors in the domestic industry had been unfavourable in the second period of investigation. Therefore, DECOM decided to establish quotas as follows:*

- *For the first year, the amount of the quota would be calculated based on the total amount imported between November 1997 and October 1998 (3,957 tons);*
- *For the second year, the quota would be 5% higher than the quota established for the first year (4,154.9 tons);*
- *For the third year, the quota would be 5% higher than the quota established for the second year (4,352.7 tons);*
- *For the fourth year, the quota would be 5% higher than the quota established for the third year (4,550.6 tons).*

*Quotas not utilized in a period of three months could be utilized in the following three-month period. CAMEX determined that the quotas should be monitored through non-automatic licensing, on a three-month period basis.<sup>155</sup>*

### ***Imposition and collecting measures***

As general rule, as in anti-dumping and countervailing investigations, provisional and definitive measures can be imposed only on imported products that have been shipped for consumption after the date of publication of the CAMEX Resolution that contains the decision to impose them.

When the amount of the definitive measure is equal to the provisional measure, the first is automatically converted into the second. However, if the final determination reaches a different amount, resulting in different safeguard measures, the difference is returned to the importer (if the definitive measure is lower than the provisional one). If, on the other hand, the definitive duty is higher than the provisional duty, payment of the difference is not required.

<sup>154</sup> See Interministerial Administrative Rule MICT/MF 9, of 21 June 1996, published on 4 July 1996.

<sup>155</sup> See CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

In the case of quantitative restrictions (quotas), the issue of collecting the measure is obviously not applicable.

### ***Monitoring the situation of the domestic industry***

During the period the safeguard measure is in force, SECEX monitors the situation of the domestic industry, in order to verify if it is complying with the adjustment undertaking. SECEX may propose the suspension of the safeguard measure if there is evidence that the measures taken to reach the desired adjustment and changes in the circumstances that gave rise to the application of the safeguard are insufficient or inadequate.

### ***Duration, review and extension of safeguard measures***

The Brazilian SG Law establishes that the maximum duration of a safeguard measure is four years. Extensions are possible. A written complaint requesting the extension of safeguard duties in force must be submitted by the domestic industry before the measure phases out. In general terms, the complaint asking for the extension of a safeguard must contain the same information as the complaint asking for the initiation of the investigation. Additionally, it must suggest the period of the extension, and present sufficient evidence that the application of the safeguard measure continues to be necessary to prevent or remedy serious injury or threat thereof and that there is evidence that the industry is adjusting, according to the agreement executed between the domestic industry and the Brazilian Government.

The complaint will be analysed by DECOM, which will evaluate whether it contains sufficient evidence for the initiation of an investigation for the extension of a safeguard measure in force. Based on DECOM's opinion, SECEX will decide whether or not to initiate the investigation and will give public notice of its decision through the publication of a SECEX Circular in the *Official Gazette*. Interested parties have 20 days from the publication of the SECEX Circular to indicate their legal representatives and 30 days to submit written information and request hearings. The rules for original proceedings also apply to extension reviews.

Any extension depends on CAMEX's understanding (based on a report by SECEX) that:

- ❑ The application of the safeguard measure continues to be necessary to prevent or to remedy serious injury or threat thereof; and
- ❑ There is evidence that the industry is adjusting (according to the agreement between the Brazilian industry and the Brazilian Government).

If CAMEX concludes that the extension is necessary, it is not obliged to follow the extension period proposed by the complainant in the complaint.

*Example: In the review for the extension of the safeguard measures applied to the imports of toys, the authorities concluded that the domestic industry was adjusting. The information collected in the review demonstrated that the duties had actually avoided the increase in imports of toys in Brazil, and had stimulated the growth of small and medium-sized enterprises active in the market, leading to an increase of competition in the domestic market for toys. Moreover, the analysis of the adjustment undertaking demonstrated that the adjustment plan had been fully implemented by the domestic industry.<sup>156</sup>*

<sup>156</sup> See SECEX Circular 76, of 2 October 2003, published on 6 October 2003.

*In this same investigation, the complainant requested the extension of the safeguard measures for two and a half years. SECEX proposed that the duties be extended for two and a half years, as suggested by the complainant. However, CAMEX adopted a conservative approach, extending the duration of the safeguard measures for one year, in order to verify whether the domestic industry would comply with the adjustment undertaking. The analysis of the adjustment undertaking confirmed the domestic industry's efforts to be competitive. Furthermore, imports of toys in the first semester of 2004 were 84% higher than the imports of toys in the second half of 2003, proving that the extension of the safeguard measures was necessary to allow the completion of the adjustment of the domestic industry. Therefore, one year after the determination extending the duration of the safeguard measures applied to the imports of toys for one year, CAMEX decided to follow the suggestion of SECEX and extended the duration of the safeguard measures for a further one and a half years.<sup>157</sup>*

If a safeguard measure is extended, it cannot be more restrictive to trade than the original measure. Even if extended, the maximum duration of safeguard measures cannot exceed 10 years, including the initial application period. This rule is consistent with WTO, since Brazil is a developing country.

***Example:** Safeguard measures applied to the imports of toys were extended three times. The first review extended the duration of the measures by four years;<sup>158</sup> the second investigation extended the duration of the measures by one year;<sup>159</sup> and the third investigation extended the duration of the measures by one and a half years.<sup>160</sup> Including the initial application period (three years), the total duration of the safeguards applied to the imports of toys was 9.5 years, which is compatible with the rules of the WTO SG Agreement, since the maximum duration of safeguard measures cannot exceed 10 years.*

Measures in the form of quotas may be extended only once, for a total period of no more than six years, and subject to the same rules above.

Safeguard measures applied for more than one year must be progressively liberalized during the period they are in effect. Exceptionally, the liberalization process may be initiated after the second year the measure is in force.

*Example: Safeguard measures applied to imports of toys were progressively liberalized, as follows:<sup>161</sup>*

<i>Period</i>	<i>Increase in import tax (TEC)</i>
<i>1 January to 31 December 1997</i>	<i>43%</i>
<i>1 January to 31 December 1998</i>	<i>29%</i>
<i>1 January to 31 December 1999</i>	<i>15%</i>
<i>1 January to 31 December 2000</i>	<i>14%</i>
<i>1 January to 31 December 2001</i>	<i>13%</i>
<i>1 January to 31 December 2002</i>	<i>12%</i>
<i>1 January to 31 December 2003</i>	<i>11%</i>
<i>1 January to 31 December 2004</i>	<i>10%</i>
<i>1 January to 31 December 2005</i>	<i>9%</i>
<i>1 January to 30 June 2006</i>	<i>8%</i>

<sup>157</sup> See CAMEX Resolution 35, of 13 December 2004.

<sup>158</sup> See Interministerial Administrative Rule MDCI/MF 19, of 22 December 1999, published on 29 December 1999.

<sup>159</sup> See CAMEX Resolution 47, of 29 December 2003, published on 30 December 2003.

<sup>160</sup> See CAMEX Resolution 35, of 13 December 2004.

<sup>161</sup> See Interministerial Administrative Rule MDCI/MF 19, of 22 December 1999, published on 29 December 1999, CAMEX Resolution 47, of 29 December 2003, and CAMEX Resolution 35, of 13 December 2004.

For safeguard measures whose duration exceed three years, SECEX must examine, within the period corresponding to half of the total period, the effects produced by the measure. A resulting report may suggest cancellation of the measure or the acceleration of the liberalization process.

### *New safeguard measure on the same product*

No safeguard measure can be applied again to the same product before at least two years have elapsed from the end of the duration of a previous safeguard measure. If the safeguard measure has been applied for a period of more than four years, the prohibition of a new measure applies to half of the period of its duration. However, in some circumstances, safeguard measures may again be applied to imports of the same product for a maximum period of 180 days, if:

- ❑ At least one year has elapsed since the date of application of the safeguard measure on the import of that product; and
- ❑ Such measure has not been applied on the same product more than twice within the five years immediately preceding the date of introduction of the safeguard measure.

### *Non-selectivity*

Unlike anti-dumping and countervailing duties, which are applied only to exports from certain countries, safeguard measures must be applied to all the imports of the product concerned, irrespective of the source. There are a few exceptions to this provision. Imports from developing countries and parties of regional agreements involving Brazil may be excluded from the application of safeguard measures, in some cases.

*Example: In the safeguard investigation regarding the imports of toys, safeguard measures were applied to imports of toys from all sources, except the imports from WTO members classified as developing countries [namely Antigua and Barbuda, Bangladesh, Bolivia, Chile, Ecuador, Guatemala, India, Indonesia, Macao (China), Malaysia, Mexico, Paraguay, the Philippines, the Republic of Korea, Singapore, Sri Lanka, Thailand, Uruguay and Venezuela (Bolivarian Republic of)].<sup>162</sup> In the second review for the extension of the duration of safeguard measures applied to toys, CAMEX decided to exclude from the application of the measures all developing countries, as well as the Mercosur States parties.<sup>163</sup>*

### *Compensation*

The application of a safeguard measure alters the equilibrium of tariff concessions and other obligations negotiated by the WTO Members during the Uruguay Round.

In order to maintain this balance, immediately after applying a provisional or a definitive measure, or extending the period of duration of a safeguard measure, the Brazilian Government must enter into consultations with the governments of the exporting countries affected by the measures, with the objective of negotiating an adequate compensation for the application of the safeguard measures.

<sup>162</sup> See Interministerial Administrative Rule MICT/MF 21, of 19 December 1996, published on 30 December 1996.

<sup>163</sup> See CAMEX Resolution 47, of December 29, 2003, published on 30 December 2003.

If an agreement concerning adequate compensation is not possible, the governments of the exporting countries may suspend substantially equivalent concessions under GATT 1994, under the terms of the WTO SG Agreement, as long as such suspension is not disapproved by the WTO Council on Trade in Goods.

Note that the right to suspend equivalent concessions cannot be exercised during the first three years that the safeguard measure is in force, provided that it has been adopted as the result of an absolute increase in imports.

### *Developing countries*

The Brazilian SG Law establishes differential treatment for developing countries with respect to the application of safeguard measures. Safeguard measures cannot be applied to an imported product originating in a developing country when the share of this country in the total imports of this product does not exceed 3%, and when the sum of individual shares that are lower than 3% of the imports do not account for more than 9% of the imports of the product concerned.

*Example: In the safeguard investigation regarding dried and unpeeled coconuts, rasped or not, DECOM exempted from the application of the safeguard measure the imports from all developing countries whose individual shares were lower than 3% of the imports of the product concerned in all periods analysed and in the whole investigation period, if the sum of individual shares that are lower than 3% did not account for more than 9% of the imports of the product concerned in the whole investigation period. The following countries were exempted by DECOM from the application of the safeguard measure in the investigation regarding dried and unpeeled coconuts, in conformity with the WTO provisions: Angola, Antigua and Barbuda, Bahrain, Bangladesh, Barbados, Belize, Benin, Bolivia, Botswana, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, the Central African Republic, Chad, Chile, China, Colombia, the Congo, Costa Rica, Cuba, Cyprus, the Democratic Republic of the Congo, Djibouti, Dominica, Ecuador, Egypt, El Salvador, Fiji, Gabon, Gambia, Granada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Jamaica, Jordan, Kenya, Kuwait, Lesotho, Madagascar, Malawi, Malaysia, the Maldives, Mali, Mauritania, Mauritius, the Republic of Moldova, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Peru, the Philippines, Qatar, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Solomon Islands, South Africa, Suriname, Swaziland, Chinese Taipei, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, the United Arab Emirates, the United Republic of Tanzania, Zambia and Zimbabwe.*

*Although India and Mexico are classified as developing countries by the WTO, because of the significant amount of imports of coconuts from these countries in the investigation period, they were not exempted from the application of the measures. On the other hand, although Indonesia and Côte d'Ivoire were exempted from the application of safeguard measures in the CAMEX Resolution which gave public notice of the final determination (CAMEX Resolution 19, of 30 July 2002), CAMEX decided to apply the safeguard measure to those countries, because the imports of dried and unpeeled coconuts from those countries accounted for more than 3% of the total imports of this product in Brazil, from 1 September to 30 November 2002.<sup>164</sup>*

<sup>164</sup> See Interministerial Administrative Rule 21, of 19 December 1996, published on 30 December 1996.

### ***Parallelism***

According to the parallelism principle, Brazil may exclude member States of Mercosur from safeguard measures if Brazil also excludes imports from Mercosur countries from the analysis of increased imports that caused injury to the Brazilian industry. In practice, Brazil always excludes Mercosur from the application of safeguard measures, because of the prohibition on applying such measures inside the zone (*see* Mercosur rules, below).

*Example: In the safeguard investigation regarding dried and unpeeled coconuts, rasped or not, DECOM exempted from the application of the safeguard measure the imports from the Mercosur States parties (Argentina, Uruguay and Paraguay) and from developing countries whose individual shares were lower than 3% of the imports of the product concerned in all periods analysed and in the whole investigation period, if the sum of individual shares that are lower than 3% did not account for more than 9% of the imports of the product concerned in the whole investigation period. Note that the imports of coconut from those developing countries and from Mercosur were not only excluded from the application of the measure, but also excluded from the imports used by SECEX to determine whether there was an increase in imports.<sup>165</sup>*

### ***Surveillance by WTO***

The decision to initiate, the decision on positive determination regarding injury and decision to impose safeguard measures (and to extend the duration of a safeguard), must be notified to the WTO SG Committee by the Brazilian Ministry of External Relations.

*Example 1: The Brazilian Ministry of External Relations notified the WTO SG Committee of the decision to apply provisional safeguard duties on the imports of toys (G/SG/N/6/BRA/1, of 25 June 1996) and of the availability of the Brazilian Government for consultations with the countries whose exports were affected by the application of the provisional duties (WTO document G/SG/N/7/BRA/1, of 12 July 1996). The Brazilian Government also notified the SG Committee of the decision to apply definitive safeguard duties on the imports of toys and of the availability of the Brazilian Government for consultations with the countries whose exports were affected by the application of the definitive duties (G/SG/N/8/BRA/1, of 20 November 1996).<sup>166</sup>*

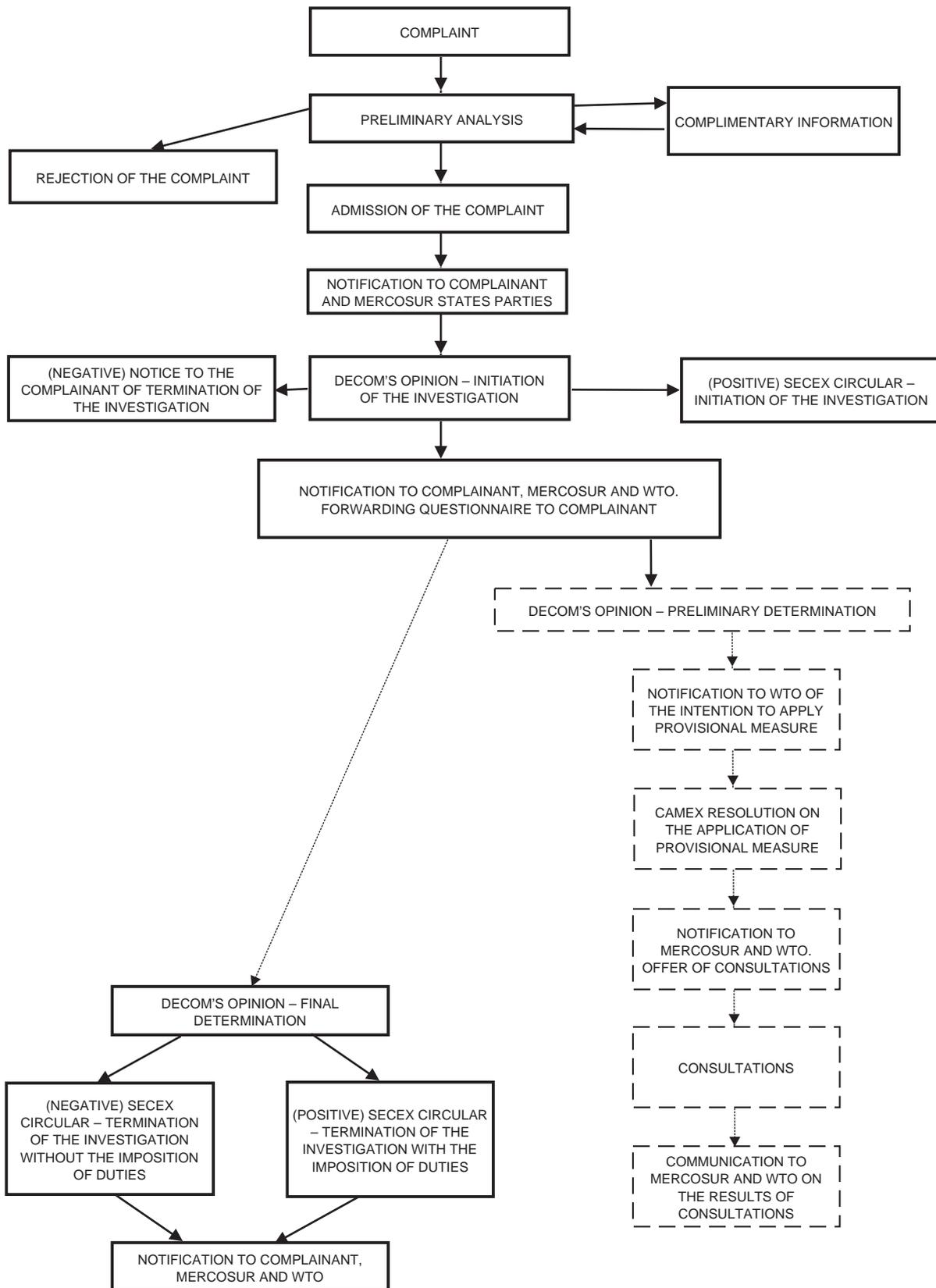
*Example 2: The Brazilian Ministry of Foreign Affairs notified the WTO SG Committee of the results of the mid-term review regarding the extension of the safeguard duties applied to the imports of toys. CAMEX decided to maintain the duties in force (WTO document G/SG/N/13/BRA/2, of 3 October 2002).<sup>167</sup>*

<sup>165</sup> See Interministerial Administrative Rule 21, of 19 December 1996, published on 30 December 1996.

<sup>166</sup> See SECEX Circular 76, of 2 October 2003, published on 6 January 2003.

<sup>167</sup> *Ibid.*

Flowchart of safeguard investigations in Brazil



## **Mercosur rules regarding safeguards**

As noted earlier, Brazil also applies the procedural rules regarding safeguard investigations established within the scope of Mercosur.

The foundational treaty of the Mercosur, the Treaty of Asuncion, established that safeguard measures could be applied by a Mercosur State party (Argentina, Brazil, Uruguay and Paraguay) on imports from other States parties, during the transition period of Mercosur, which ended 31 December 1994. This provision was intended to facilitate the establishment of the common market.

According to Annex IV of the Treaty of Asuncion, the Mercosur States parties could apply safeguard measures on the imports of products originating from another State party if those imports were causing injury or threatening to cause serious injury to its domestic market, as a result of a significant increase over a short period of time. In order to apply a safeguard measure, the importing country should hold consultations with the Common Market Group.

It is important to note that safeguard measures could be applied only on the imports of products benefiting from the Mercosur trade liberalization programme established under the Treaty of Asuncion, and only until 31 December 1994. After that, safeguard measures could not be applied by a Mercosur State party against the imports of another State party.

The Nineteenth Additional Protocol to the Economic Complementation Agreement No. 18 (the Mercosur rules), between Brazil, Argentina, Paraguay and Uruguay, established the rules for the application of safeguard measures by the Mercosur States parties on imports from non-Mercosur countries. Decree No. 2667 regulates the execution of the Protocol in the Brazilian territory. According to the Protocol, Mercosur can adopt safeguard measures as a single entity or in the name of all States parties.

### ***Procedures for the application of safeguard measures by Mercosur as a single entity***

In order to apply a safeguard measure, it must be demonstrated that imports of the product concerned have increased in such great quantities in Mercosur that they are causing injury or threatening injury to the Mercosur domestic industry producer of a like or directly competitive product.

The Mercosur domestic industry is understood as the totality of producers of like or directly competitive products established in the States parties whose production constitutes an important part of the total production of such product in Mercosur.

### ***Government bodies involved***

An investigation process for the application of safeguard measures by Mercosur as a single entity involves intergovernmental and national agencies.

The Committee on Trade Remedies and Safeguards is the authority responsible for conducting the investigation and determining whether there has been an increase in the imports of the product concerned, serious injury or threat of serious injury to the Mercosur domestic producers of a like or directly competitive product, and causal link between the increase in imports and the serious injury or threat thereof.

The Mercosur Trade Commission is the authority that decides to initiate an investigation, adopts provisional or definitive measures, terminates the investigation without the imposition of a safeguard measure and extends,

revokes or liberalizes the measures in force. The Mercosur Trade Commission must base its decisions on reports issued by the Committee on Trade Remedies and Safeguards.

The Mercosur National Sections are responsible for conducting the investigation in the member States and, thus, for collecting relevant data and conducting hearings and verification visits, when necessary.

The *pro tempore* presidency of Mercosur is responsible for notifying the WTO SG Committee whenever the Trade Commission decides to initiate an investigation, to impose safeguard measures or to extend the duration of a safeguard.

#### ***Submission of the complaint***

The complaint requesting the initiation of a safeguard investigation and the imposition of duties must be submitted to the National Sections by companies or class entities, in conformity with the form prepared by the Committee on Trade Remedies and Safeguards. The National Section where the complaint was submitted will then forward copies of the complaint to the other three National Sections, up to three days after the submission of the complaint.

#### ***Initiation of a safeguard investigation***

The National Sections proceed to a joint analysis of the complaint and prepare a report recommending or not the initiation of an investigation. It is up to the National Sections to present the report to the Committee on Trade Remedies and Safeguards, which forwards the opinion to the Mercosur Trade Commission. The Commission then issues a directive determining the initiation or not of an investigation. The directive must contain all the elements in which its decision on whether to initiate a safeguard investigation was grounded, as well as the deadlines for the interested parties to present their opinions and requests for hearings.

#### ***Investigation***

In the course of the investigation, the National Sections send questionnaires to the interested parties and conduct hearings and verification visits. National Sections must also analyse the adequacy of the adjustment plan proposed by the domestic producers. The opinion of the National Sections, expressing their conclusions on the existence of injury or threat thereof caused by the increase in imports and the viability of the adjustment plan, shall be sent to the Committee on Trade Remedies and Safeguards and to the Trade Commission.

The Trade Commission analyses the National Sections' opinion and issues a directive determining the application or not of a provisional safeguard measure. In the case of an affirmative preliminary determination, the Committee on Trade Remedies and Safeguards conducts consultations with the governments of the exporting countries, in order to negotiate compensation.

#### ***Imposition of duties***

Based on the report of the consultations and on the National Sections' opinion mentioned above, the Trade Commission decides whether to impose definitive duties. The directive containing the decision of the Trade Commission must include the facts and information that led to such conclusion. The decision to apply provisional duties must be communicated to the WTO SG Committee by the *pro tempore* presidency before the duties are applied.

Provisional measures shall be applied as increase in the import tax (TEC) and take the form of *ad valorem* duty, specific duty or a combination of both. The duration must not exceed 200 days.

If all the conditions for the application of safeguard measures are fulfilled, the Trade Commission may apply definitive safeguard measures. The directive containing the decision of the Trade Commission must include the facts and information that led to such conclusion. The decision to apply definitive duties must be communicated to the WTO SG Committee by the *pro tempore* presidency.

Definitive safeguard measures are applied as an increase in the import tax (TEC) and take the form of *ad valorem* duties, specific duties, a combination of the two, or quantitative restrictions (quotas).

A definitive safeguard measure shall not be applied for a period longer than four years. However, its period of application may be extended. The duration of a definitive safeguard cannot exceed 10 years, including the initial application period and its extension. The duration of the provisional measure will be counted as part of the total time of duration of the definitive measure.

When safeguard measures are applied in the form of quotas, the Committee on Trade Remedies and Safeguards may seek agreements with the governments of the countries directly interested in supplying the product. If they fail to reach an agreement, quotas shall be allocated for countries having substantial interest in proportion to their share of imports to Brazil of the product concerned, in terms of value or quantity of the product. Quotas shall also be allocated through consultation with the governments of the interested countries under the auspices of the WTO SG Committee.

If provisional measures were applied but the final determination did not establish the application of definitive safeguard measures, the amount paid as provisional measures shall be returned.

#### ***Review, extension and revocation of duties***

Safeguard measures can be reviewed, extended or revoked by decision of the Trade Commission. The Commission shall base its decisions on the reports of the Committee on Trade Remedies and Safeguards, which will coordinate consultation with the Governments of the interested countries regarding the review of the safeguard measures in force.

#### ***Procedures for the application of safeguard measures by Mercosur in the name of one of the States parties***

As mentioned above, the Mercosur rules also control the application of a safeguard measure by Mercosur in the name of one of the Mercosur member States. In this case, the determination of serious injury and threat thereof must be based on the economic conditions verified in the member State. It must be demonstrated that the imports of the product concerned in the State concerned have increased in such great quantities that they are causing injury or threatening injury to the domestic industry producing a like or directly competitive product.

The domestic industry will be the totality of producers of like or directly competitive products established in the State whose production constitutes an important part of the total domestic production of such product.

#### ***Government bodies involved***

An investigation process for the application of safeguard measures by Mercosur in the name of one of the member States also involves intergovernmental agencies (Committee on Trade Remedies and Safeguards, Mercosur Trade Commission and *pro tempore* presidency of Mercosur), as well as national agencies of the States parties – those in charge of the technical analysis and national agencies responsible for the imposition of duties (DECOM and SECEX in Brazil).

### ***Submission of the complaint***

The complaint requesting the initiation of the investigation and the imposition of a safeguard measure by Mercosur in the name of one of its member States must be submitted by companies or representative entities to the technical agency of the member State allegedly injured by the increase in imports of a certain product. The written complaint must be in conformity with the form prepared by the Committee on Trade Remedies and Safeguards.

The technical agency of the country concerned will then examine the complaint in order to reach an opinion on whether to initiate or not the investigation.

### ***Initiation of a safeguard investigation***

The authorities responsible for the imposition of the duties analyse the opinion of the technical agency and give public notice of their decision to initiate or not the safeguard investigation.

The public notice must contain the elements in which its decision on whether to initiate a safeguard investigation was grounded, as well as the deadlines for the interested parties to present their opinions and requests for hearings. The *pro tempore* presidency is responsible for forwarding copies of the technical agency's opinion to the other member States, and for communicating with the other member States and the WTO SG Committee on the decision to initiate the investigation. Brazil always notifies WTO through the *pro tempore* presidency of Mercosur.

*Example: In the safeguard investigation regarding dried and unpeeled coconuts, rasped or not, the pro tempore presidency of Mercosur notified the WTO SG Committee of the decision to initiate the safeguard investigation, through the document G/SG/N/6/BRA/2, of 12 September 2001.<sup>168</sup>*

### ***Investigation***

The technical agency of the State concerned, as the authority responsible for conducting the safeguard investigation, may send questionnaires to the interested parties and conduct hearings and verification visits. It must also analyse the adequacy of the adjustment plan proposed by the domestic producers. The Committee on Trade Remedies and Safeguards must be informed of the progress in the investigation.

The technical agency then issues an opinion expressing its conclusion on the existence of injury or threat thereof caused by the increase in imports and the viability of the adjustment plan. Copies of the technical agency's opinion are sent to other States parties through the *pro tempore* presidency of Mercosur.

The authorities responsible for the imposition of the duties analyse the opinion of the technical agency and decide whether to apply safeguard measures. If they decide for the application of duties, they must inform the *pro tempore* presidency of Mercosur, who communicates this decision to the WTO SG Committee.

### ***Imposition of duties***

Provisional measures are applied by the authority responsible for the application of measures, based on the report issued by the technical agency. Provisional measures are applied as an increase in the import tax (TEC) and shall take the form of *ad valorem* duty, specific duty or a combination of both. Their duration must not exceed 200 days.

<sup>168</sup> See CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

The member State applying provisional safeguard measure has to hold consultations with the exporting countries and with other Mercosur member States, in order to negotiate compensation. The technical agencies will issue a report on the results of the consultations. The report is forwarded to the WTO SG Committee and to the other Mercosur member States by the *pro tempore* presidency.

Based on the report on the results of the consultations and the opinion issued by the technical agency, the authorities responsible for the application of the measures reach a conclusion on the application of definitive safeguard measures. The public notice determining the application of duties must be forwarded to the WTO SG Committee and to the other Mercosur member States by the *pro tempore* presidency.

Definitive safeguard measures may be applied as an increase in the import tax (TEC), in the form of *ad valorem* duties, specific duties, or a combination of the two, or quantitative restrictions (quotas). Those measures cannot be applied for a period longer than four years. Even though the period of application may be extended, the duration of a definitive safeguard cannot exceed 10 years, including the initial application period and its extension. The duration of the provisional measure will be counted as part of the total time of duration of the definitive measure.

If safeguard measures are applied as quantitative restrictions, the authorities responsible for the application of the measures may seek agreements with the governments of the countries directly interested in supplying the product. If they fail to reach an agreement, quotas shall be allocated for countries having substantial interest in proportion to their share of imports to Brazil of the product concerned, in terms of value or quantity of the product. Quotas shall also be allocated through consultation with the governments of the interested countries under the auspices of the WTO SG Committee.

When provisional measures were applied but the final determination did not establish the application of definitive safeguard measures, the amount paid as provisional measures shall be returned.

#### ***Review, extension and revocation of duties***

A safeguard measure can be reviewed, extended or revoked by decision of the authorities responsible for the application of the measure. Prior to such decision, consultation must be held with the governments of the interested countries. The decision on the consultations and on the revision, extension or revocation of duties must be communicated to the *pro tempore* presidency, which will inform the other Mercosur member States and the WTO SG Committee.

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## **Substantive aspects**

As said earlier, safeguard measures may be applied to a product if an investigation, according to the rules and procedures described in the first part of this chapter, shows that the product is being imported in such increased quantities, absolute or relative to national production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive goods.

### **Domestic industry that produces like or directly competitive goods**

The Brazilian SG Law tells us that the imposition of safeguard measures may be requested, among others, by companies or associations that represent

companies producing the product at issue. Although the Brazilian SG Law is not clear regarding representativeness of the domestic industry in order to request the initiation of an investigation, the complaint must be supported by a substantial portion of the production of the like or directly competitive product in Brazil, which will be considered as the domestic industry.

In other words, ‘domestic industry’ means the producers of the like or directly competitive products operating in the Brazilian territory, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total national production of such products.

The characterization of the domestic industry is essential to a safeguard proceeding since injury (based on which the measure is calculated) refers to the domestic industry. For the purpose of safeguard investigations, the domestic industry must refer to the like or directly competitive product, which is broader than the requirement of like product for anti-dumping and countervailing investigations.

Unlike anti-dumping and anti-subsidy procedures, the assessment of injury in safeguard investigations is not limited to producers of like products but extends also to producers of directly competitive products. Directly competitive products may be defined as products which are suitable for the same purposes and, accordingly, can essentially be substituted one for the other.

*Example 1: In the safeguard investigation regarding imports of toys, the product under investigation was defined as ‘toy’. The authorities concluded that, in spite of the existence of many different types of toys (including balls, dolls, puzzles, video games) in a broad range of prices, all of them had the same purpose to the consumer: play. Therefore, they were all considered as substitutable products. In the investigation, the authorities considered as like products the toys produced by Brazilian companies that were in directly competitive with the imported ones. The term ‘directly competitive products’, in this investigation, was defined as substitutable products. Once the authorities reached a conclusion on the products under investigation and like products, they defined the domestic industry as comprising the 21 manufacturers of toys representing 71% of the domestic industry in 1995 that had submitted the information requested by SECEX in comparable units. In order to confirm the definition of the domestic industry, SECEX also evaluated whether imports of toys were done by those 21 companies in 1994 and in 1995 and concluded that the amount of such imports was not significant compared to their turnover (10% of the turnover in 1994 and 20% of the turnover in 1995).<sup>169</sup>*

*Example 2: In the safeguard investigation regarding imports of dried and unpeeled coconuts, rasped or not, DECOM compared the imported product (rasped integral dehydrated coconut) and the product produced in Brazil (dried coconut) in terms of production process, physical characteristics and uses. It concluded that those products were directly competitive products. The domestic industry was defined as the total production of dried coconut in Brazil – which is the product directly competitive to the imported product – cultivated by the totality of coconut producers, congregated by SINDCOCO.<sup>170</sup>*

## Injury

Since safeguard measures are independent from the behaviour of exporters, the injury determination is central to the imposition of such measures.

The Brazilian SG Law considers that safeguard measures are applicable in the case of an injury qualified as serious injury. Serious injury is understood as a significant overall impairment in the position of a domestic industry. It is clear

<sup>169</sup> See Interministerial Administrative Rule 21, of 19 December 1996, published on 30 December 1996.

<sup>170</sup> See CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

that injury that is ‘serious injury’ is more than an injury that is ‘material injury’ as required in cases related to dumping practices or subsidies. Threat of serious injury, meaning a serious injury that is clearly imminent, is also covered by safeguard measures.

In order to reach a conclusion on the existence of injury or threat thereof as a result of increased imports of a certain product, the investigating authorities must analyse facts that can illustrate the situation of the affected domestic industry, and not rely merely on allegation, conjecture or remote possibilities. Determination of serious injury or threat of serious injury must be based on objective evidence and such evidence must demonstrate the existence of a causal link between the increased imports of the product concerned and the alleged injury or threat of injury. A finding of serious injury can also be based on a finding of threat of serious injury.

Accordingly, the authorities shall examine:

- The increase in imports of the product concerned;
- The unforeseeable circumstances involved;
- The share of the domestic market taken by the increased imports;
- The prices of the imports;
- The consequent impact on the domestic industry;
- Other factors that, although not related to the evolution of imports, have a causal relationship with the injury or the threat of injury to the domestic industry in question.

*Example: In the safeguard investigation regarding imports of dried and unpeeled coconuts, rasped or not, DECOM analysed the following factors in order to reach a conclusion on the existence of serious injury: (I) absolute and relative increase in the imports of rasped coconut (in amount); (ii) decline in FOB price of the imported product; (iii) absolute and relative increase in imports of rasped coconut (in value); (iv) increase in imports when compared to the domestic production; (v) reduction in the cultivated area; (vi) decline in sales of the domestic industry and its share in the apparent consumption; (vii) reduction of the work force; (viii) drop in revenue and prices in dollars; (ix) increase in revenue and prices in reais; and (x) emphasis on the undercutting margin. The analysis of such factors led DECOM to the conclusion that the increase in imports of dried and unpeeled coconuts had caused serious injury to the domestic industry producing directly competitive products.<sup>171</sup>*

### ***Increase in imports***

The authorities must analyse the amount and the rate of the increase in imports of the product concerned. Such increase must be:

- In absolute terms, which means that Brazil is importing substantially more, as a general fact; and
- In relative terms, which means imports have increased in relation to production in Brazil.

Safeguard measures can be imposed only if the import growth leads to the conclusion that there has been a substantial increase in imports.

<sup>171</sup> See CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

*Example: In the safeguard investigation regarding imports of dried and unpeeled coconuts, rasped or not, DECOM concluded that there had been increase in imports of dried and unpeeled coconuts into Brazil, as follows: (I) P1-P2 – 67.6% (amount) and 90% (value); (ii) P2-P3 – 51.5% and 24.3%; (iii) P1-P3 – 154% and 136.1%. Those figures do not include imports from Mercosur States parties, which were considered to be insignificant.<sup>172</sup>*

### ***Unforeseen developments***

Although the Brazilian SG Law does not contain any requirement related to unforeseen developments, the Brazilian authorities analyse whether the increase in imports is a result of unforeseen developments, according to Article XIX of GATT 1994, incorporated into the Brazilian laws by Decree No. 1355 of 1995.

Hence, it is important that the increase in imports has occurred because of unforeseen developments. This means that the imports can be subject to safeguard measures only if the complainant demonstrates that the surge in imports could not have been predicted by the domestic industry.

*Example: In the safeguard investigation regarding imports of dried and unpeeled coconuts, rasped or not, the complainant demonstrated that the economic crisis in Asia in 1997 had affected the Asian companies, which are the major suppliers of coconuts worldwide. Furthermore, there had been a decline in demand for coconut oil worldwide, leading to the excessive offer of such product. Since Brazil is the largest consumer of coconut milk and rasped coconut in the world, the excessive offer of dried coconut was destined to Brazil, resulting in an increase in imports of rasped dried coconut into the country. Moreover, the complainant stated that, as Brazil is a WTO member, it could not impose quantitative restrictions on the imports of dried coconut, action that could have restrained the increase in imports.<sup>173</sup>*

### ***Share of the domestic market taken by the imports***

An injury determination must consider the market share of the Brazilian industry before the increase in imports and after such growth. Injury caused by imports is characterized when the market share of the Brazilian industry falls substantially, against gain in market share by the imported like product.

*Example: In the safeguard investigation regarding imports of toys, the authorities concluded that the share of domestic toys in the total sales of toys in Brazil fell 28% in quantity and 22% in value from 1994 to 1995. The share of the domestic industry in the apparent consumption of toys, in value, fell from 70% in 1994 to 52% in 1995.<sup>174</sup>*

### ***Prices of the imports***

Verification regarding prices of the imports is important to determine whether there has been a significant undercutting in relation to the price of the like product made in Brazil. In light of a flood of imported products, the Brazilian industry could have undercut the like product, which may have put the industry in a situation of serious injury caused by increased imports.

<sup>172</sup> See CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

<sup>173</sup> *Ibid.*

<sup>174</sup> See Interministerial Administrative Rule 21, of 19 December 1996, published on 30 December 1996.

**Example:** In the safeguard investigation regarding imports of dried and unpeeled coconuts, rasped or not, it was found that there had been a significant increase in the value of the imports of dried and unpeeled coconut (P1, 90%; P2, 24.3%; P3, 136.1%), excluding the imports from the Mercosur countries (Argentina and Uruguay), which were insignificant. The average price of the Brazilian imports of the product concerned had risen 13.2% from P1 to P2 but declined 6.6% from P1 to P3.<sup>175</sup>

### **Impact on the domestic industry**

The impact of the increased imports on the domestic industry is evidenced by changes in economic factors such as:

- Production;
- Capacity utilization;
- Stock;
- Sales;
- Market share;
- Prices (decrease in prices or lack of increase in prices, which could have occurred in the absence of imports);
- Profits and losses;
- Return of invested capital;
- Cash flow; and
- Employment.

**Example:** In the safeguard investigation regarding imports of dried and unpeeled coconuts, rasped or not, DECOM analysed the evolution of nine economic factors related to the domestic production of coconuts in the investigation period, in order to reach a conclusion on whether the increased imports had affected the domestic industry: (I) cultivated area; (ii) labour; (iii) stocks; (iv) prices; (v) comparison between price and production cost; (vi) turnover; (vii) undercutting; (viii) apparent consumption; and (ix) the relationship between domestic production and the imports.<sup>176</sup>

### **Other factors**

In order to make a finding on injury, the investigating authorities may also take into consideration other factors that, although not related to the evolution of imports, have a causal relationship with the injury or the threat of injury to the domestic industry in question.

**Example:** In the safeguard investigation regarding imports of toys, the investigating authorities analysed other factors that, although not related to the evolution of imports, could explain the serious injury suffered by the domestic industry in question, namely: (I) the increase in the sales of the domestic producers which did not constitute the domestic industry; and (ii) smuggling or underbilling. However, serious injury could not be attributed to those factors, since the authorities concluded that the sales of the domestic producers that were not part of the domestic industry had also been affected by the increase in imports, and they did not find evidence of smuggling or underbilling.<sup>177</sup>

<sup>175</sup> See CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

<sup>176</sup> *Ibid.*

<sup>177</sup> See Interministerial Administrative Rule 21, of 19 December 1996, published on 30 December 1996.

### ***Causal link between serious injury or threat thereof and increase in imports***

Once serious injury or threat thereof have been attested, it must be assessed whether there is a causal link between such injury and increase in imports. In other words, it must be verified whether this injury has been caused by the increased quantities of imports to the Brazilian market.

According to the Brazilian SG Law, if factors other than increased imports are causing threat of injury or serious injury to the domestic industry in question at the same time, such serious injury shall not be attributed to increased imports.

*Example: In the safeguard investigation regarding imports of dried and unpeeled coconuts, rasped or not, DECOM analysed the following factors to reach a decision on the existence of a causal link between the increase in imports and the injury suffered by the domestic industry: (I) the evolution of cultivated area; (ii) the evolution of domestic production; (iii) the share of the domestic industry in the apparent consumption of the product; (iv) the drop in the turnover of the domestic industry; and (v) the average of the prices of the product concerned in each period investigated. DECOM concluded that the decline in sales in the domestic market and in the share of the domestic producers in the apparent consumption, as well as the reduction of the work force, cultivated area, revenue and prices, corroborated the existence of a causal link between the increase in imports and injury. In order to attest that factors other than the increase in imports were not responsible for the injury caused to the domestic industry, the complainant stated in the complaint that exports of coconuts by the Brazilian companies were irrelevant (equivalent to less than 0.5% of the total production). Therefore, the injury could not be attributed to the bad export performance of the Brazilian coconut producers.<sup>178</sup>*

### ***Threat of serious injury***

When there is an alleged threat of serious injury, the authorities must examine whether it is clearly foreseeable that the threat in question is likely to develop into serious injury. For this purpose, factors that must be taken into account include the growth rate of increase of exports to the Brazilian market, and the export capacity of the exporting country (existing or potential) and the probability that the exports resulting from that capacity will be destined to Brazil.

<sup>178</sup> See CAMEX Resolution 19, of 30 July 2002, published on 31 July 2002.

## **Appendix I**

# **Decree No. 1602 of 23 August 1995 – Regulates the administrative procedures regarding the imposition of anti dumping measures<sup>1</sup>**

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The President of the Republic, by virtue of the powers vested in him by Art. 84, sections IV and VI, of the Constitution and taking into consideration the provisions of the Agreement Regarding the Implementation of Article VI of the General Agreement on Tariffs and Trade – GATT 1994, approved by Legislative Decree No. 30 on 15 December 1994, and promulgated by Decree No. 1.355 of 30 December 1994, and Law No. 9.010 of 30 March 1995, wherein provision is made for the imposition of the measures established by the Anti dumping Agreement,

DECREES:

### **TITLE I PROCEDURES**

#### **Chapter I PRINCIPLES**

Art. 1. Anti dumping measures may be imposed when imports of primary and non primary dumped products cause injury to domestic industry.

1.1 Anti dumping measures shall be imposed based on open investigations initiated and conducted pursuant to the provisions of this Decree.

1.2 Pursuant to the provision of Paragraph 5 of Article VI of GATT/1994, the import of a product may not be subject, simultaneously, to the imposition of the anti dumping measure and a compensatory measure which is part of GATT/1994 Agreement on Subsidies and Compensatory Measures.

Art. 2. It is within the competency of the Minister of Industry, Commerce and Tourism and the Minister of Finance to make the decision to impose, by joint action, provisional anti dumping measures or definitive measures and approve price undertakings based on the findings of the Secretariat of Foreign Trade – SECEX, of the Ministry of Industry, Commerce and Tourism, which determines the existence of dumping and the resulting injury.

Art. 3. SECEX is responsible for undertaking the administrative process that is governed by this Decree.

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<sup>1</sup> English version as notified to WTO.

## Chapter II DETERMINATION OF DUMPING

Art. 4. For the purposes of this Decree, the practice of dumping is considered to be the introduction of a product into the domestic market, including under the method of drawback, at an export price that is below the normal value.

### Section I Normal Value

Art. 5. Normal value is considered to be the price that is actually being charged for the like product under ordinary course of trade, for internal consumption in the exporting country.

5.1 The term 'like product' shall be understood as an identical product, that is equal in all aspects to the product being examined, or, in the absence of such a product, another product that, although not exactly equal in all aspects, has characteristics closely resembling those of the product under consideration.

5.2 The term 'exporting country' shall be understood as the country of origin and of exportation, except in the hypothesis provided for in Art. 10.

5.3 The sales of the like product for internal consumption in the exporting country shall be normally considered as being of sufficient quantity for determining their normal value, if they constitute 5% or more of the product's sales to Brazil, allowing a lower percentage when it shall be demonstrated that domestic sales at this percentage do occur in sufficient quantity to permit adequate comparison.

Art. 6. Should there be no sales of the like product in the ordinary course of trade in the domestic market or when, for reasons of special market conditions or low sales volume, adequate comparison is impossible, the normal value shall be based:

- I. On the price of the like product being charged in exporting operations to a third country, as long as this price is representative; or
- II. On the value as determined in the country of origin, taking into account the cost of production in the country of origin plus a reasonable amount for administrative and selling costs, in addition to a margin of profit.

6.1 For purposes of price, they may be considered as not being in the ordinary course of trade and thus not considered in determining normal value, those sales of the like product in the domestic market of the exporting country or sales to a third country, at prices below per unit (fixed and variable) costs of production, administrative and selling costs being included.

6.2 The provision of the preceding paragraph shall be applied only when it is shown that sales are made:

- (a) Over a long period, normally one year, but never less than six months;
- (b) In substantial quantities, being considered as such those transactions taken into account for determining normal value, made at a weighted average price for sales below the weighted average unit cost, or a sales volume below the unit cost corresponding to 20% or more of the volume sold in transactions considered for determining normal value; and
- (c) At prices that do not permit covering all costs within a reasonable period of time.

6.3 The provision of item 'c' of the preceding paragraph does not apply when it is shown that the prices below the unit cost, at the moment of sale, are above the weighted average unit cost found in the course of the investigation.

6.4 Transactions among parties who are considered associated or who have agreed a compensatory arrangement among themselves may be considered as not being in the ordinary course of trade and not be taken into account in determining normal value, unless it is proved that the related prices and costs are comparable to those of operations among parties that are not so related.

6.5 The costs that are treated in item II of this article, shall be calculated based on the records kept by the exporter or by the producer of the product being investigated, as long as such records are pursuant to accepted accounting principles in the exporting country and reflect the costs related to the production and sale of the product in question.

6.6 Available evidence shall be considered regarding appropriate distribution of costs, including those furnished by the exporter or producer in the course of the investigation procedures, as long as such distribution has been traditionally used by the exporter or producer, particularly when determining adequate periods of amortization and depreciation and allowances resulting from capital expenses and other development costs.

6.7 Adequate adjustment shall be made for those non recurring cost items that benefit future and/or present production, or for circumstances in which the costs observed in the course of the investigation period are affected by start up operations, at least if they reflect on the distribution mentioned in the preceding paragraph.

6.8 The adjustments made due to start up must reflect the costs verified at the close of the start up period or, should such period extend beyond that covered by the investigation, the most recent costs that can be taken into account in the course of the investigation.

6.9 Calculation of the amount referred to in item II of this article, shall be based on effective production and sales data of the like product, done by the producer or exporter under investigation, during the normal course of trade.

6.10 When calculation of the amount cannot be done based on data mentioned in the preceding paragraph, it shall be done by means of:

- (a) The actual amounts incurred and realized by the exporter or producer in question, relative to production and sale of products of the same category, in the domestic market of the exporting country;
- (b) The weighted average of the actual amounts incurred and realized by other exporters or producers under investigation, in relation to the production and selling of the like product on the domestic market of the exporting country;
- (c) Any other reasonable method, as long as the amount stipulated for profit does not exceed the amount of profit normally made by other exporters or producers from sales of products of the same general category, in the domestic market of the exporting country.

Art. 7. When difficulties occur in determining a comparable price as in the case of imports originating in a country that is not predominantly oriented toward a market economy, where domestic prices are for the most part established by the State, the normal value may be determined based on the price charged or on the value determined for the like product in a third country

that has a market economy, or on the price charged by the latter country for its exports to other countries, excluding Brazil, or, whenever this is not possible, based on any other reasonable price, including the price paid or to be paid for the like product in the Brazilian market, duly adjusted, if necessary, to include a reasonable margin of profit.

7.1 The choice of the third country with an adequate market economy shall take into account any reliable information presented at the time of selection.

7.2 The time frames of the investigation shall be taken into account and, whenever feasible, recourse shall be had to a third country with a market economy that is the object of the same investigation.

7.3 The interested parties shall be notified, immediately after the initiation of the investigation, regarding the third country with a market economy that is to be used, and a period of time shall be established for returning the respective questionnaires mentioned in the lead paragraph of Art. 27.

## **Section II Export Price**

Art. 8. The export price shall be the actual price paid or to be paid for the product exported to Brazil, free of measures, discounts and reductions actually granted and directly related to the sales under consideration.

Sole paragraph. In cases where there is no export price or where this appears unreliable, due to an association or compensatory arrangement between the exporter and an importer or a third party, the export price may be constructed using:

- (a) The price for which imported products have been resold for the first time to an independent buyer; or
- (b) A reasonable basis, in the case of products that are not to be resold to independent buyers, or not to be resold in the same condition as when they were imported.

## **Section III Comparison Between Normal Value and Export Price**

Art. 9. A fair comparison shall be made between the export price and the normal value, at the same level of trade, normally that of ex factory level, in respect of sales made at as nearly as possible the same time. The interested parties, as defined in paragraph 3 of Art. 21 shall be notified regarding the type of information necessary for ensuring a fair comparison, without requiring excessive burden of proof from them.

9.1 For purposes of adjustment in each case according to its specific characteristics an examination shall be made of the differences that affect price comparison, among them differences in the conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics and any other differences that demonstrably affect price comparability. When some of these factors overlap, duplication of adjustments already made shall be avoided.

9.2 For the purpose of imposition of the sole paragraph of Art. 8, adjustments shall also be admitted in function of costs incurred between importation and resale, including import measures, other taxes and profits accounted for.

9.3 In cases such as described in the preceding paragraph, if the comparison is affected, the normal value shall be established on a trade level equivalent to that of the constructed export price, or the adjustments provided for in paragraph 1 of this article may be made.

9.4 The amount of the adjustment shall be calculated based on relevant data corresponding to the period of investigation concerning the existence of dumping, referred to in paragraph 1 of Art. 25, or on data from the last available fiscal year.

9.5 In the event of a price comparison, as provided for in the lead paragraph of this article, requiring currencies conversion, the rate of exchange in effect on the day of sale will be used, except when there occurs a sale in foreign currency in forward markets directly linked to the export sale involved, and then the rate of exchange in the forward sale shall be used.

9.6 In normal situations, the day of sale shall be the contract date, the purchase order date or the date of confirmation of the order or of the invoice, whichever establishes the material terms of sale.

9.7 Fluctuations in exchange rates shall be ignored and, for purposes of investigation, a period of at least 60 days shall be considered necessary for the exporters to adjust their export prices, in order to reflect relevant alterations that have occurred during the period of the dumping investigation.

Art. 10. In the case of a product not being imported directly from its country of origin, but exported to Brazil from a third intermediary country, the provisions of this Decree shall also be applied and the price for which the product is sold to Brazil by the exporting country shall be compared with the comparable price in the exporting country.

Sole paragraph. The comparison may be made with the price in the country of origin, if:

- (a) The product is merely transshipped through the exporting country;
- (b) The product is not produced in the exporting country; or
- (c) There is no comparable price for the product in the exporting country.

## **Section IV**

### **Margin of Dumping**

Art. 11. The margin of dumping shall be the difference between the normal value and the export price.

Art. 12. The existence of a margin of dumping shall be determined based on a comparison between:

- I. The weighted average normal value and the weighted average of the prices of all comparable export transactions; or
- II. The normal value and the export prices on a transaction to transaction basis.

12.1 A normal value, determined by means of a weighted average, can be compared with the prices of specific export transactions in the case where a pattern of prices is found for exports that differs significantly among different purchasers, regions or time periods and if an explanation is given for the reason that such differences cannot be taken into account by the use of a weighted average to weighted average or transaction to transaction comparison.

12.2 Sampling techniques may be used to determine the normal value and the export prices, by using prices that appear with the most frequency or that are the most representative, as long as they include a significant amount of the transactions under examination.

Art. 13. Determining the individual margin of dumping for each one of the known exporters or producers of the product under investigation shall be the general rule.

13.1 In a case where the number of known exporters, producers and importers or types of products being investigated is so large that it becomes impractical to proceed with the determination cited in the preceding paragraph, the investigation may limit itself to:

- (a) A reasonable number of interested parties or products, by means of valid statistical sampling based on information available at the time of selection; or
- (b) The largest percentage of the volume of exports from the country in question, which can reasonably be investigated.

13.2 Any selection of exporters, producers, importers or types of products that is made pursuant to the provision of the preceding paragraph, shall go into effect after consultation with the exporters, producers or importers, and their consent obtained, as long as the necessary information has been provided for selecting the representative sample.

13.3 Should any of the selected firms not furnish the requested information, another selection shall be made. If there is not enough time to make a new selection or if the new firms selected also fail to provide the requested information, the determination or decision shall be based on the best information available, pursuant to the provision of Art. 66.

13.4 The individual margin of dumping shall also be determined for each exporter or producer who has not been included in the selection, but who provides the necessary information when this is being considered in the course of the investigation process, with the exception of situations in which the number of exporters or producers is so large that analysis of individual cases implies a disproportionate burden and impedes conclusion of the investigation within the designated time period. Voluntary replies shall not be discouraged.

### **Chapter III DETERMINATION OF INJURY**

Art. 14. For the purposes of this Decree, the term ‘injury’ shall be understood as material injury or the threat of material injury to an already established domestic industry or a material retardation in establishing such an industry.

14.1 Determination of injury shall be based on positive evidence and shall include an objective examination of:

- (a) The volume of dumped imports;
- (b) Their effect on prices of the like product in Brazil; and
- (c) The consequent impact of such imports on the domestic industry.

14.2 Regarding the volume of dumped imports, it shall be determined whether this is significant and if there has been a substantial increase in imports under such conditions, both in absolute terms or relative to production or consumption in Brazil.

14.3 For purposes of the investigation, an negligible volume of imports, coming from a certain country, is normally understood to be less than three percent of Brazil's imports of the like product, unless the countries that, individually, provide less than 3% of Brazil's imports of the like product, collectively are responsible for more than 7% of the product's imports.

14.4 As to the effect that dumped imports have on prices, it shall be taken into account whether there has been a significant price undercutting for imported products at dumped prices in relation to the price of the like product in Brazil, or whether such imports have had the effect of significantly depressing prices or impeding in a relevant way price increases which would have occurred in the absence of such imports.

14.5 None of these factors alone, nor several of them together, shall necessarily be considered as giving decisive guidance.

14.6 When imports of a product coming from more than one country are simultaneously subject to investigation, the effects of such imports shall be assessed cumulatively, if it is determined that:

- (a) The margin of dumping established for each one of the countries is more than the *de minimis* and that the volume of imports from each country is not negligible; and
- (b) The cumulative assessment of the effects of those imports is appropriate in the light of the conditions of competition between imported products and the conditions of competition between the imported products and the like domestic product.

14.7 The margin of dumping shall be considered *de minimis* when, expressed as a percentage of the export price, it is below 2%.

14.8 The examination of the impact that dumped imports have on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual or potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

14.9 The list of factors in the preceding paragraph is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

Art 15. A causal link must be demonstrated between the dumped imports and the injury to the domestic industry, based on an examination of:

- I. Relevant evidence; and
- II. Other known factors, besides the dumped imports, that could be causing injury to domestic industry at the same time, and such injuries, caused by factors other than the dumped imports, must not be attributed to those imports.

15.1 The relevant factors under these conditions include, *inter alia*, the volume and prices of imports that are not sold at dumping prices, the impact of the process of liberalization of imports on domestic prices, contraction in demand or changes in consumer patterns, trade restrictive practices by domestic and foreign producers, and competition between them, developments in technology, and the export performance and productivity of the domestic industry.

15.2 The effect of dumped imports shall be assessed in relation to the domestic industry, when available data permit separate identification of such production, based on criteria such as the productive process, producers' sales and profits.

15.3 If such separate identification of that production is not possible, the effects of dumped imports shall be assessed by examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

Art 16. The determination of the existence of a threat of material injury shall be based on facts and on a convincing reason, not merely on allegation, conjecture or remote possibility. Change of the circumstances that could bring about a situation in which dumping would cause injury, must be clearly foreseen and imminent.

16.1 In making a determination regarding the existence of a threat of material injury, consideration shall be given, *inter alia*, to the following factors:

- (a) A significant rate of increase of dumped imports, indicating the likelihood of substantially increased importation;
- (b) Sufficient freely disposable, or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to Brazil, taking into account the availability of other export markets to absorb any additional exports;
- (c) Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports, and;
- (d) Inventories of the product being investigated.

16.2 None of the factors in the preceding paragraph, by itself, will give decisive guidance, but the totality of these factors must lead to the conclusion that further dumped imports are imminent and that, unless protective action is taken, material injury would occur.

#### **Chapter IV** **DEFINITION OF DOMESTIC INDUSTRY**

Art. 17. For the purposes of this Decree, the term 'domestic industry' shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:

- I. When producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term 'domestic industry' may be interpreted as referring to the rest of the producers;
- II. In exceptional circumstances as defined in paragraph 4 of this article, Brazil is divided into two or more competing markets, and then the term 'domestic industry' shall be interpreted as the group of producers in one of those markets.

17.1 For the purposes of this article, producers shall be considered as being related to the exporters or the importers only in the case where:

- (a) One of them controls the other, directly or indirectly;
- (b) Both are controlled directly or indirectly by a third party;
- (c) Both control a third party directly or indirectly.

17.2 The cases cited in the preceding paragraph shall only be considered if there are reasons to believe or suspect that these relationships may lead the producer in question to act in a manner different from those who are not part of such a relationship.

17.3 For purposes of this article, control is considered to exist when the former is legally or operationally able to exercise restraint or direction over the latter.

17.4 For purposes of imposing the provision of item II of this article, producers in each market may be considered as a distinct domestic industry, if:

- (a) The producers within such a market sell all or almost all of their production of the product in question in that market;
- (b) The demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory.

17.5 In the case of paragraph 4 of this article, injury may be found to exist, even when a major portion of domestic production is not being injured, provided there is a concentration of dumped imports in that market and these are causing injury to the producers of all or almost all of the production of that market.

## **Chapter V THE INVESTIGATION**

### **Section I Application**

Art. 18. Except as provided for in art. 24, an investigation to determine the existence, degree and effect of any alleged dumping shall be requested by the domestic industry or on its behalf by means of an application in writing, pursuant to the directions issued by SÉCEX.

18.1 The application cited in the lead paragraph must include evidence of dumping, injury and of a causal link between the dumped imports and the alleged injury, along with the following data:

- (a) The identity of the applicant, and a description of the volume and value of the corresponding production by the domestic industry. In a case where the application is submitted on behalf of a domestic industry, the application must indicate the name of the industry on whose behalf it is being submitted and the name of the firms represented, as well the volume and value of the corresponding production;
- (b) An estimate of the volume and value of national production of the like product;
- (c) A list of the known domestic producers of the like product that are not represented in the application, and in so far as possible, an indication of the volume and value of the domestic production of the like product by such producers, as well as their opinion regarding support of the application;
- (d) A complete description of the allegedly dumped product, the names of the respective country or countries of origin or export, the identity of each known exporter or foreign producer and a list of the known persons importing the product in question;

- (e) A complete description of the product manufactured by the domestic industry;
- (f) Information about the representative price being charged for the product in question, when sold for consumption in the domestic market of the exporting country or countries, or in cases provided for in Art. 6, information about the representative sales price of the product by the exporting country or countries to a third country or countries, or about the constructed value of the product;
- (g) Information regarding the representative export price or, in cases provided for in Art. 8, information about the representative sales price of the product when sold for the first time to an independent buyer in Brazil;
- (h) Information on the evolution of the volume of allegedly dumped imports, the effect of these imports on prices of the like product on the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of that industry.

18.2 Should the application contain confidential information, the provision of Art. 28 shall apply.

Art. 19. The application will undergo a preliminary examination in order to verify if it is appropriate or if complementary information is needed. The result of this examination shall be communicated to the applicant within 20 days from the date of submission of the application.

19.1 When complementary information is requested, a new examination shall be made in order to verify if further information is required or if the application is appropriate. The applicant shall be notified of the result of this examination within 20 days from the date of submission of the complementary information.

19.2 The applicant shall be notified if the application is appropriate or if it has been judged inadequate within a period of 20 days from the date of submission of new information.

19.3 The time period for attending to complementary information or new information that has been requested shall be determined by SECEX, according to the nature of the information, and the applicant shall be so notified.

19.4 The applicant shall have 10 days, from the date of issue of the communication informing that the application is appropriate, to present as many copies of the complete text of the application, including the non confidential summary of the same, when such is the case, pursuant to the terms of paragraph 1 of Art. 28, as there are known producers and exporters and governments of the listed exporting countries.

19.5 In a case where the number of producers and exporters, cited in paragraph 4, is particularly high, copies of the application may be furnished only for submission to the governments of the listed exporting countries and to the corresponding representative associations.

## Section II Initiation of the Investigation

Art. 20. Evidence of dumping and the injury caused by it shall be considered simultaneously in the analysis to decide on initiation of the investigation.

20.1 With a basis on information from other sources that are promptly available, the appropriateness and adequacy of the evidence offered in the application shall be examined, in order to determine the existence of sufficient motives to justify the initiation of an investigation.

20.2 SECEX shall proceed to the examination of the level of support or rejection of the application as shown by other national producers of the like product, in order to verify whether the application was submitted by domestic industry or on its behalf. In the case of a fragmented industry that involves an especially large number of producers, support or rejection may be confirmed by using valid statistical sampling techniques.

20.3 An application shall be considered as being made 'by domestic industry or on its behalf' if it is supported by those producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application.

Art. 21. The applicant shall be notified of the decision, affirmative or negative, regarding the initiation of an investigation, within 30 days from the date of the issue of the communication stating that the application is adequate.

21.1 The application shall be rejected and, consequently, the process shall be terminated, when:

- (a) There is not sufficient evidence of the existence of dumping or of injury caused by the same, that would justify any investigation;
- (b) The application was not submitted by the domestic industry nor on its behalf; or
- (c) The domestic producers supporting the application account for less than 25% of the total production of the like product by the domestic industry.

21.2. Should the decision be affirmative, the investigation shall be initiated and a notice shall be published in the 'Diário Oficial' (*Official Gazette*) regarding such decision. The known involved parties shall be notified and shall be granted a period of 20 days from the date of publication of the decision for an application requesting the qualifying of other parties that are considered as being interested, with the respective indication of their legal representatives, pursuant to the provision of relevant legislation.

21.3 For the purposes of this Decree the following are to be considered as interested parties:

- (a) Domestic producers of the like product and the association that represents them;
- (b) Importers or consignees of the goods under investigation and the association that represents them;
- (c) Foreign exporters or producers of the product in question and the associations that represent them;
- (d) The government of the country exporting the product in question;
- (e) Other parties, either Brazilian or foreign, considered by SECEX to be interested.

21.4 As soon as the investigation is initiated and without prejudice to the right to confidentiality, the complete text of the application which requested it

shall be furnished to the known foreign producers and exporters and to the authorities of the exporting country and must be made available to other interested parties, if required. In a case where the number of interested producers and exporters is especially large, the complete text of the application shall be furnished only to the authorities of the exporting country and to the corresponding representative associations.

Art. 22. After initiating the investigation, SECEX shall notify the Federal Revenue Secretariat of the Ministry of Finance, so that it may take the appropriate steps which, should it be the case, will provide for the imposition of definitive anti dumping measures on the imports that are the object of the investigation, referred to in Art. 54.

Sole paragraph. The measures adopted by the Federal Revenue Secretariat, pursuant to this article, shall not hinder the procedures of customs clearance.

Art. 23. Prior to the decision to initiate an investigation, the existence of the application requesting it shall not be made public except in the case of the government of the exporting country concerned, which must be notified of the existence of a duly qualified application.

Art. 24. Under exceptional circumstances, the Federal Government, *ex officio*, may initiate the investigation as long as there is sufficient evidence of dumping, injury and a causal link between them which justifies the initiation of an investigation. The government of the country concerned shall be notified of the existence of such evidence, before the initiation of the investigation.

### **Section III Conduction of the Investigation**

Art. 25. In the course of the investigation, the evidence of dumping and injury caused by it, shall be examined simultaneously.

25.1 The period of investigation for ascertaining the existence of dumping must include the twelve previous months as close as possible to the initiation of the investigation, and, under exceptional circumstances, may be less than twelve months but never less than six.

25.2 The period of investigation regarding the existence of injury must be sufficiently representative to permit analysis as provided for in Chapter III, may not be less than three years, and shall necessarily include the period during which dumping is investigated.

#### **Subsection I Evidence**

Art. 26. All interested parties in an anti dumping investigation shall be given notice of the information required and shall have ample opportunity to submit, in writing, all evidence that they consider relevant in respect of the investigation in question.

Sole paragraph. Due consideration shall be given to any difficulties encountered by the interested parties, especially small enterprises, in providing requested information, and any possible assistance shall be given them.

Art. 27. All interested parties, except the governments of the exporting countries, shall receive questionnaires for purposes of the investigation and shall have forty days within which to return them. This period shall be counted from the date the questionnaires are issued.

27.1 Any requests for an extension of the forty day period shall be duly considered and if its necessity is demonstrated, such extension may be authorized whenever practicable for a period of up to 30 days, taking into account the time periods of the investigation.

27.2 Additional or complementary information may be requested or accepted in writing throughout an investigation. The time period for providing requested information shall be stipulated based on the nature of the information and may be extended when a duly justified request is made. The time periods for the investigation itself must be taken into account both for information that is requested and for consideration of such additional information submitted.

27.3 Should any of the interested parties deny access to necessary information, not providing it on time or creating obstacles to the investigation, the findings related to preliminary or final decisions shall be composed based on the best information available, pursuant to the provision of Art. 66.

Art. 28. Information which is confidential by nature or which has been provided as being confidential by the parties in the investigation shall be treated as such, upon good cause shown, and shall not be disclosed without the specific permission of the party which has provided it.

28.1 The interested parties who provide confidential information must submit a non confidential summary thereof, which permits a reasonable understanding of the information provided. In cases where it is impossible to provide a summary, the parties shall justify this in writing.

28.2 Should it happen that the information labelled confidential is not justified as such, and if the provider of the information is unwilling to make it public in its totality or in summary form, such information cannot be considered, unless it is demonstrated in a convincing manner and from reliable sources that such information is correct.

Art. 29. The industrial users of the product under investigation and representatives of consumers' organizations, if the product is habitually sold on the retail market, shall have the opportunity to provide information which is relevant to the investigation.

Art. 30. In the course of the investigation, the accuracy of the information provided by the interested parties will be verified.

30.1 Should it become necessary and if feasible, investigations may be carried out in the territory of other countries as long as authorization is granted by the firms involved, and the representatives of the government of the country in question are notified and these have no objection to the investigation. The procedures described in Art. 65 shall apply to investigations undertaken in the territory of another country.

30.2 If it is necessary and feasible, investigations may be made in interested firms located in Brazil, as long as they have been previously authorized by such firms.

30.3 Subject to the requirement to protect confidential information, the results of investigations conducted pursuant to the preceding paragraphs shall be attached to the process.

## **Subsection II**

### **Defense of the Interests of the Parties**

Art. 31. In the course of the investigation, the interested parties shall have full opportunity to defend their interests. To this end, when requested, within the

time period indicated in the directive ordering the initiation of the investigation, meetings shall be held where an opportunity shall be given to the interested parties to meet with those who have adverse interests, so that opposing views may be presented and rebuttal arguments offered.

31.1 The party requesting the meeting must submit, together with the application, a list of the specific points to be considered.

31.2 The known interested parties shall be notified, with at least 30 days' notice, of the meeting and the points to be considered during the meeting.

31.3 There shall be no obligation to attend a meeting and the absence of any party shall not be prejudicial to its interests.

31.4 The interested parties must indicate their legal representatives who shall attend the meeting, at least five days before the meeting, and, up to 10 days prior to the meeting, the arguments to be presented therein. The interested parties, if duly justified, may present additional information orally.

31.5 Information that is presented orally shall be considered only if it is reproduced in writing and made available to the other interested parties, within 10 days following the meeting.

31.6 When such is the case, consideration shall be given to the need for preserving confidentiality and the convenience of the parties.

31.7 The holding of meetings shall not hinder SECEX from reaching a preliminary or final determination.

Art. 32. The interested parties may request, in writing, to examine the information contained in the process, which shall be promptly made available to the parties who have so requested, with the exception of confidential information and internal government documents. An opportunity shall be given so that these parties may defend their interests in writing based on such information.

### **Subsection III**

#### **Final Procedures Concerning the Conduction of the Investigation**

Art. 33. Before completing the findings regarding the final determination, a meeting shall be called by SECEX, wherein the interested parties shall be notified regarding the essential facts under examination that are the basis of the findings, and allowing the interested parties a period of 15 days from the meeting to submit comments.

33.1 The National Confederation of Agriculture (CNA), the National Confederation of Industry (CNI), the National Trade Confederation (CNC) and the Brazilian Exporters Association (AEB) shall also be notified regarding the essential facts under examination that form the basis for the SECEX findings.

33.2 When the period provided for in the lead paragraph is over, the investigating process shall be considered as closed and information received later shall not be considered for purposes of the final decision.

33.3 The provisions of paragraphs 3, 4, 5 and 6 of Art. 31 also apply to this article.

### **Section IV**

#### **Provisional Anti dumping Measures**

Art. 34. Provisional anti dumping measures may be applied only if:

- I. An investigation has been initiated in accordance with the provision of Section II of Chapter V, a public notice of the decision to initiate an investigation has been published and the interested parties have been given adequate opportunity to submit information and make comments;
- II. A preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry;
- III. The authorities cited in Art. 2 judge such measures necessary to prevent injury being caused during the investigation; and
- IV. At least 60 days have passed since the date of the initiation of the investigation.

34.1 The amount of the provisional anti dumping measure may not exceed the margin of dumping.

34.2 Provisional anti dumping measures shall take the form of a provisional duty or security, the amount of which shall be equivalent to that of the anti dumping duty that is provisionally established.

34.3 In the case of the provisional duty, this shall be collected and in the case of the security this shall be paid by means of a deposit or bank bond, together with the term of responsibility.

34.4 The requirement of provisional measures may remain suspended until the final decision, as long as the importer offers an equivalent bond equal to the total amount of the obligation.

34.5 The interested parties shall be notified of the decision to impose provisional anti dumping measures, the act that contains the decision shall be published in the 'Diário Oficial'.

34.6 The Federal Revenue Secretariat shall make provisions regarding the form for payment of the bond cited in paragraph 2.

34.7 The release by customs of goods subject to provisional anti dumping measures shall depend on payment of the duty or of the bond.

34.8 The provisional anti dumping measures shall remain in effect for a period of not more than four months, except in cases where, by decision of the authorities cited in art. 2 and by request of the exporters that represent a significant share of the trade in question, it may be extended to six months. The exporters desiring an extension of the period of imposition of the provisional anti dumping measures shall request such in writing, within 30 days prior to the end of the period that the measure is in effect.

34.9 Should it be decided in the course of the investigation that a provisional anti dumping measure of less than the margin of dumping is sufficient to eliminate the injury, the periods provided for in the preceding paragraph shall be for six and nine months respectively.

## **Section V Price Undertakings**

Art. 35. Proceedings of the investigation and imposition of provisional or definitive anti dumping measures may be suspended, if the exporter voluntarily assumes satisfactory undertakings to revise prices or to cease exports to Brazil at dumped prices, as long as the authorities cited in Art. 2 are convinced that said undertaking eliminates the injury resulting from dumping.

35.1 A price increase to fulfil these undertakings shall not be more than what is necessary to eliminate the margin of dumping, and may be limited to what is necessary to terminate the injury being caused to the domestic industry.

35.2 The exporters shall propose price undertakings or accept those proposed by SECEX only after there has been a preliminary determination that there is a case of dumping and the injury caused by it.

35.3 The exporters shall not be obliged to propose price undertakings nor forced to accept those offered. These facts shall not prejudice consideration of the case nor alter the preliminary findings which shall have been concluded.

35.4 SECEX has the right to refuse price undertaking offers if such acceptance is considered to be ineffective.

35.5 In the case of a refusal, and if it be possible, reasons shall be given to the exporter explaining why acceptance of the undertaking has been judged inappropriate, and the exporter shall be given the opportunity to respond.

Art. 36. After a price undertaking has been accepted the act containing the decision to approve such undertaking shall be published in the 'Diário Oficial' and, depending on the case, shall contain the decision to continue or to suspend the investigation, and the interested parties shall be notified.

Sole paragraph. The investigation of dumping and injury must continue if the exporter so desires, or if the authorities cited in Art. 2 so decide.

Art. 37. The exporter with whom a price undertaking is agreed upon must periodically submit, if so requested, information relative to the fulfilment of the undertaking and shall permit verification of any relevant data.

Sole paragraph. Non fulfilment of the provision of this article shall be considered as a violation of the undertaking.

Art. 38. In the case of an undertaking violation, without continuing the investigation, steps may be taken for immediate imposition by the authorities cited in art. 2 of provisional anti dumping measures, based on the best information available, and the investigation shall recommence.

Sole paragraph. The interested parties shall be notified concerning the termination of the undertaking and the provisional anti dumping measures being imposed. The act containing this decision shall be published in the 'Diário Oficial'.

## Section VI Conclusion of the Investigation

Art. 39. The investigations shall be concluded within one year from their initiation, except under exceptional circumstances when the time period may be up to eighteen months.

Art. 40. The applicant may, at any time, request the termination of the process. If approved, the investigation shall be closed. Should SECEX decide to continue the investigation, the applicant shall be notified in writing.

Art. 41. The investigation shall be terminated without imposition of anti dumping measures in cases where:

- I. There has not been sufficient evidence of the existence of dumping or of any resulting injury;
- II. The margin of dumping is *de minimis*, according to the provision of paragraph 7 of Art. 14; or

- III. The volume of actual or potential dumped imports, or the injury caused are negligible, according to the provision of paragraph 3 of Art. 14.

Art. 42. The investigation shall be closed with the imposition of measures, when SECEX reaches a final determination on the existence of dumping, of injury and of the causal link between them.

Sole paragraph. The amount of the anti dumping duty shall not exceed the margin of dumping.

Art. 43. In a case where a price undertaking has been accepted, with subsequent continuance of the investigation:

- I. If SECEX arrives at a negative conclusion concerning dumping or any resulting injury, the investigation shall be closed and the undertaking automatically terminated, except when the negative conclusion results, in large part, from the very existence of the price undertaking, a case where it may be required to be maintained for a reasonable period of time, pursuant to the provisions of this Decree;
- II. If the authorities cited in art. 2, based on findings by SECEX, conclude that there has been dumping and resulting injury, the investigation shall be closed and the imposition of the definitive duty shall be suspended while the undertaking is in effect under the terms to be established and pursuant to the provisions of this Decree.

43.1 For the purposes of this article, the provision of Art. 37 applies.

43.2 In the case of undertaking violation, steps may be taken for the immediate imposition, by the authorities cited in Art. 2, of anti dumping measures, based on the findings of the investigation.

43.3 The interested parties shall be notified about the termination of the undertaking and about the anti dumping duty imposed. The act containing this decision shall be published in the 'Diário Oficial'.

Art. 44. The act containing the decision to end the investigation in cases provided for in this Section shall be published in the 'Diário Oficial'. Interested parties shall also be notified.

Sole Paragraph. In the case of a decision to conclude the investigation with the imposition of anti dumping measures, the act that contains such a decision must name the supplier or suppliers in question, with the measures corresponding to each. In the case of the number of suppliers being especially high, the findings shall contain the name of the supplier countries involved, with the respective measures.

## **Chapter VI** **IMPOSITION AND COLLECTION OF ANTI DUMPING** **MEASURES**

### **Section I** **Imposition**

Art. 45. For the purposes of this Decree, the expression 'anti dumping duty' signifies an amount of money equal to or less than the margin of dumping, calculated and imposed pursuant to this article, for the exclusive purpose of neutralizing the injurious effects of dumped imports.

45.1 The anti dumping measure shall be calculated by imposing *ad valorem* or specific duties, either fixed or variable, or a combination of both.

45.2 The *ad valorem* duty shall be imposed on the customs value of the merchandise, on a CIF basis, judged in terms of the relevant legislation.

45.3 The specific duty shall be set in United States dollars and converted to Brazilian currency, under the terms of the relevant legislation.

Art. 46. Anti dumping measures imposed on imports originating with known exporters or producers, that have not been included in the selection treated in Art. 13, but who have submitted the information requested, may not exceed the weighted average of the margin of dumping established for the group of exporters or producers selected.

46.1 For purposes of this article, zero or *de minimis* margins shall not be taken into account, nor the margins established under circumstances as mentioned in paragraph 3 of Art. 27.

46.2 The authorities cited in art. 2 shall impose an individually calculated duty on imports originating from any exporter or producer not included in the selection, who has submitted the information requested in the course of the investigation, as provided for in paragraph 4 of Art. 13.

Art. 47 To impose the provision of item II of art. 17, anti dumping measures shall be due only on the products in question that are destined for final consumption in that market that has been considered a distinct domestic industry, for purposes of the investigation, pursuant to the terms of paragraph 4 of Art. 17.

## Section II Charges

Art. 48. When an anti dumping duty is imposed on a product, this shall be collected independently of any obligations of a fiscal nature relative to its importation, in amounts that are adequate for each case, without discrimination, on all imports of the product that have been judged as being made at dumping prices and which are injurious to domestic industry, whatever their origin.

Sole paragraph. Measures shall not be charged on those imports proceeding from exporters with whom price undertakings have been agreed upon.

## Section III Products Subject to Provisional and Definitive Anti dumping Measures

Art. 49. Except in cases provided for in this Section, provisional anti dumping measures and anti dumping measures shall be imposed only on imported products that have been shipped for consumption after the date of the publication of the directive that contains the decisions cited in Arts. 34 and 42.

Art. 50. If the final decision is that dumping or its resulting injury does not exist, the amount of the provisional anti dumping measures shall be returned if it has been collected, or if secured by a deposit it shall be returned, or in the case of a bank bond, this shall be cancelled.

Art. 51. If the final decision points to the existence of a threat of material injury or significant retardation in establishing an industry, without any material injury having occurred, the value of the provisional anti dumping measures, if they have been collected, shall be returned, or if secured by a

deposit, this shall be returned, or in the case of a bank bond this shall be cancelled, unless it is verified that the dumped imports, in the absence of provisional anti dumping measures, would have led to the verification of material injury, in which case the provisions in the following articles shall apply.

Art. 52. Should the final determination point to the existence of dumping and its resulting injury, the following shall be observed:

- I. When the amount of the duty imposed by the final determination is less than the amount that has been provisionally collected or secured by a deposit, the excess amount shall be respectively returned or reimbursed;
- II. When the amount of the duty imposed by the final decision is more than the amount that has been provisionally collected or secured by a deposit, the payment of the difference shall not be required;
- III. When the amount of the duty imposed by the final decision is equal to the amount that has been provisionally collected or secured by a deposit, these amounts shall be automatically converted into a definitive duty.

Art. 53. In a case where the final determination is that dumping and resulting injury do exist, and when the amount of the duty imposed by the final decision, in the case of a guarantee by bank bond, is more than or equal to the amount that has been provisionally established, the amount corresponding to the secured amount will be collected immediately. When this amount is less than that of the provisional measure, only the amount equivalent to that established by the final decision shall be collected.

Sole paragraph. The collection of the amounts cited in the lead paragraph will cause the consequent extinction of the bank bond. In a case of non payment, the bank bond shall be automatically executed, independently of any judicial or extra judicial notice, under the terms of the relevant legislation.

Art. 54. Definitive anti dumping measures may be charged on dumped imports which were entered for consumption up to ninety days before the imposition of the provisional anti dumping measures, whenever it is found that, with regard to the product in question:

- I. There is a history of dumping causing injury, or that the importer was aware or should have been aware that the producer or exporter practices dumping and that this would cause injury; and
- II. The injury is caused by massive dumped imports of a product in a relatively short time, which, taking into account the period of time in which they occur and the volume of the dumped imports and also the rapid build up of inventories of the imported product, is likely to seriously undermine the remedial effect of the definitive anti dumping measures, as long as the importers involved are given the opportunity to comment.

Sole paragraph. Measures shall not be imposed on products that have been shipped for consumption prior to the date of the initiation of the investigation.

Art. 55. In the case of a price undertaking violation, definitive anti dumping measures may be charged on imported products that have entered for

consumption, up to ninety days prior to the imposition of the provisional anti dumping measures, as seen in Art. 38, excepting those that had been shipped before the undertaking violation.

## **Chapter VII**

### **DURATION AND REVIEW OF ANTI DUMPING MEASURES AND PRICE UNDERTAKINGS**

Art. 56. Anti dumping measures and price undertakings shall only remain in force as long as there is a need to counteract dumping which causes injury.

Art. 57. Every definitive anti dumping duty shall be terminated not later than five years after its imposition, or five years from the date of the conclusion of the most recent review that concerned dumping and injury.

57.1 The time period for imposition that is treated in the lead paragraph of this article may be extended by means of a substantiated request submitted by the domestic industry or on its behalf, by agencies or organs of the Federal Public Administration, or by SECEX, as long as it has been demonstrated that the expiry of the measures would very likely lead to a continuation or recurrence of dumping and injury.

57.2 The interested parties shall have a period of five months prior to the end of the enforcement period treated in the lead paragraph in order to respond in writing concerning the suitability of a review and to request a meeting if necessary.

57.3 The review shall proceed pursuant to the provision in Section III of Chapter V and must be concluded within twelve months from the date of its initiation. The acts which contain the decision to initiate and terminate a review shall be published in the 'Diário Oficial' and the interested parties shall be notified.

57.4 The measures shall remain in effect throughout the review.

57.5 The provision in this article applies to price undertakings accepted pursuant to Art. 35.

Art. 58 There shall be a review, in whole or in part, of the decisions regarding the imposition of anti dumping measures at the request of the interested party or by an organ or agency of the Federal Public Administration, or SECEX, as long as at least one year has passed since the imposing of the definitive anti dumping measures and sufficient evidence is presented showing that:

- I. The imposition of a duty has ceased to be necessary to neutralize dumping;
- II. It would be improbable that the injury would subsist or recur if the duty were revoked or altered;
- III. The actual duty is not or has ceased to be sufficient for neutralizing the dumping which is causing injury.

58.1 In exceptional cases of substantial changes of circumstance, or when in the national interest, reviews may be made at a shorter interval when requested by the interested party or organs or agencies of the Federal Public Administration, or by the investigating agency.

58.2 If there are elements that justify the review, it shall be initiated and the act containing the findings shall be published in the 'Diário Oficial' and the interested parties will be notified.

58.3 The review must be concluded within a period of twelve months from its initiation and shall adhere to the provision in Section III of Chapter V.

58.4 As long as the review has not been concluded, the measures shall not be altered and shall remain in effect until the end of the review.

58.5 The authorities cited in Art. 2, basing themselves on the result and in conformity with the evidence gathered during the course of the review, may eliminate, maintain or alter the anti dumping duty. Should it happen that the duty in effect is higher than necessary for neutralizing the injury to domestic industry and is no longer justified, due restitution shall be made.

58.6 The act that contains the decision to terminate the review shall be published in the 'Diário Oficial' and the interested parties will be notified.

58.7 The provision of this article applies to price undertakings accepted pursuant to Art. 35.

Art. 59 When a product is subject to anti dumping measures, an immediate summary review shall be held, if so requested, in order to quickly determine the individual margin of dumping for any exporters or producers of the exporting country in question, who have not exported the product to Brazil in the course of the investigation period, as long as these exporters or producers can demonstrate that they have no relationship with the exporters or producers of the exporting country who are subject to anti dumping measures imposed on their product.

59.1 During the summary review, anti dumping measures shall not be charged on imports originating from the exporters or producers cited in the lead paragraph of this article.

59.2 Once the review has started, SECEX shall notify the Federal Revenue Secretariat so that it may take the necessary steps, should a case of dumping be determined, to charge anti dumping measures on imports originating from the producers or exporters in question, starting with the date on which the summary review is initiated.

Art. 60. Anti dumping measures may be suspended for a period of one year, which can be extended for a further year, should provisional alterations occur in market conditions, and as long as the injury does not recur or subsist in virtue of the suspension and the domestic industry is consulted.

Sole paragraph. Measures may be re-imposed at any time if the suspension is no longer justified.

## **Chapter VIII PUBLIC NOTICE AND EXPLANATION OF DETERMINATIONS**

Art. 61. The act resulting from the decisions of the authorities cited in Art. 2, and the act by SECEX, shall be published in the 'Diário Oficial' and shall contain detailed information regarding the conclusions reached for each issue of fact and law considered to be relevant.

Sole paragraph. For the purpose of notification, a copy of the directives mentioned in the lead paragraph of this article shall be sent to the government of the exporting country or countries of the products that have been under investigation and also to the other interested parties.

## **Chapter IX**

### **ANTI DUMPING ACTIONS ON BEHALF OF A THIRD COUNTRY**

Art. 62 Third countries may apply for the imposition of anti dumping measures through their own authorities.

62.1 Such an application must contain price information to show that the imports are being dumped and to show that the alleged dumping is causing injury to the domestic industry of that country.

62.2 Analysis of the application shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country. The injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to Brazil, or even on the total exports of the product.

62.3 In order to initiate an investigation, the Brazilian government shall request approval from the Council for Trade in Goods of the World Trade Organization.

## **Chapter X**

### **THE FORM OF PROCEDURAL ACTS AND TERMS**

Art. 63. Procedural acts and terms do not depend on any special format, but the interested parties must observe the instructions of this Decree and of SECEX when preparing petitions and documents in general; otherwise they shall not be appended to the process.

63.1 Observance shall be required only of instructions that have become public prior to the beginning of the proceedings, or that shall have been specified in the communication to the party involved.

63.2 Procedural acts and terms shall be written and the meetings must be in the Portuguese language, with documents written in another language being submitted in translations done by an official translator.

63.3 Procedural acts are public and the right to consult the official records and to request a certificate regarding the progress of the investigation is restricted to the parties and their legally appointed representatives, pursuant to the provision of art. 32 regarding confidentiality of the information and of internal government documents.

63.4 Applications for the certificate shall only be accepted 30 days after the initiation of the investigation or from the submission of the last application for a certificate by the same party.

## **Chapter XI**

### **THE DECISION MAKING PROCESS**

Art 64. The act or decisions, either preliminary or final, relating to the investigation, shall be adopted pursuant to a directive from SECEX.

64.1 Within a 20-day period from the time it receives the findings from the Secretary of Foreign Trade, SECEX shall publish the act containing the decision to initiate an investigation, to extend the time of an investigation, to file the process at the request of the applicant, to initiate a review process concerning definitive measures or price undertakings, or to terminate the investigation without imposing any measures.

64.2 Within tens days from the date of reception of the findings by the Minister of State for Industry, Trade and Tourism and the Minister of State for Finance, acts shall be published which contain the decision to impose

provisional anti dumping measures, extension of the measures, acceptance of the end of price undertakings, termination of the investigation with imposition of measures, suspension of a definitive duty, or the result of the review of definitive measures or price undertakings.

64.3 Under exceptional circumstances, even when there is evidence of dumping and of the resulting injury, the authorities cited in Art. 2 may decide, for reasons of national interest, in favour of suspending the imposition of measures or for the non approval of price undertakings, or even, in accordance with the provision of the sole paragraph of Art. 42, in favour of the imposition of measures at an amount different than the one recommended and, in such a case, the act shall contain the reasons for such a decision.

## TITLE II SPECIAL PROCEDURES

### Chapter I ON-THE-SPOT INVESTIGATIONS

Art. 65 Upon initiation of an investigation, the authorities of the exporting country and the firms known to be concerned should be notified of the intention to carry out on the spot investigations.

65.1 In exceptional circumstances, when it is intended to include non governmental experts in the investigating team, the firms and the authorities of the exporting country should be so notified, and these experts shall be subject to sanctions as provided for in Art. 325 of the Brazilian Penal Code, in the case of breach of confidentiality.

65.2 Explicit agreement must be previously obtained from the firms involved in the exporting country, prior to such a visit.

65.3 When the approval mentioned in the preceding paragraph has been received, the authorities of the exporting country shall be immediately notified, by means of a 'note verbale', of the names and addresses of the firms that are to be visited, as well as the dates scheduled for such visits.

65.4 Sufficient advance notice shall be given to the firms in question before the visits are made.

65.5 Visits to explain the questionnaire, which is treated in the lead paragraph of Art. 27, may be made only at the request of the producer or exporting firm and may take place only if SECEX notifies the representatives of the country in question and there is no objection to the visit.

65.6 The visit shall be made after the questionnaire has been returned, unless the firm agrees otherwise and the government of the exporting country is notified of the anticipated visit and has no objection.

65.7 Prior to the visit, the firms involved shall be notified regarding the general nature of the information being sought, and, during the visit, may request supplementary clarifications due to the information received.

65.8 Replies to requests for information or to questions that are put by authorities or firms of the exporting country, that are essential to a successful on the spot investigation should, whenever possible, be answered before the visit is made.

## Chapter II BEST INFORMATION AVAILABLE

Art. 66. As soon as the investigation is initiated, the information required shall be specified in detail to the interested parties and the manner in which that information should be structured by the interested party in its response, as well as the time periods for submitting it.

66.1 The party shall be advised that if the information is not submitted within the specified period of time, it will imply that determinations will be made based on the facts available, including those contained in the request for initiating the investigation.

66.2 When the determinations are made, verifiable information shall be taken into account that has been appropriately presented and which, therefore, may be used in the investigation without any difficulty and which has been presented in good time.

66.3 Should SECEX not accept some information, the reason for the refusal shall be communicated immediately to the party so that the latter may provide new explanations within the established time periods, respecting the time limits of the investigation. Should the explanations be unsatisfactory, the reasons for refusal must appear in the published acts that contain any decision or determination.

66.4 Should an interested party not furnish requested information or furnish it only partially and this relevant information is not brought to the attention of the investigating authorities, the result may be less favourable to that party than if it had cooperated.

66.5 Should information from secondary sources be used in elaborating the determinations, including that submitted in the application, an attempt shall be made to compare the information with information from independent sources or with those originating with other interested parties.

66.6 SECEX may request that an interested party submit its replies in computer language.

66.7 If the interested party does not use computerized accounting or if the submission of the reply in this manner would mean an additional burden with an unjustified increase in costs and difficulties, that party shall be dispensed from presenting its reply pursuant to the previous paragraph.

66.8 Whenever SECEX does not have the specific means for processing the information, having received it in computer language incompatible with its operating system, the information must be submitted in the form of a written document.

## Chapter III GENERAL PROVISIONS

Art. 67. The time periods provided for in this Decree shall be counted continuously.

Art. 68. The time periods in this Decree may be extended once and for an equal period of time, except those for which extension is already provided for.

Art. 69. Acts practised contrary to the provisions of this Decree shall be considered null and void under the law.

Art. 70. The procedures established by this Decree shall not impede the competent authorities from acting promptly regarding any decisions or determinations, nor shall they hinder the procedures of customs clearance.

Art. 71. For the purposes of this Decree, the term ‘industry’ also includes activities connected with agriculture.

Art. 72. The Minister of State for Industry, Trade and Tourism and the Minister of State for Finance shall pass complementary norms for executing this Decree.

Art. 73. This Decree takes effect on the date of its publication.

## **Appendix II**

# **Decree No. 1.751 of 19 December 1995 – Regulates the administrative procedures regarding the imposition of countervailing measures**

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The VICE PRESIDENT OF THE REPUBLIC, acting as PRESIDENT OF THE REPUBLIC, by virtue of the powers that are vested in him by Article 84, Sections IV and VI, of the Constitution, and taking into consideration the provisions of the Agreement on Subsidies and Countervailing Measures, the Agreement on Agriculture and the General Agreement on Tariffs and Trade 1994 – GATT 1994, approved by Legislative Decree No. 30, dated 15 December 1994, and, and promulgated by Decree No. 1.355 dated 30 December 1994, and by Law No. 9.019, dated 30 March 1995,

DECREES:

### **TITLE I SUBSIDIES AND PROCEDURES FOR THE APPLICATION OF COUNTERVAILING MEASURES**

#### **Chapter I PRINCIPLES**

Article 1º. Countervailing measures may be applied with the objective of compensation for subsidies that are granted, directly or indirectly, in the exporting country, to the manufacture, production, export or transport of any product, whose export to Brazil causes injury to domestic industry.

§ 1º. Countervailing measures shall be applied in accordance with investigations initiated and conducted according to the provisions of this Decree. Agricultural products are also simultaneously subject to the provisions of Chapter I of Title II.

§ 2º. In keeping with the provisions set forth in paragraph 5 of Article VI of GATT/1994, the import of a product may not be subject simultaneously to the application of countervailing measures and anti dumping measures, which are referred to in the Agreement on the Implementation of Article VI of GATT 1994, to compensate for the same situation.

§ 3º. The term ‘exporting country’ means the country of origin or exportation to where the subsidy is granted. If the products are not exported directly to Brazil from the exporting Country, but from an intermediate country, the procedures referred to in this Decree will be applied, and the transactions in question will be considered to have occurred between the exporting country and Brazil.

Article 2º. The Ministers of State of Industry, Trade, and Tourism and of Finance, have the competence to apply, through a joint act, provisional countervailing measures or definitive measures and ratify undertakings, based

on findings of the Secretariat of External Trade – SECEX. of the Ministry of Industry, Trade and Tourism, which confirm the existence of subsidies and of injury arising therefrom.

Article 3º. SECEX is responsible for conducting the administrative proceedings regulated by this Decree.

## **Chapter II SUBSIDIES**

### **Section I Definition of a Subsidy**

Article 4º. For purposes of this Decree, subsidy shall be considered to exist when a benefit is conferred in function of the following hypotheses:

- I. If there is in the exporting country any form of income or price support that contributes, directly or indirectly, to the increase or decrease of exports of any product; or
- II. If there is financial contribution by the government or by a public organ within the territory of the exporting country, henceforth referred to as ‘government’, where:
  - (a) The practice of the government involves a direct transfer of funds (e.g. grants, loans and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);
  - (b) Government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives). In accordance with Article XVI of GATT 1994 and Annexes I through III of the Agreement on Subsidies and Countervailing Measures, the exemption of an exported product from duties or taxes borne by the like product when destined for internal consumption, or the remission of such duties or taxes in amounts not in excess of those that have accrued, shall not be deemed to be a subsidy;
  - (c) The government provides goods or services other than general infrastructure, or purchases goods;
  - (d) The government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in the previous paragraphs, which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments.

Sole paragraph. The term ‘like product’ is to be understood as a product identical in all aspects to the product that is being examined or in the absence of such a product, another product that, although not exactly the same, has characteristics closely resembling those of the product under consideration.

### **Section II Actionable Subsidies**

Article 5º. For purposes of this Decree, a subsidy, as defined in the previous Article, will be denominated actionable, subject to countervailing measures, if the same is specific, with the exception of those foreseen in Articles 11, 12, and 13.

Article 6°. A subsidy is specific where the granting authority, or the legislation pursuant to which this authority operates, explicitly limits access to this subsidy to an enterprise, or to a group of enterprises, within the jurisdiction of that authority, here denominated ‘certain enterprises’.

1°. Specificity will not occur when the granting authority, or the legislation pursuant to which this authority operates, establishes objective conditions or criteria that determine eligibility for subsidies and the amounts to be granted, provided that the eligibility is automatic and that such criteria are strictly adhered to. The criteria and conditions stipulated by law, regulation or other normative act, must be strictly respected and their verification shall be made.

§ 2°. The expression ‘conditions or objective criteria’ means neutral conditions or criteria that do not favour certain enterprises over others, that are economic in nature and horizontal in application, such as number of employees or the size of the enterprise.

§ 3°. In cases where there is not, apparently, specificity in the terms of §§ 1° and 2°, but there are reasons to believe that the subsidy in question is in fact specific, other factors may be taken into consideration, such as: the use of a subsidy programme by a limited number of certain enterprises, predominant use of a subsidy programme by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy.

§ 4°. For purposes of § 3°, the following shall be taken into account:

- (a) Information about the frequency with which applications for subsidies are refused or approved and the reasons which led to these decisions;
- (b) The diversification of economic activities within the jurisdiction of the granting authority, as well as the period of time during which the programme of subsidies was in force.

Article 7°. Subsidy will be specific if it is limited to certain enterprises located inside a geographic region situated inside the jurisdiction of the granting authority.

Sole paragraph. The setting or change of generally applicable tax rates by all levels of the government with competence to do so, shall not be deemed to be a specific subsidy.

Article 8°. Notwithstanding the provisions of Articles 6° and 7°, subsidies will be specific, for purposes of investigation, if they fall within the definition of prohibited subsidies, in the terms of Article 3 of the Agreement on Subsidies and Countervailing Measures, as follows:

- I. Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I. This standard will be met when it is demonstrated that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that subsidies are granted to export enterprises, shall not for that reason alone be considered as an export subsidy.
- II. Subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

Article 9°. Any determination of specificity in accordance with the provisions of this section, shall be clearly based on positive proof.

### **Section III Non Actionable Subsidies**

Article 10. For purposes of this Decree, a subsidy, as defined in Article 4°, will be considered non actionable, not subject to countervailing measures, when:

- I. It is not specific as defined in articles 6° and 7°,
- II. It is specific as defined in Articles 6° and 7°, but meets the conditions enumerated in Articles 11, 12, and 13.

Article 11. Assistance granted for purposes of research, with the exception of that related to civil aircraft, is not subject to countervailing measures, as defined in § 1° of this article, when carried out by firms, or by higher education or research establishments on a contract basis with firms if the Assistance covers up to a maximum of 75% of the costs of industrial research, as defined in paragraph § 3°, or 50% of the costs of pre competitive development activities, defined in § 4°. These permitted levels of non actionable Assistance will be established by reference to the total eligible costs incurred over the duration of a project and provided that such assistance is limited exclusively to:

- I. Personnel costs of those employed exclusively in the research activity, such as researchers, technicians, and other supporting staff.
- II. Costs of instruments, equipment, land and buildings, used exclusively and permanently for the research activity, except when disposed of on a commercial basis.
- III. Costs of consultancy and equivalent services used exclusively for the research activity, including bought in research, technical knowledge, patents, etc.
- IV. Additional overhead costs incurred directly as a result of the research activity.
- V. Other running costs, such as those of materials, supplies and the like, incurred directly as a result of the research activity.

§ 1°. The term ‘research’ does not include fundamental research activities carried out independently by higher education or research establishments.

§ 2°. The term ‘fundamental research’ means an enlargement of technical scientific knowledge not linked to industrial and commercial objectives.

§ 3°. The term ‘industrial research’ means planned research or investigation aimed at the discovery of new knowledge that may be useful to the development of new products, processes or services, or in bringing about a significant improvement to existing products, processes or services.

§ 4°. The term ‘pre competitive development activity’ means the translation of industrial research findings into a plans, blueprint or design for new, modified or improved products, processes or services, whether intended for sale or use, including the creation of a first prototype which would not be capable of commercialization. It may further include the conceptual formulation and design of products, processes, or services alternatives and initial demonstration or pilot projects, provided that the same projects cannot be converted or used for industrial application or commercial exploitation. The

term does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services and other on going operations even though those alterations may represent improvements.

§ 5°. In the case of programmes that span industrial research and pre competitive development activity, the allowable levels of non actionable assistance shall not exceed the simple average of the allowable levels of non actionable assistance applicable to each one of the two categories referred to in the caput of this article, calculated on the basis of all eligible costs as set forth in items I to V of this Article.

Article 12. Assistance to a disadvantaged region within the territory of an exporting country pursuant to a general framework of regional development and non specific, in accordance with the provisions of Articles 6° and 7°, is not subject to countervailing measures provided that:

- I. Each disadvantaged region must be a clearly designated contiguous geographical area with a definable economic administrative identity;
- II. The region is considered as disadvantaged on the basis of neutral and objective criteria, clearly expressed in law, regulations or other normative acts, in such a way as to permit verification, and that such verification demonstrates that the difficulties arise out of more than temporary circumstances; and
- III. The criteria shall include a measurement of economic development verified during a period of three years, and based on at least one of the following indicators:
  - (a) One of either income per capita or household income per capita, or GDP per capita, which must not be above 85% of the average for the territory concerned;
  - (b) Unemployment rate, which must be at least 110% of the average for the territory under consideration.

§ 1°. The economic development measure referred to in item III, may also be the result of a composite measure of the indicators referred to in paragraphs 'a', 'b' and may also include others not mentioned.

§ 2°. 'General framework of regional development' means that regional subsidy programmes are part of an internally consistent and generally applicable regional development policy and that regional development subsidies are not granted to geographically isolated areas, without any or almost no influence on the development of a region.

§ 3°. 'Neutral and objective criteria' means criteria that do not favour certain regions beyond what is necessary to eliminate or reduce regional disparities, within the framework of the regional development policy.

§ 4°. For the purposes set forth in the previous paragraph, regional subsidy programmes shall include ceilings on the amount of assistance which can be granted to each subsidized programme which shall be differentiated according to the different levels of development in each assisted region, and must be expressed in terms of investment costs or cost of job creation.

§ 5°. Within such ceilings, the assistance distribution shall be sufficiently broad and even to avoid the predominant use of one subsidy by, or the granting of disproportionately large amounts of subsidy to, certain enterprises, in accordance with the provisions of Section II of this Chapter.

Article 13. Assistance granted to promote the adaptation of facilities in operation for at least two years before the imposition of new environmental requirements imposed by law or regulations which result in greater constraints and financial burden on firms are not subject to the application of countervailing measures, provided that such assistance:

- I. Is a one time non recurrent measure;
- II. Is limited to 20% of the cost of adaptation;
- III. Does not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms;
- IV. Is directly linked and proportionate to the reduction of nuisance and pollution planned by the firm and does not cover any manufacturing costs savings which may be achieved;
- V. Is available to all firms which can adopt the new equipment and/or production processes.

### **Chapter III**

## **THE CALCULATION OF THE AMOUNT OF ACTIONABLE SUBSIDY**

Article 14. In order to apply countervailing measures, the amount of the actionable subsidy shall be calculated by unit of subsidized goods exported to Brazil, based on the benefits utilized during the period of investigation of actionable subsidies, as per § 1º of Article 35.

Sole paragraph. The term 'subsidized product' will be understood as a product that benefits from an actionable subsidy.

Article 15. The following shall not be considered as conferring a benefit:

- I. Government provision of equity capital, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of the exporting country;
- II. Government loans, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan that could have been obtained on the market. In this case the benefit shall be the difference between these two amounts.
- III. A loan guarantee by a government, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay on a comparable commercial loan, without the government guarantee. In this case, the benefit shall be the difference between the two amounts, adjusted for any differences in fees.
- IV. The provision of goods or services or purchase of goods by the government, unless the provision is made for less than adequate remuneration, or the purchase for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to market conditions prevailing for the good or service under consideration in the country of provision or purchase, including price, quality, availability, marketability, transportation, and other conditions of purchase or sale.

Article 16. In the determination of the amount, the following items may be deducted from the total:

- I. Expenses incurred necessarily to qualify for the subsidy or to benefit from it.
- II. Taxes to which the product has been submitted upon exportation to Brazil, when specifically designed to neutralize subsidies.

Sole paragraph. When an interested party or government requests a deduction, they have to present proof that the deduction is justified.

Article 17. When the subsidy is not granted on the basis of the quantities manufactured, produced, exported, or transported, the amount of actionable subsidy shall be calculated if appropriate, dividing in an adequate way the total value of the subsidy by the volume manufactured, produced, for sale or for export of the product which is referred to, during the period of investigation during which subsidy existed.

Article 18. When the subsidy is granted for the present or future acquisition of fixed assets, the amount of the actionable subsidy shall be calculated and pro rated for a period that corresponds to the normal depreciation of such assets in the industry which is being considered. The amount thus calculated, relative to the period of investigation of the existence of actionable subsidy, including the amount derived from the acquisition of fixed assets in previous periods, it shall be divided as per the previous article.

Sole paragraph. In case of assets not subject to depreciation, the subsidy shall be considered a loan at zero interest rate and evaluated as per the item II of Article 15.

Article 19. When the subsidy cannot be related to the acquisition of fixed assets, the amount of assistance received during the investigation of the existence of subsidy shall be attributed to this period and divided as per Article 17, unless there exist exceptional circumstances that justify attributing them to a different period.

Article 20. The general rule will be the determination of an individual amount of actionable subsidy for each one of the known exporters, or producers of the product under investigation.

§ 1º. If the number of exporters, producers, importers known or types of products or transactions under investigation be so expressive that the determinations of the 'caput' become impractical, the examination may be limited to:

- (a) A reasonable number of interested parties, transactions or products, determined by a statistically valid sample based on the information available at the time of selection; or
- (b) To the largest volume of production, sale, or exportation, that is representative and may be investigated taking into account the determined deadlines.

§ 2º. Any selection of exporters, producers, importers, types of products or transactions, which is made as per the previous paragraph, shall be effected after the governments of the exporting countries, the exporters, the producers or importers, have been consulted and their approval has been obtained, provided that they have provided information necessary for the selection of a representative sample.

§ 3º. If one or more of the selected enterprises do not provide the information requested, another selection shall be made. If there is not enough

time to make a new selection or if the new firms selected also fail to provide the requested information, the determination or decision shall be based on the information available, pursuant to the provision of Article 79.

§ 4°. The individual amount of actionable subsidy shall be determined for each exporter or producer who was not included in the selection, but who presents the necessary information in time for consideration during the investigation, with the exception of situations in which the number of exporters or producers is so expressive that the analysis of individual cases would result in a disproportionate burden which would impede the conclusion of the investigation within the designated time limit. Voluntary replies shall be encouraged.

#### **Chapter IV DETERMINATION OF INJURY**

Article 21. For the effects of this Decree, the term ‘injury’ shall mean material injury or threat of material injury to a domestic industry already established or material retardation of the establishment of such an industry.

§ 1°. Determination of injury shall be based on positive evidence and shall include an objective examination of:

- (a) The volume of imports of the subsidized product;
- (b) Its effect on the prices of the like Brazilian product;
- (c) The consequent impact of these imports on the domestic industry.

§ 2°. With regard to the volume of imports of the subsidized product, it shall be considered whether there has been a significant increase in subsidized imports, either in absolute terms or relative to the production or consumption in Brazil.

§ 3°. For purposes of this investigation, the term ‘negligible’ shall normally be understood to mean the volume of imports coming from a specific country, less than 3% of the total imports of the like product, unless the countries that account for, individually, less than 3%, account for collectively, more than 7% of the total imports of the like product.

§ 4°. For developing countries, negligible shall be understood to mean the volume of imports when this accounts for less than 4% of the total imports of the like product, unless these countries that account for, individually, less than 4%, account for, collectively, more than 9% of the total imports of the like product.

§ 5°. In regard to the effect of imports of subsidized products on the prices of this product, it shall be considered whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like product of Brazil, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred.

§ 6°. None or several of these factors can necessarily give decisive guidance.

§ 7°. When imports of a product originating from more than one country are simultaneously investigated, the effects of such imports shall be determined cumulatively, if it is determined that:

- (a) The amount of subsidization established in relation to the imports of each one of the countries, is not *de minimis*, and that the volume of imports of each country is not negligible.

- (b) The cumulative assessment of the effects of these imports is appropriate in view of the conditions of competition between the products imported and the conditions of competition between these products and the like domestic product.

§ 8°. The amount of the actionable subsidy shall be considered as *de minimis* when it is less than 1% *ad valorem*.

§ 9°. The amount of the actionable subsidy shall be considered as *de minimis* for developing countries when the global level of actionable subsidies granted for the product in question does not exceed 2% *ad valorem*.

§ 10. For developing countries Members who have eliminated subsidies for exports, before the period of eight years counting from the date the Marrakesh Agreement Establishing of the World Trade Organization (WTO Agreement), the value mentioned in the previous paragraph shall be 3% *ad valorem*. This provision shall be applied starting from the date of notification of the elimination of the export subsidy to the Committee on Subsidies of the WTO, and for the whole period in which export subsidies have not been granted by the developing country Member which has notified.

§ 11. The provisions of the previous paragraph shall expire eight years after the WTO Agreement has entered in force.

§ 12. For developing countries Members, which are referred to in Annex IV, the amount mentioned in § 9° shall be 3% *ad valorem*.

§ 13. The examination of the impact of imports of the subsidized product on the domestic industry shall include evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity, as well as factors that affect domestic prices, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government assistance programmes.

§ 14. The list contained in the previous paragraph is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

Article 22. It's necessary to demonstrate de causal relationship between imports of subsidized products and the injury to the domestic industry based on an examination of:

- I. Relevant evidence; and
- II. Any known factors, other than the subsidized imports, which at the same time are injuring the domestic industry, and the injuries caused by these other factors will not be attributed to the subsidized imports.

1°. The relevant factors in this respect, include, among others, the volumes and prices of non subsidized imports of the product in question, the impact of the alterations in import tariffs on the domestic prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between foreign and domestic producers, developments in technology and the export performance and productivity of domestic industry.

§ 2°. When the available data permit the separate identification of domestic industrial production of the like product, the effect of the imports of the subsidized product shall be assessed on the basis of such criteria as the production process, producer's sales and profits.

§ 3°. If such separate identification of that production is not possible, the effects of imports on the subsidized product shall be determined by an examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

Article 23. The determination of the existence of the threat of material injury shall be based on facts and a convincing motive. The change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent.

§ 1°. In making the determination of the existence of threat of material injury, the following factors, among others, shall be considered:

- (a) The nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom.
- (b) A significant rate of increase of subsidized imports, indicative of the likelihood of a substantially increased importation.
- (c) Sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter, that indicates the likelihood of substantially increased subsidized exports to Brazil, taking into consideration the availability of other possible markets that could absorb the possible increase of exports.
- (d) Imports entering at prices that will have a significant depressing or suppressing effect on domestic prices, and that will probably increase the demand for imports.
- (e) Inventories of the product under investigation.

§ 2°. None of the factors of § 1° by itself shall give decisive guidance, but the totality of the factors will lead to the conclusion that additional imports of the subsidized products are imminent and that unless protective action is taken, material injury will occur.

## **Chapter V DEFINITION OF DOMESTIC INDUSTRY**

Article 24. For the purposes of this Decree, the term ‘domestic industry’ shall be understood as referring to the domestic producers of the like product, or to those whose collective output of the mentioned product constitutes a major proportion of the total domestic production, except when:

- I. The producers are related to the importers or exporters or are themselves importers of the allegedly subsidized product or a like product originating in other countries. In this case, the expression ‘domestic industry’ shall be interpreted as referring to the rest of the producers; or:
- II. In exceptional circumstances, Brazilian territory may be divided into two or more competing markets, and the term ‘domestic industry’ shall be interpreted as the producers of one of those markets.

§1°. To apply the determination of item I, producers shall be considered to be related to exporters or to importers only if:

- (a) One of them, directly or indirectly, controls the other;
- (b) Both of them are, directly or indirectly, controlled by a third party;
- (c) Together they control, directly or indirectly, a third party.

§ 2°. The situations of the previous paragraph shall only be considered if there are grounds to believe or suspect that these relations may cause the producer to behave differently from non related producers.

§ 3°. Control, for purposes of this paragraph, will be considered to exist when the former is in legal or operational conditions to exercise restraint or direction over the latter.

§ 4°. For purposes of that determined in item II, the producers in each one of the markets, may be considered domestic industry when:

- (a) The producers active in this market, sell all or almost all of their production of the like product in question in this same market; and
- (b) The demand in this market is not to any substantial degree supplied by producers of the like product located elsewhere in the territory.

§ 5°. In the situation of § 4° of this article, the injury may be found to exist even where a major portion of the total domestic industry is not being injured, provided there is a concentration in that market of the subsidized imports, and that these are causing injury to the producers of all or almost all of the production within such market.

## Chapter VI THE INVESTIGATION

### Section I Petitions

Article 25. With the exception of that provided for in Article 33, the investigation to determine the existence, the degree, and the effect of any alleged subsidy, shall be requested by the domestic industry, or in its behalf, by means of petition, in written form, in accordance with the procedures established by SECEX.

§ 1°. The petition shall include evidence of the existence of a subsidy, and if possible, the amount, the injury and the causal link between the imports of the subsidized product and the injury alleged, and the following data:

- (a) The identity of the petitioner, a description of the volume and value of the domestic production by the petitioner, or if the petition has been presented on behalf of the domestic industry, the name of the industry on whose behalf the petition was presented with the name of the domestic producers represented as well as the volume and value of the production accounted for by such producers.
- (b) An estimate of the volume and value of the total national production of the like product.
- (c) A list of known domestic producers of the like product, which are not represented in the petition, and as far as possible, an indication of the volume and value of domestic production of the like product which corresponds to those producers, as well as their position concerning the presentation of the petition.
- (d) A complete description of the product allegedly subsidized, the name of the respective country or countries of origin or of export, the identity of each known exporter or foreign producer, and a list of the known importers of the product in question.

- (e) A complete description of the product manufactured by the domestic industry.
- (f) Evidence with regard to the existence, amount, and nature of the subsidy in question.
- (g) Evidence of the evolution of the volume and value of imports of the allegedly subsidized product, of the effects of such imports on prices of the like product in the domestic market and the consequent impact of the imports on domestic industry, as demonstrated by factors and indices having a bearing on the state of the domestic industry.

§ 2°. If the petition contains confidential information, the provisions of Article 38 shall apply.

Article 26. A petition shall undergo a preliminary examination to determine whether it contains the necessary elements, or if complementary information is necessary. The petitioner shall be informed of the results of this examination within 20 days of filing the petition.

§ 1°. When complementary information is requested, a new examination shall take place to determine if new information is necessary or if the petition is properly presented. The petitioner shall be informed of the results of this examination within 20 days from the submission of the complementary information.

§ 2°. Twenty days from the date of the presentation of the new information, the petitioner shall be informed whether the petition is properly presented or if it was considered definitively not acceptable.

§ 3°. The time limit for supplying complementary information or new information shall be determined by SECEX, in accordance with the nature of the information, and shall be communicated to the petitioner.

§ 4°. The petitioner shall have 10 days from the time of being informed that the petition is proper, to present as many copies of the non confidential summary of the petition and of the resume as per § 1° of Article 38, as there are producers, known exporters, and governments of exporting countries listed.

§ 5°. If the number of producers and exporters, referred to in § 4°, is especially high, copies of the petition may be provided in a number sufficient only for sending to governments of countries listed and the corresponding representative associations.

## **Section II**

### **Opening an Investigation**

Article 27. As soon as possible after the acceptance of the petition, as per Article 26 and, in any case, always before opening the investigation, the governments, whose products may come to be subject of the investigation, shall be invited for consultation with the aim of clarifying the situation as to the matters referred to in Article 25 and for arriving at a mutually satisfactory solution.

§ 1°. The government of the exporting country shall be notified of the petition for the opening of the subsidies investigation and shall have a time limit of 10 days to manifest interest in holding consultations, which shall take place within 30 days.

§ 2°. The deadlines referred to in this Article will be counted from the date of the notification to the exporting countries concerning the invitation for consultations.

Article 28. The evidence of both subsidy and injury shall be considered simultaneously, in the decision whether or not to initiate an investigation.

§ 1°. The accuracy and adequacy of the evidence contained in the petition shall be examined based on information from other sources readily available in order to determine the existence of sufficient motives to justify the initiation of an investigation.

§ 2°. SECEX shall proceed with the examination of the degree of support or opposition to the petition expressed by the other domestic producers of the like product, with the objective of determining if the petition was presented by or on behalf of the domestic industry. In the case of fragmented industries involving an exceptionally high number of producers, support or opposition may be determined through the use of statistically valid sampling techniques.

§ 3°. A petition shall be considered to have been presented 'by or on behalf of the domestic industry' if presented by producers responsible for more than 50% of the total domestic production of the like product made by the portion of domestic industry that had expressed support or opposition to the petition.

Article 29. An investigation may be opened with a view to verifying if the alleged subsidies are specific in terms of Articles 6° and 7°, or if they are related to research activities, regional development, or environmental requirements, if they meet the requirements established in Articles 12, 13, or 14, respectively.

§ 1°. An investigation will not be opened when the subsidy has been granted in the context of a programme considered non actionable by the exporting country, which has notified it in advance to the Committee on Subsidies and Countervailing Measures of the WTO.

§ 2°. The exception covered by the previous paragraph will not be applied, however, to cases in which the competent body of the WTO, or procedures of the Committee on Subsidies and Countervailing Measures, conclude that a violation of the provisions contained in Section III of Chapter II of this Decree exists.

Article 30. The petitioner will be notified of a positive or negative determination regarding initiation of an investigation within fifty days following the date of dispatch of the determination that the petition is properly presented.

§ 1°. The petition shall be rejected and the case closed, when

- (a) There is no sufficient evidence of existence of a subsidy, or of injury caused by it, that justifies the initiation of an investigation;
- (b) The petition has not been presented by or on behalf of the domestic industry; or
- (c) The domestic producers, who support the petition, account for less than 25% of the total production of the like product produced by the domestic industry.

§ 2°. In the case of a positive determination, the investigation shall be opened and an act containing such determination shall be published in the 'Diário Oficial' (*Official Gazette*). The interested parties and governments shall be notified and given a time limit of 20 days, counting from the date of publication of this determination, in order to request qualification of other parties who manifest interest, along with their legal representatives, as per the pertinent legislation.

- § 3°. For effects of this Decree, interested parties shall be considered:
- (a) The domestic producers of the like product or the association which represents them;
  - (b) The importers or consignees of the goods which are the object of investigation or the associations which represent them;
  - (c) The exporters or foreign producers of the goods referred to or the associations which represent them;
  - (d) Other parties, national or foreign, considered by SECEX as interested parties.

§ 4°. As soon as the investigation is initiated, the complete text of the petition shall be provided to the known producers and exporters, and to the authorities of the exporting country, and, shall, if so requested, be placed at the disposal of other interested parties involved in the investigation. If the number of producers and exporters is especially large, the non confidential version of the petition shall be provided only to the authorities of the exporting country and to the corresponding representative association. Due regard shall be paid to the protection of confidential information.

Article 31. The initiation of the investigation shall be communicated by SECEX to the Secretariat of the Federal Revenue of the Ministry of Finance, so that it may take the appropriate steps which, shall it be the case, will provide for the imposition of the definitive countervailing measures to the imports of the product which is the object of the investigation, as per Article 64.

Sole paragraph. The arrangements adopted by the Secretariat of the Federal Revenue, as per this article, shall not hinder the procedures of customs clearance.

Article 32. Before the initiation of the investigation, the existence of the petition will not be publicized, except as per the directives of Article 27.

Article 33. In exceptional circumstances, the Federal Government, *ex officio*, may initiate an investigation, as long as there is sufficient evidence of the existence of a subsidy, of injury, and of a causal relationship between them, that justify the initiation.

### **Section III Conduction of the Investigation**

Article 34. In the course of the investigation, opportunity shall be given to the countries whose products are the object of the investigation, to hold consultations with a view to elucidate the facts and reach a mutually satisfactory solution.

Article 35. The evidence of the existence of the actionable subsidy and of the injury shall be considered simultaneously during the investigation.

§ 1°. The period of investigation of the existence of the actionable subsidy shall include the twelve month period immediately preceding the date of the initiation of the investigation. It may retroact up to the beginning of most recently concluded fiscal year of the recipient for which trustworthy financial information and other relevant data are available. Under exceptional circumstances, the period of investigation can be of less than twelve months, but never less than six.

§ 2°. The period of investigation of the existence of injury shall be sufficiently representative to permit the analysis to which Chapter IV refers to and shall not be of less than three years and will necessarily include the period of investigation of the existence of the actionable subsidy.

### **Subsection I Evidence**

Article 36. The interested parties and governments and the parties in the investigation to be interested shall be given notice with regard to the required information and shall have ample opportunity to present in writing the evidence they consider relevant with respect to the investigation being considered.

Sole paragraph. Whatever difficulties the interested parties, especially small enterprises, have in supplying the requested information, will be taken into consideration, and they will be given any assistance practicable.

Article 37. The interested parties and governments of the exporting countries shall receive questionnaires destined for the investigation and shall have a time limit of forty days to answer them, counting from the day of their dispatch.

§ 1°. Requests for extension of the time limit of forty days shall be considered, and if necessity is demonstrated, the extension may be granted, when practicable, for a period not to exceed 30 days, taking into account the time limits established for the investigation.

§ 2°. Additional or complementary information may be requested or accepted, in writing, during the course of the investigation. The time limit for furnishing the requested information shall be stipulated in function of their nature and may be extended by suitably justified requests. The time limits for the investigation shall be taken into account, for the supply of additional information, as well as for consideration of the additional information presented.

§ 3°. If either of the parties or governments refuse access to the necessary information, do not provide it within the time limit determined, or yet, impede the investigation, preliminary or final determinations may be made based on the facts available, as per Article 79, keeping in mind the time limits of the investigation.

Article 38. Information which is confidential by nature or is provided on a confidential basis by parties and governments interested in the investigation, shall be treated as such, if justified, and will not be disclosed without express permission of the party supplying it. Information classified as confidential will be the object of a separate process.

§ 1°. Interested parties and governments which provide confidential information, shall present a non confidential summary of the same, that will permit a reasonable understanding of the information provided. In cases in which it is not possible to present the summary, the parties or governments shall justify such this situation in writing.

§ 2°. If it is considered that the request for confidentiality is not warranted, and if the supplier of the information refuses to make it public in whole or in summary format, such information may be disregarded, unless it is demonstrated in a convincing manner and from appropriate sources that the information is correct.

Article 39. Opportunity shall be given to the industrial users of the product under investigation, and representatives of consumer organizations, in cases

where the product is commonly sold at the retail level, to provide information which is relevant to the investigation. This information will be considered in the determinations or decisions.

Article 40. In the course of the investigation, the accuracy of the information provided by the interested parties and governments will be verified.

§ 1°. Investigations may be carried out in the territory of other countries, if the governments have been duly notified and have not objected. The enterprises located in other countries may also be equally investigated and have their records examined, if their approval is obtained, and the representatives of the government of the country in question have been notified and do not object to the investigation. The procedures described in Article 78 shall be applied in the investigations of the enterprises.

§ 2°. Investigations may be carried out in the enterprises involved which are located in Brazilian territory, if previous authorization has been obtained.

§ 3°. The results of the investigations, carried out in accordance with the provisions of paragraphs 1° and 2° of this article, shall be attached to the process, with due regard being given to the right to confidentiality.

## **Subsection II The Defense**

Article 41. During the investigation, the parties and the interested governments shall have ample opportunity to defend their interests. If it is requested, within the time limit indicated in the act that initiates the investigation, hearings will be held where opportunity will be given to those who hold opposing views in such a way that opposing interpretations and arguments may be expressed.

§ 1°. The parties or interested governments who have requested the hearing shall provide, along with the request, a list of specific issues that are to be discussed.

§ 2°. The interested parties and governments shall be informed of the hearing, and of the aspects to be discussed, within a minimum of 30 days previous to the meeting.

§ 3°. Attendance shall not be obligatory and absence of any party shall not be used to against their interests.

§ 4°. The interested parties and governments shall indicate their legal representatives who will be present in the hearing, at least five days before it is held, and send in writing, at least 10 days before it is held, the arguments to be presented in the occasion. The interested parties and governments, may, if adequately justified, present additional information orally.

§ 5°. When appropriate, due account shall be given to the need to protect confidentiality.

§ 6°. The fact that hearings are being held shall not impede SECEX from reaching a preliminary or final determination.

Article 42. Whatever decision or determination is made shall be based only on the information and documents that are part of the case and that are available to all interested parties and governments, due account having been given to the need to protect confidential information.

§ 1°. Information provided orally shall only be taken into consideration if, within 10 days, the same is reproduced in writing and placed at the disposal of other interested parties and governments.

§ 2º. The interested parties and governments may request, in writing, to see the information that is relevant to the legal proceedings, which shall be placed at their disposition with the exception of confidential information and the internal Government documents. Opportunity shall be given for the parties to defend their interests, in writing, based on such information.

### **Subsection III Final Procedures Concerning the Conduction of the Investigation**

Article 43. Before preparation of the opinion which will lead to the final determination, SECEX will hold a hearing in which the interested parties and governments will be informed of the essential facts under examination that form the basis of the opinion. The interested parties and governments will have fifteen days, counting from the date of the hearing, to present their views in this regard.

§ 1º. The National Agricultural Confederation (CNA), the National Industrial Confederation (CNI), the National Commercial Confederation (CNC), and the Brazilian Foreign Trade Association (ABE) will be equally informed of the essential facts under examination that forms the basis of the SECEX opinion.

§ 2º. When the time limit determined in the ‘caput’ has expired, the conduction of the process will have been finalized and received later shall not be considered in reaching the final determination.

§ 3º. The provisions contained in paragraphs 3º, 4º, and 5º of Article 41 also apply to this Article.

### **Section IV Provisional Countervailing Measures**

Article 44. Provisional Countervailing Measures may only be applied if:

- I. The investigation has been initiated as per the provisions of Section II of Chapter VI, the act that contains the determination of the initiation was published and the interested parties and governments have been offered adequate opportunity to present their views;
- II. An affirmative preliminary determination has been made that an actionable subsidy exists and that there is injury to the domestic industry as a result of imports of the subsidized product;
- III. The authorities referred to in Article 2º have decided that such measures are necessary to prevent injury during the investigation; and
- IV. At least 60 days have passed since the date of the initiation of the investigation.

§ 1º. The amount of the provisional countervailing measure shall not exceed the amount of the actionable subsidy previously calculated.

§ 2º. Provisional countervailing measures shall be applied in the form of provisional measures guaranteed by cash deposit or bank guarantees.

§ 3º. Interested parties and governments shall be notified of the decision to apply provisional countervailing measures and the act containing such decision shall be published in the ‘Diário Oficial’ (*Official Gazette*).

§ 4°. The Secretariat of the Federal Revenue shall decide the form which the guarantee shall take.

§ 5°. The release from customs of the goods which are the object of provisional countervailing measures shall depend on the presentation of the guarantee.

§ 6°. The validity of the provisional countervailing measures shall be limited to a period which shall not exceed four months.

## Section V Undertakings

Article 45. The proceedings may be suspended without the application of provisional countervailing measures or countervailing measures, if the government of the exporting country agrees to eliminate or reduce the subsidy, or adopts other measures concerning its effects, or if the exporter accepts voluntarily satisfactory undertakings to revise the prices of the exports destined for Brazil, if the authorities referred to in Article 2° become convinced that the referred undertaking eliminates the injurious effect of the subsidy.

§ 1°. The increase in prices in keeping with the undertaking with the exporter shall not exceed that amount necessary to compensate the amount of the actionable subsidy, and may be limited to that necessary to remove the injury caused to the domestic industry.

§ 2°. The government of the exporting countries and the exporters shall only propose or accept undertakings, after SECEX having arrived at an affirmative preliminary determination of the existence of actionable subsidy and of injury, and in the case of an undertaking from the exporters, that they obtain consent of the government of the exporting country.

§ 3°. The government of the exporting country and the exporters are not obliged to propose undertakings, nor will they be forced to accept those offered. These facts shall not harm the consideration of the case nor shall they alter the preliminary determination which has been reached.

§ 4°. The right is granted to SECEX to refuse undertakings, if such acceptance is considered inappropriate.

§ 5°. Where practicable, in case of refusal, the reasons for considering inappropriate the acceptance of the undertaking shall be provided to the governments and they shall be given an opportunity to make comments thereon.

Article 46. Once the undertaking is accepted, the act which contains its legal ratification shall be published in the 'Diário Oficial' (*Official Gazette*), and shall contain, depending on the case, the decision as to continue or to suspend the investigation. Interested parties and governments shall be notified.

Sole paragraph. The investigation of subsidy and injury shall proceed, if the government of the exporting country so desires or the authorities referred to in Article 2° so decide.

Article 47. The government of the exporting country or the exporter with whom the compromise agreement was established, shall provide, periodically, if requested, information relative to compliance with the agreement and permit the verification of the pertinent data.

Sole paragraph. The failure to comply with the terms of this Article shall be considered a violation of the undertaking.

Article 48. In the case of a violation of the undertaking, actions may be taken viewing immediate application, by the authorities referred to in Article 2º, of provisional countervailing measures using the best information available and the investigation that had been suspended shall recommence immediately.

Sole paragraph. The interested parties and governments shall be notified about the termination of the compromise agreement and the application of provisional countervailing measures and the act containing such decision shall be published in the 'Diário Oficial' (*Official Gazette*).

## Section VI Concluding the Investigation

Article 49. Investigations shall be concluded within one year of initiation, except in exceptional circumstances, when the time limit may be up to eighteen months.

Article 50. The petitioner may, at any time, request the closing of the case. If the request is accepted, the investigation shall be terminated. If SECEX decides to continue the investigation, the petitioner shall be informed in writing.

Article 51. The investigation shall be terminated, without the application of countervailing measures, if:

- I. There has not been sufficient evidence of the existence of an actionable subsidy or of injury resulting therefrom;
- II. The amount of the actionable subsidy was *de minimis* as provided in paragraphs 7º to 12 of Article 21;
- III. The volume of imports, actual or potential, of the subsidized product or the injury caused was negligible, as per §§ 3º and 4º of Article 21.

Article 52. The investigation shall be concluded with application of measures, when SECEX completes the pertinent procedures of consultations, arrives at a final determination of the existence of an actionable subsidy, of injury and of a causal link between them.

Sole paragraph. The value of countervailing measures may not exceed the amount of the actionable subsidy, as per the terms of Article 14.

Article 53. In a situation where the investigation is continued after the acceptance of an undertaking:

- I. The undertaking shall automatically lapse and the investigation terminate, if SECEX arrives at a negative determination of actionable subsidization or of injury resulting therefrom, except in cases where such a determination is due in large part to the existence of an undertaking. In such cases the undertaking may be maintained for a reasonable period of time in conformity with the provisions of this Decree;
- II. If the authorities referred to in Article 2º confirm the existence of an actionable subsidy and injury resulting therefrom, based on the SECEX opinion, the investigation shall be closed and the application of definitive measures shall be suspended while the undertaking is in effect, it being understood that the terms under which the undertaking was established, and the provisions of this Decree, are respected.

§ 1º. For the purposes of this Article, the provisions of Article 47 apply.

§ 2°. In case of violation of the undertaking, action may be adopted with a view to the immediate application, by the authorities referred to in Article 2°, of countervailing measures having as a basis the determination of the investigation that was carried out.

§ 3°. The interested parties and governments shall be notified about the lapse of the undertaking and about the countervailing duty applied. The act containing such decision shall be published in the 'Diário Oficial' (*Official Gazette*).

Article 54. The act that contains the determination or the decision to close the investigation, in the cases foreseen in this Section, shall be published in the 'Diário Oficial' (*Official Gazette*). The interested parties and governments shall be notified of the close of the investigation.

Sole paragraph. In the case of a decision to conclude the investigation, with the application of countervailing measures, the act containing such a decision shall indicate the producer or producers of the product in question, with the measures applicable to each one. If the number of producers is especially high, the act shall contain the names of the producing countries involved, with the respective applicable measures.

## Chapter VII THE IMPOSITION AND COLLECTION OF COUNTERVAILING DUTIES

### Section I Imposition

Article 55. For the effects of this Decree, the expression 'countervailing measures' means the amount of money equal to or less than the amount of actionable subsidy determined, calculated as per Article 14 and applied in conformity with this article, with the objective of removing the injury caused by the actionable subsidy.

§ 1. The countervailing measures, provisional or definitive, shall be calculated by means of the application of *ad valorem* or specific duties, fixed or variable, or by a combination of both.

§ 2. The *ad valorem* duties shall be applied to the customs value of the merchandise, on the basis of the cif value, verified in terms of the pertinent legislation.

§ 3. The specific duty shall be fixed in dollars of the United States of America and converted into national currency, in terms of the pertinent legislation.

Article 56. Countervailing measures, applied to imports originating from known exporters or producers that have not been included in the selection treated in Article 20, but who have provided the information requested, may not exceed the weighted average of the subsidy amount established for the selected group of exporters or producers.

§ 1. For purposes provided for in this article, zero amounts or *de minimis* amounts will not be taken into account nor the amounts established in the circumstances to which § 3° of Article 37 refers.

§ 2. The authorities referred to in Article 2 shall apply measures calculated individually to the original imports of any exporter or producer not included in the selection, who has provided the information requested during the investigation, as provided in § 4° of Article 20.

Article 57. For purposes of application of the provisions of item II of Article 24, countervailing measures shall be applicable only to products destined for final consumption in the market that has been considered domestic industry, for purposes of the investigation, in accordance with § 4° of Article 24.

## **Section II Collection**

Article 58. Countervailing measures applied to a product shall be collected, independent of any other tax obligations relative to its importation, in the appropriate amounts in each case, on a non discriminatory basis, on the import of the product from all sources which have been considered to be subsidized and causing injury to the domestic industry, whatever may be its provenance.

§ 1. Measures will not be charged on imports proceeding from or originating in countries that have renounced any subsidies in question, or whose undertakings have been accepted.

§ 2. Customs clearance of goods which are the object of definitive compensatory measures shall depend on their payment.

## **Section III Products subject to Provisional Measures**

Article 59. Except for the cases foreseen in this Section, provisional countervailing measures may only be applied to products which have been dispatched for consumption after the date of publication of the act that contains the decisions foreseen in Articles 44 and 52.

Article 60. In the case of a final negative determination concerning the existence of an actionable subsidy or of injury resulting therefrom, the amount of the provisional countervailing measures, if guaranteed by deposit, shall be refunded, or, in the case of bank guarantee, it shall be annulled.

Article 61. If the final determination is that there is threat of injury or material retardation, without injury having occurred, the amount of the provisional countervailing measures, if guaranteed by deposit, shall be refunded, or in the case of bank guarantee, it shall be annulled, unless it be verified that the subsidized imports, in the absence of provisional countervailing measures, would have led to a determination of injury, in which case the provisions of Articles 62 and 63 will apply.

Article 62. If the final determination is that the actionable subsidy exists and that it is resulting in injury, in the situation of guarantee by deposit:

- I. The excess amount shall be reimbursed when the value of the measures applied by the final decision are less than the value of the provisional measures guaranteed by deposit.
- II. The difference shall not be collected when the value of the measures applied are more than the value of the measures provisionally applied by deposit.
- III. The amount shall be automatically converted into definitive measures when the value applied by the final decision is equal to the value of the measures provisionally determined.

Article 63. If the final determination confirms the existence of the actionable subsidy and injury resulting therefrom, in the situation of a bank guarantee:

- I. The amount corresponding to the guaranteed value shall be immediately collected when the value of the definitive measures is greater than or equal to the value of the measures provisionally determined.
- II. Only the amount equivalent to the value determined by final decision will be collected when this value is less than the value of the measures provisionally determined.

Sole paragraph. The collection of the amounts referred to in the opening paragraph will lead to the consequent extinction of the guarantee. In a situation of breach of contract, the guarantee shall be automatically executed, independently of judicial or extrajudicial notice, in accordance with the pertinent legislation.

Article 64. Definitive countervailing measures may be collected for subsidized imported products that have been dispatched for consumption up to ninety days previous to the date of the application of provisional countervailing measures, whenever it is determined that, with relation to the product in question, that the injury is caused by massive imports, within a relatively short period of time, and will lead to the recurrence of such injury.

Sole paragraph. Measures will not be collected for products which have been dispatched for consumption before the opening date of the investigation.

Article 65. In cases of violation of undertakings, definitive countervailing measures may be charged on imported products dispatched for consumption up to ninety days before the application of provisional countervailing measures, foreseen in Article 48, except for the products which had been dispatched before the violation of the agreement.

## **Chapter VIII**

### **THE DURATION AND REVIEW OF COUNTERVAILING MEASURES AND UNDERTAKINGS**

Article 66. Countervailing measures and undertakings may only remain in force as long as and to the extent necessary to counteract the actionable subsidy which is causing the injury and shall be terminated within a maximum period of five years, after application or after the conclusion of the most recent revision which has considered the actionable subsidy and the resulting injury.

Article 67. The time limit for the action to which the previous Article refers may be extended after revision, by means of petition formulated by the domestic industry or on its behalf, by organs or entities of the Federal Public Administration, or by initiative of SECEX, if it is demonstrated that the withdrawal of the measures would lead to continuation or recurrence of subsidization and injury.

§ 1º. The petition referred to in the opening paragraph shall be presented within a time limit of five months before the end of the application period of measures referred to in Article 66. The same time limit will apply when the initiative is taken by SECEX.

§ 2º. If it is confirmed that there is evidence that would justify a revision, it shall be initiated and will follow the provisions of Section III of Chapter VI and shall be concluded within a period of 12 months counting from the date of initiation. The acts which contain the determination to initiate and the conclude the revision shall be published in the 'Diário Oficial' (*Official Gazette*) and the interested parties and governments shall be notified.

§ 3°. The measures and undertakings shall remain in force pending the outcome of the revision.

Article 68. A revision of part or of all of the elements of decision relative to the application of countervailing measures will be conducted at the request of the interested parties or governments, or of an organ or entity of the Federal Public Administration, or SECEX, as long as a minimum period of one year has elapsed from the date of imposition of definitive countervailing measures and sufficient evidence has been presented that:

- I. The application of measures ceased to be necessary to offset the actionable subsidy;
- II. It is unlikely that the injury will continue or recur if the measures were removed or varied; or
- III. The existing measures are not or have ceased to be sufficient to offset the actionable subsidy causing the injury.

§ 1°. In exceptional cases of substantial change of circumstances, or when in the national interest, revisions may be made at shorter intervals, at the request of the interested parties or governments, or of an organ or entity of the Federal Public Administration, or by SECEX.

§ 2°. If it is confirmed that there is evidence that justifies the revision, it shall be initiated and the act which contains such determination shall be published in the 'Diário Oficial' (*Official Gazette*) and the interested parties and governments shall be notified.

§ 3°. The revision shall be concluded within twelve months counting from its initiation and shall follow the provisions of Section III of Chapter VI.

§ 4°. The measures shall be maintained in force pending the outcome of the revision.

§ 5°. The authorities referred to in Article 2°, based on the results of the revision and in conformity with the evidence collected in the course of the revision, may terminate, maintain, or alter the countervailing measures. If it is found that the measures in force are greater than what is necessary to offset the injury to the domestic industry or are no longer justified, adequate reimbursement shall be determined.

§ 6°. The act which contains the determination to terminate the revision shall be published in the 'Diário Oficial' (*Official Gazette*) and the interested parties and governments shall be notified.

§ 7°. The provisions of this Article apply to the undertakings accepted in conformity with Section V of Chapter VI.

Article 69. When a product is subject to countervailing measures, if requested, an expedited review shall be instituted immediately to in order for individual countervailing measures to be promptly established for any exporters or producers that have not in fact been investigated for reasons other than the refusal to cooperate with the investigation.

Article 70. Countervailing measures may be suspended, on the basis of a technical opinion, for a period of one year, which can be extended for an equal period, if temporary alterations occur in market conditions, as long as the injury does not recur or does not subsist as a result of the suspension and as long as domestic industry has expressed its views.

Sole paragraph. The measures may be reapplied, at any moment, if the suspension is no longer justified.

## Chapter IX PUBLIC NOTICE

Article 71. The acts resulting from the decisions of the authorities referred to in Article 2º, and the determinations of SECEX, shall be published in the 'Diário Oficial' (*Official Gazette*) and shall contain detailed information about the conclusions reached regarding each matter of fact and of law considered pertinent, in keeping with the terms of Article 22 of the Agreement on Subsidies and Countervailing Measures.

Sole paragraph. For purposes of notification, a copy of the acts mentioned in the first paragraph of this Article shall be sent to the government of the country or countries that export the products that have been the object of investigation, and also to other the known interested parties.

## Chapter X FORMALITIES RELATED TO ACTS AND PROCEDURAL TERMS

Article 72. The interested parties and governments shall observe the norms of this Decree and the instructions of SECEX in the elaboration of petitions and documents in general, since documents will not be attached to the process in case of disregard of norms and instructions.

§ 1º. The only instructions that must be observed are those that have been made public before the beginning of the procedural process or have been specified in communications directed to the parties.

§ 2º. The acts and procedural terms shall be written and the hearings and consultations reduced to written terms. The translation to Portuguese, by an official translator, of texts in other languages is mandatory.

§ 3º. The procedural acts are public and the right to consult the minutes and to request certificates about the proceedings is restricted to the parties, to governments and their attorneys, with due consideration being given to the provisions of the sole paragraph of Article 42, which regard to the respect for confidentiality of information and internal documents of the Government.

§ 4º. Requests for certificates related to the proceedings will only be accepted 30 days after the opening of the investigation or from the last request for a certificate by the same party.

## Chapter XI THE DECISION MAKING PROCESS

Article 73. The determinations or decisions, preliminary or final, relative to the investigation, shall be adopted based on the findings of SECEX.

§ 1º. SECEX shall publish, within 20 days from the date of reception of the findings by the Foreign Trade Secretary, an act that contains the determination to (a) open an investigation; (b) extend the time limit of an investigation; (c) terminate a case by request of the petitioner; (d) initiate a revision process of definitive measures, or undertakings; or (e) terminating an investigation without the application of measures.

§ 2º. An act shall be published, within 20 days from reception of the findings by the Ministers of State of Industry, Trade, Tourism, and of Finance, which contains the decision to (a) apply provisional countervailing measures; (b) accept or reject an undertaking; (c) terminate an investigation with the application of measures; (d) suspension of definitive measures; (e) the result of a revision of definitive measures or undertakings.

§ 3°. In exceptional circumstances, notwithstanding evidence of the existence of an actionable subsidy and injury resulting therefrom, the authorities referred to in Article 2° may decide, for reasons of national interest, to suspend the application of measures or not to ratify undertakings, or even, in accordance with the provisions of the sole paragraph of Article 52, to apply measures at a amount from that which was recommended, and, in this case the act shall contain the grounds for their decision.

## TITLE II SPECIAL PROCEDURES

### Chapter I AGRICULTURAL PRODUCTS

Article 4. The provisions of this Chapter apply to agricultural products, included in Annex V, during a period of nine years beginning on 1 January 1995.

Sole paragraph. In the case of developing countries, the period is of 10 years.

Article 75. Non actionable subsidies are those measures of domestic support that meet the criteria established in Annex VI, which may be verified by opening an investigation to determine if they are in complete conformity with that Annex.

Article 76. In order to initiate an investigation of actionable subsidies, it shall be verified if they are in conformity to the reduction commitments, in terms of domestic support and export subsidies, as specified in Part IV of the list of each country and in other documentation annex to the Agreement on Agriculture.

Sole paragraph. In the initiation of investigations to examine actionable subsidies for agricultural products, which fall within the provisions of the caput or the criteria for exemption of reduction commitments, the provisions of Article 13 of the Agreement on Agriculture will be observed.

Article 77. The following are export subsidies subject to the reduction commitments:

- I. The provision by governments or their agencies of direct subsidies, including payments in kind, to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board, contingent on export performance;
- II. The sale or disposal for export by governments or their agencies of non commercial stocks of agricultural products at a price lower than the comparable price charged for the like product to buyers in the domestic market;
- III. Payments on the export of an agricultural product that are financed by virtue of governmental action, whether or not a charge on the public account is involved, including payments that are financed from the proceeds of a levy imposed on the agricultural product concerned or on an agricultural product from which the export product is derived;
- IV. The provision of subsidies to reduce the costs of marketing exports of agricultural products (other than the widely available export promotion and advisory services) including handling, upgrading and other processing costs, and the costs of international transport and freight;

- V. Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipping;
- VI. Subsidies on agricultural products contingent on their incorporation in exported products.

## **Chapter II ON THE SPOT INVESTIGATIONS**

Article 78. Once the investigation is initiated, the authorities of the exporting country shall be informed of the intention to carry out on the spot investigations, as per § 1° of Article 40.

§ 1°. In exceptional circumstances, when there is the intention of including non governmental experts in the investigation team, the authorities of the exporting country and the interested enterprises shall be informed. The non governmental experts will be subject to the sanctions provided for in Article 325 of the Brazilian Penal Code.

§ 2°. Explicit agreement shall be obtained from the enterprises concerned in the exporting country, before the visit is made.

§ 3°. After obtaining the agreement referred to in the previous paragraph, the authorities of the exporting country shall be immediately notified of the names and addresses of the enterprises to be visited, as well as the dates agreed on.

§ 4°. The enterprises involved shall be notified of the visit with sufficient advance notice.

§ 5°. Visits with the purpose of explaining the questionnaire can only take place at the request of the producer or exporter firm, and this may only occur if SECEX notifies the representative of the government in question and there are no objections to the visit.

§ 6°. Visits shall be made after the return of the questionnaire, unless the enterprise agrees otherwise and the government of the exporting country has been previously notified and has not objected.

§ 7°. Before the visit, the general nature of the information requested shall be brought to the attention of the enterprises involved and the answers to the requests for information or questions formulated by the authorities or enterprises of the exporting country, essential for the good result of the on the spot investigation shall, whenever possible, be provided, before the visit takes place.

§ 8°. Requests for supplementary clarification may be made during the visit, based on the information obtained.

## **Chapter III USE OF INFORMATION FROM SECONDARY SOURCES**

Article 79. As soon as the investigation is initiated, and whenever necessary, the information requested of the interested parties and governments shall be specified in detail, as well as the time limits for response and the form in which the information shall be structured in the reply.

§ 1°. The parties and governments shall also be notified that the failure to provide the requested information or the partial submission of information requested, within the time limits established, will allow for determinations to be

made on the basis of available facts and that the results obtained may be less favourable to that party, than they would have been if the party had cooperated.

§ 2°. SECEX may request that part of the reply be provided in computer language.

§ 3°. Whenever a party does not maintain computerized accounting, or the delivery of the replies in such form would represent an additional burden, with unjustified increase in costs and difficulties, this party may be exempt from the obligation to present the replies in the form mentioned in the previous paragraph.

§ 4°. Whenever SECEX does not have specific means to process the information, by having received it in a computer language incompatible with its operational system, the information shall be provided in written form.

§ 5°. In formulating determinations, verifiable information that has been presented within schedule, but which is not, however, in all aspects adequate, may be used.

§ 6°. If SECEX does not accept certain information, it shall communicate immediately to the party the motive for the refusal, so that the party may supply clarifications, within the time limits established, keeping within the limit established for the investigation. If the additional clarifications are not satisfactory, the reasons for refusal shall figure in the acts that contain any determination or decision.

§ 7°. In a situation in which it is proved that the information is false or tendentious, the information shall be rejected and the determinations shall be based on the available facts.

§ 8°. In the formulation of determinations, if secondary sources of information are used, including those provided in the petition, independent sources of information and information from other parties shall be used for comparative purposes.

## **Chapter IV GENERAL PROVISIONS**

Article 80. The provisions of the Agreement on Subsidies and Countervailing Measures relative to prohibited and actionable subsidies, contained in Parts II and III respectively, may be invoked simultaneously with those relative to countervailing measures treated in this Decree.

Sole paragraph. In regard to the effects of a subsidy on the domestic market, only one form of compensation may be applied, or a countervailing measure, if the necessary requisites are met, or a remedy falling within the scope of Articles 4° and 7° of the Agreement on Subsidies and Countervailing Measures.

Article 81. The provisions of the Agreement on Agriculture shall be applied simultaneously with those of this Decree.

Article 82. The time limits foreseen in this present Decree, shall be calculated in calendar days and may be extended for one additional equal period, except for those which already have an extension established.

Article 83. Acts practised contrary with the provisions of this Decree, shall be null under law.

Article 84. The procedures established in this Decree shall not impede the competent authorities for acting expeditiously in relation to any decisions and determinations and shall not hinder customs clearance.

Article 85. For effects of this Decree, the term 'industry' also includes activities related to agriculture.

Article 86. The provisions of this Decree shall be applied to investigations and revisions initiated after 30 December 1994.

Article 87. The Ministers of State of Industry, Trade and Tourism and of Finance shall issue the complementary norms for the execution of this Decree.

Article 88. This Decree shall enter into force on the date of its publication.

## Annex I

### Illustrative list of export subsidies

- (a) The provision by governments of direct subsidies to a firm or to an industry contingent upon export performance.
- (b) Currency retention schemes or any similar practices which involve a bonus on exports.
- (c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.
- (d) The provision by governments or their agencies either directly or indirectly through government mandated schemes, of imported or domestic products or services for the use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available on world markets for their exporters.

The term 'commercially available' means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

- (e) The full or partial exemption or remission or deferral specifically related to exports, of direct taxes, or social welfare charges paid or payable by industrial or commercial enterprises.

'Remission' of taxes includes the refund or rebate of taxes.

Deferral need not amount to an export subsidy when, for example, appropriate interest charges are collected.

The term 'direct taxes' means taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property.

Prices for goods in transactions between exporting enterprises and foreign buyers under their or under the same control should, for tax purposes, be the prices which would be charged between independent enterprises acting at arm's length.

This item does not include measures that avoid double taxation of foreign source income.

- (f) The allowance of special deductions directly related to exports or to export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.
- (g) The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

The term 'indirect taxes' means taxes on sales, excise, turnover, value

added, franchise, stamp, transfer, inventory and equipment taxes, border taxes, and all taxes other than direct taxes, referred to in letter 'e' and import charges, referred to in letter 'I'.

- (h) The exemption, remission or deferral of prior stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior stage cumulative indirect taxes on goods and services used in the production of like products when sold for domestic consumption; provided, however, that prior stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II. The provisions of this item does not apply to value added tax systems and border tax adjustment in lieu thereof; the problem of excessive remission of value added taxes is exclusively covered by item 'g'.

'Prior stage' indirect taxes are those levied on goods or services used directly or indirectly in the making of a product. 'Cumulative' indirect taxes are multi staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production.

- (I) The remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable period of time, not to exceed two years. This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II and the guidelines in the determination of substitution drawback systems as export subsidies contained in Annex III.

'Remission or drawback' includes the full or partial exemption or deferral of import charges.

The term 'import charges' means tariffs, duties, and other fiscal charges not elsewhere enumerated in this Annex that are levied on imports.

- (j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long term operating costs and losses of the programmes.
- (k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit), or the payment

by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantages in the field of export credit terms.

Provided, however, that if a Member of the WTO is a party to an international undertaking on official export credits to which at least twelve original Members to the Agreement on Subsidies and Countervailing Measures are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original Members), or if in practice a Member country applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered a prohibited export subsidy.

- (l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of GATT 1994.

## **Annex II**

### **Guidelines on consumption of inputs in the production process**

- (a) Inputs consumed in the production process are those incorporated physically, energy, fuels and oils used in the production process and catalysts which are consumed in the course of their use to obtain the exported product.
- (b) Indirect tax rebate schemes can allow for exemption, remission, or deferral of prior stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). Similarly, drawback schemes can allow for the remission or drawback of import charges levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).
- (c) The Illustrative List of Export Subsidies in Annex I makes reference, in items 'h' and 'I', to the term 'inputs consumed in the production of the exported product'. Pursuant to item 'h', indirect tax rebate schemes can constitute an export subsidy to the extent that they result in exemption, remission, or deferral of prior stage cumulative indirect taxes in excess of the amount of such taxes actually levied on inputs that are consumed in the production of the exported product. Pursuant to item 'I', drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess to those actually levied on inputs that are consumed in the production of the exported product. Normal allowance for waste will be made in findings regarding consumption of inputs in the production of the exported product. In the case foreseen in item 'I', substitution may be made when appropriate.
- (d) For purposes of subsidy investigations, SECEX will proceed in the following manner when examining the mechanism of rebate:
  - (d.1) Where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys as subsidy by reason of over rebate or excess drawback of indirect taxes or import charges on inputs consumed in the production of the exported product, SECEX will first determine whether the government of the exporting Member has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts. Where such system or procedure is

- determined to be applied, SECEX will then examine the system or procedure to see whether it is reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. SECEX may consider it necessary to realize, in accordance with paragraph 1 of Article 40 of the Decree that regulates the norms of application of countervailing measures, certain practical tests in order to verify information and certifying that the system or procedure is being effectively applied.
- (d.2) When such a system or procedure does not exist, or when it is not reasonable, or when though it exists, it is not being applied or not applied effectively, a further examination by the exporting Member based on the actual inputs involved would need to be carried out in the context of determining whether an excess payment occurred. If SECEX considers it necessary, a further examination will be carried out, in accordance with the previous item.
- (d.3) SECEX shall treat inputs as physically incorporated if such inputs are used in the production process and physically present in the exported product. It is not necessary that the input be present in the final product in the same form in which it entered the production process.
- (d.4) In determining the amount of a specific input that is consumed in the production of the exported product, a ‘normal allowance for waste’ should be taken into account, and such waste should be treated as consumed in the production of the exported product. The term ‘waste’ refers to that portion of the particular of a given input which does not serve an independent function in the production process, is not consumed in the production of the exported product (for reasons such as inefficiencies), and is not recovered, used or sold by the same manufacturer.
- (d.5) On determining whether the claimed allowance for waste is ‘normal’, SECEX will take into account the production process, the average experience of the industry in the exporting country, and other technical factors, as appropriate. SECEX will take into account that an important question is whether the authorities of the exporting country have calculated reasonably the amount of waste, when such an amount is intended to be included in the tax or duty rebate or remission.

### **Annex III**

#### **Guidelines in the determination of substitution drawback systems as export subsidies**

- (a) Drawback systems can allow for the refund or drawback of import charges on inputs which are consumed in the production process of another product and where the export of this latter product contains domestic inputs having the same quality and characteristics as those substituted for the imported ones. Pursuant to item ‘I’ of the Illustrative List of Export Subsidies in Annex I, substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported inputs for which drawback is being claimed.

- (b) For purposes of subsidy investigations, SECEX will proceed in the following manner to examine any substitution drawback system:
- (b.1) Item 'I' of the Illustrative List stipulates that home market inputs may be substituted for imported inputs in the production of a product for export provided such inputs are equal in quantity to, and have the same quality and characteristics as, the imported inputs being substituted. The existence of a verification system or procedure is important because it enables the government of the exporting Member to ensure and demonstrate that the quantity of exports for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is not drawback of import charges in excess of those originally levied on the imported inputs in question.
  - (b.2) Where it is alleged that a substitution drawback conveys a subsidy, SECEX will first proceed to determine whether the government of the exporting Member has in place and applies a system or procedure of verification. Where such a system or procedure is determined to be applied, SECEX will examine the system or procedures of verification to establish if these are reasonable, effective for the purpose intended and based on generally accepted commercial practices of the exporting country. To the extent these procedures are determined to meet this test and are effectively applied, no subsidy shall be presumed to exist. It may be deemed necessary for SECEX to carry out, in accordance with paragraph 1 of Article 40 of the Decree which regulates the application of countervailing measures, certain practical tests to verify information or to certify that the verification procedures are being effectively applied.
  - (b.3) When there are no procedures of verification, or when they are not reasonable, or yet, when the procedures exist and were considered reasonable, but have not been actually applied or with effectively, there may be a subsidy. In such situations it shall be necessary for the exporting country to carry out a further examination based on the actual transactions involved in order to determine if there have been excessive payments. If SECEX deems it necessary, a further examination will be carried out in accordance with the previous item.
  - (b.4) The existence of a substitution drawback provision under which exporters are allowed to select particular import shipments on which drawback is claimed should not of itself be considered to convey a subsidy.
  - (b.5) An excess drawback of import charges in the sense of item 'I' of Annex I will be deemed to exist where governments paid interest on any monies refunded under their drawback schemes, to the extent of the interest actually paid or payable.

#### **Annex IV**

#### **Developing countries members**

Developing countries Members which are referred to in paragraph 12 of Article 21 of the Decree which regulates the norms for the application of countervailing measures, are the following:

- (a) Least developed countries designated as such by the United Nations, that are members of the World Trade Organization.

- (b) Each of the following developing countries which are Members of the WTO shall not be subject to the provisions of this Annex when GNP per capita has reached \$1,000 per annum: Bolivia, Cameroon, Congo, Côte d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka and Zimbabwe.

### Annex V List of agricultural products

01 Products in Chapters 1 to 24 of the Harmonized System (HS), less fish and fish products, plus

02	HS Code	2905.43	(mannitol)
	HS Code	2905.44	(sorbitol)
	HS Heading	33.01	(essential oils)
	HS Headings	35.01 to 35.05	(albuminoidal substances, modified starches, glues)
	HS Code	3809.10	(finishing agents)
	HS Code	3823.60	(sorbitol n.e.p)
	HS Headings	41.01 to 41.03	(hides and skins)
	HS Heading	43.01	(raw fur skins)
	HS Headings	50.01 to 51.03	(raw silk and silk waste)
	HS Headings	51.01 to 51.03	(wool and animal hair)
	HS Headings	52.01 to 52.03	(raw cotton, waste and cotton carded or combed)
	HS Heading	53.01	(raw flax)
	HS Heading	53.02	(raw hemp)

The product description in round brackets are not necessarily exhaustive. The valid descriptions are to be found in the Mercosur Common Nomenclature.

### Annex VI Domestic support: the basis for exemption from the reduction commitments

1. Domestic support measures for which exemption from the reduction commitments shall meet the fundamental requirement that they have no, or at most minimal, trade distorting effects or effects on production. Accordingly, all measures for which exemption is claimed shall conform to the following basic criteria:

- (a) The support in question shall be provided through a publicly funded government programme (including government revenue foregone) not involving transfers from consumers; and
- (b) The support in question shall not have the effect of providing price support to producers.

Besides the basic criteria, the measures shall meet the criteria and the conditions relative to specific governmental policies, as follows:

## 2. General Services

Policies in this category involve expenditures (or revenue foregone) in relation to programmes which provide services or benefits to agriculture or to the rural community. They shall not involve direct payments to producers or processors. Such programmes, which include but are not restricted to the following list, shall meet the general criteria mentioned in item 1 and the conditions relative to specific policies in the following cases:

- (a) Research, including general research, research in connection with environmental programmes, and research programmes relating to particular products;
- (b) Control of pest and disease, including general and product specific pest and disease control measures, such as early warning systems, quarantine and eradication;
- (c) Training services, including both general and specialist training facilities;
- (d) Extension and advisory services, including the provision of means to facilitate the transfer of information and the results of research to producers and consumers;
- (e) Inspection services, including general inspection services and the inspection of particular products, for health, safety, grading or standardization purposes;
- (f) Marketing and promotion services, including market information, advice and promotion relating to particular products but excluding expenditure for unspecified purposes that could be used by sellers to reduce their selling price or confer direct economic benefit to purchasers; and
- (g) Infrastructural services, including: electricity reticulation, roads or other means of transport, market and dock facilities, water supply facilities, dams and drainage schemes, and infrastructural works associated with environmental programmes. In all cases the expenditure shall be directed to the provision or construction of capital works only and will exclude the subsidized provision of on farm facilities other than the reticulation of generally available public utilities. It shall not include subsidies to inputs or operating costs, or preferential user charges.

## 3. Public stockholding for food security purposes

Expenditures (or revenue foregone) in relation to the accumulation and holding of stocks of products which form an integral part of a programme of food security identified in national legislation. This may include governmental aid to private storage of products as part of such programme.

The volume and accumulation of such stocks shall correspond to predetermined targets related solely to food security. The process of stock accumulation and disposal shall be financially transparent. The purchase of food by the government shall be made at current market prices and sales from food security stocks shall be made at no less than the current domestic market price for the product and quality in question.

Governmental stockholding for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria shall be considered to be in conformity with the provisions of this item, including programmes under which stocks of

foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the price of acquisition and the price of external reference is accounted for in the AMS, as determined by Annex 3 of the Agreement on Agriculture.

4. Domestic food aid

Expenditures (or revenue foregone) in relation to the provision of domestic food aid to section of the population in need.

Eligibility to receive food aid shall be subject to clearly defined criteria related to nutritional objectives. Such aid shall be in the form of direct provision of food to those concerned or the provision of means to allow eligible recipients to buy food either at market or at subsidized prices. Food purchases by the government shall be made at current market prices and the financing and administration of the aid shall be transparent.

For purposes of items 3 and 4 of this annex, the provision of foodstuffs at subsidized prices with the objective of meeting food requirements of the rural and urban poor in developing countries on a regular basis at reasonable prices shall be considered in conformity with the provisions of this paragraph.

5. Direct payments to producers

Support provided through direct payments (or revenue foregone, including payments in kind) to producers for which exemption from reduction commitments is claimed shall meet the basic criteria established in item 1, plus specific criteria applying to individual types of direct payment as set out in items 6 through 13. Where exemption from reduction is claimed for any existing or new type of direct payment other than those specified in items 6 through 13, it shall conform to criteria specified in items 'b' to 'e' of item 6, in addition to the general criteria established in item 1.

6. Decoupled income support

- (a) Eligibility for such payments shall be determined by clearly defined criteria such as income, status as a producer or landowner, factor use or the level of production in a defined and fixed base period.
- (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period.
- (c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
- (d) The amount of such payments in any given year shall be related to, or based on, the factors of production employed in any year after the base period.
- (e) No production shall be required in order to receive such payments.

7. Government financial participation in income insurance and income safety net programmes

- (a) Eligibility for such payments shall be determined by an income loss, taking account only income derived from agriculture, which exceeds 30% of average gross income or the equivalent in

net income terms (excluding any payments from the same or similar schemes) in the preceding three year period or a three year average based on the preceding five year period, excluding the highest and lowest entry. Any producer meeting this condition shall be eligible to receive the payments.

- (b) The amount of such payments shall compensate for less than 70% of the producer's income loss in the year the producer becomes eligible to receive the assistance.
- (c) The amount of any such payments shall related solely to income; it shall not relate to the type or volume of production (including livestock units) undertaken by the producer; or to the prices, domestic or international, applying to such production; or to the factors of production employed.
- (d) Where a producer receives in the same year payments described in this item and in item 8 (relief from natural disasters), the total of such payments shall be less than 100% of the total loss of the producer.

8. Payments (made either directly or by way of government financial participation in crop insurance schemes) for relief from natural disasters.

- (a) Eligibility to receive such payments shall arise only following a formal recognition by government authorities that a natural or like disaster (including disease outbreaks, pest infections, nuclear accidents, and war on the territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss which exceeds 30% of the average of production in the preceding three year period or a three year average based on the preceding five year period, excluding the highest and the lowest entry.
- (b) Payments made following a disaster shall be applied only in respect of losses of income, livestock (including payments in connection with the veterinary treatment of animals), land or other production factors due to the natural disaster in question.
- (c) Payments shall compensate for not more that the total cost of replacing such losses, and shall not require or specify the type or quantity of future production.
- (d) Payments made during a disaster shall not exceed the level required to prevent or alleviate further loss as defined in the criteria established in 'b' of this item.
- (e) Where a producer receives in the same year payments described in this item and in the previous item (income insurance and income safety net programmes), the total of such payments shall be less than 100% of the total loss of the producer.

9. Structural adjustment assistance provided through producer retirement programmes

- (a) Eligibility for such payments shall be determined by reference to clearly defined criteria in programmes designed to facilitate the retirement of persons engaged in marketable agricultural production, or their movement to non agricultural activities.
- (b) Payments shall be conditional upon the total and permanent retirement of the recipients from marketable agricultural production.

10. Structural adjustment assistance provided through resource retirement programmes

- (a) Eligibility for such payments shall be determined by reference to clearly defined criteria in programmes designed to remove land or other resources, including livestock, from marketable agricultural production.
- (b) Payments shall be conditional upon the retirement of land from marketable agricultural production for a minimum of three years, and in the case of livestock, on its slaughter or definitive permanent disposal.
- (c) Payments shall not require or specify any alternative use for such land or other resources which involves the production of marketable agricultural products.
- (d) Payments shall not be related to either the type or quantity of production or to the prices, domestic or international, applying to production undertaken using the land or other resources remaining in production.

11. Structural adjustment assistance provided through investment aids

- (a) Eligibility for such payments shall be determined by reference to clearly defined criteria in government programmes designed to assist in the physical or financial restructuring of a producer operations in response to objectively demonstrated structural disadvantages. Eligibility for such programmes may also be based on a clearly defined government programme for the reprivatization of agricultural land.
- (b) The amount of such payments in any given year shall be related to, or based on, the type or volume of production (including livestock units), undertaken by the producer in any year after the base period, except for that provided for in by 'e' below.
- (c) The amount of such payments in any given year shall not be related, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
- (d) Payments shall be given only for the period of time necessary for the realization of the investment in respect of which they are provided.
- (e) The payments shall not mandate or in any way designate the agricultural products to be produced by the recipients except to require them not to produce a particular product.
- (f) The payments shall be limited to the amount required to compensate for the structural disadvantage.

12. Payments under environmental programmes:

- (a) Eligibility for such payments shall be determined as part of a clearly defined government environmental or conservation programme and be dependent on the fulfilment of specific conditions under the government programme, including conditions related to production methods or inputs.
- (b) The amount of payment shall be limited to the extra costs or loss of income involved in complying with the government programme.

13. Payments under regional assistance programmes
- (a) Eligibility for such payments shall be limited to producers in disadvantaged regions. Each such region must be a clearly designated contiguous geographical area with definable economic and administrative identity, considered as disadvantaged on the basis of neutral and objective criteria clearly spelt out in law or regulation and indicating that the region's difficulties arise out of more than temporary circumstances.
  - (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units), undertaken by the producer in any year after the base period other than to reduce that production.
  - (c) The amount of such payments in any given year, shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
  - (d) Payments shall be available only to producers in eligible regions but generally available to all producers within such regions.
  - (e) Where related to production factors, payments shall be made at a digressive rate above a threshold level for the factor concerned.
  - (f) The payments shall be limited to the extra costs or loss of income involved in undertaking agricultural production in the prescribed area.

## Appendix III

# Decree No. 1.488 of 11 May 1995 – Regulates the administrative procedures regarding the imposition of safeguard measures

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The President of the Republic, by virtue of the powers vested in him by Article 84, Sections IV and VI, of the Constitution and taking into consideration the provisions of the Agreement on Safeguards, approved by Legislative Decree No. 30, dated 15 December 1994, and promulgated by Decree No. 1.355, dated 30 December 1944, and the General Agreement on Tariffs and Trade – GATT, adopted by Law No. 313, dated 30 July 1948,

DECREES:

### Chapter I CONDITIONS FOR APPLICATION

Art. 1. Safeguard measures may be applied to a product if an investigation shows, in accordance with the provisions of this Regulation, that such product is being imported in such increased quantities, absolute or relative to national production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive goods.

Art. 2. It is the competence of the Minister of Industry, Commerce and Tourism and of the Minister of Finance to apply, by joint action, the safeguard measures that are governed by this Regulation.

2.1 The application of safeguard measures will be preceded by an investigation conducted by the Foreign Trade Secretariat – SECEX, of the Ministry of Industry, Commerce and Tourism.

2.2 Decisions regarding the application, suspension or modification of the time periods for application of the safeguard measures will be made based on the report by SECEX, after having heard the Ministry of External Relations and, whenever the case, the Ministries whose area of competence the decisions regard, which must be published in the Official Diary.

Art. 3. The request for the application of a safeguard measure may be presented by:

- (I) SECEX;
- (ii) Other interested organs and agencies of the Federal Government;
- (iii) Companies or associations which are representative of companies that produce the product which is the object of the request.

3.1 Requests for the application of safeguard measures must be submitted in writing, in accordance with a form prepared by SECEX, and contain

sufficient elements of evidence which demonstrate the increase in imports, the serious injury or the threat of serious injury that they have caused and the causal link between both circumstances.

3.2 The decision regarding the initiation of the investigation, which will deliberate on the application of safeguard measures, will be the object of a SECEX circular letter, published in the Official Diary, it being the task of the Ministry of External Relations to transmit the pertinent information to the Committee on Safeguards of the World Trade Organization – WTO.

3.3 Interested parties will be heard at a hearing within 30 days, where they will have the opportunity to present elements of evidence and their views on the allegations made by the other interested parties. Requests for hearings are to be submitted in writing to SECEX.

3.4 Adequate opportunity will be granted for prior consultation with any Government that has a substantial interest as an exporting country of the product in question, with a view to examine the information supplied by the petitioner, to exchange opinions on the measure and to seek an understanding on ways to achieve the objective of maintaining the equivalent level of rights and obligations under the terms of GATT 1994.

3.5 The determination of the authorities which are cited in the opening paragraph of Article 2 will be the subject of an interministerial directive, which will contain the decisions of fact and of law, with a detailed analysis of the case and a demonstration of the relevance of the factors that have been examined.

3.6 All confidential information submitted by the involved parties in a safeguard investigation shall, by means of prior justification, be classified as such by SECEX and shall not be made public without the express permission of the party which submitted it.

3.7 SECEX may invite the parties that have submitted confidential information to present a non-confidential summary of the same, and should it be indicated that the information cannot be summarized, the reasons for this impossibility should be provided.

3.8 Should SECEX decide that a request for confidentiality is not warranted, and if the party that submitted the information is unwilling to make it public, nor authorizes its public disclosure in whole or in part, SECEX reserves the right not to take it into consideration, unless it has been demonstrated to its satisfaction and from appropriate sources that the information is correct.

## **Chapter II**

### **PROVISIONAL SAFEGUARD MEASURES**

Art. 4. A provisional safeguard measure may be applied under critical circumstances in cases where delay could cause damage which would be difficult to repair, pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury to domestic industry. Consultations with any Government involved must be initiated immediately after such application.

4.1 The provisional safeguard measure will have a maximum duration of 200 days, and may be suspended by interministerial decision prior to the final date established.

4.2 When the adoption of a definitive safeguard measure is decided upon, the period of its provisional application will be counted as part of the total time of the duration of the measure.

4.3 Provisional safeguard measures will be charged independently of any obligation of fiscal nature, through the application of an *ad valorem* duty, of a specific duty or by a combination of both and collected as compensatory receipts, in accordance with the provision of Article 3, sole paragraph, of Law No. 4.320, dated 17 March 1964.

4.4 The amount corresponding to the provisional safeguard measure may be collected or remain on deposit as a guarantee. The eventual compensation will be made in cash, preserving the real value of the deposits made.

4.5 Immediate refund will always be made if the investigation determines that a definitive safeguard measure will not be applied.

### **Chapter III NON-SELECTIVITY**

Art. 5. Provisional safeguard measures will be applied to the imported product independently of its sources, except in cases provided for in the transitory provisions applicable to textile products (Chapter XI).

### **Chapter IV SERIOUS INJURY AND THREAT OF SERIOUS INJURY**

Art. 6. For the purposes of the present Regulation, it is understood as:

- (I) ‘serious injury’: the significant overall impairment in the position of a domestic industry;
- (ii) ‘threat of serious injury’: the serious injury that is clearly imminent, based on facts and not merely on allegation, conjecture or remote possibility;
- (iii) ‘domestic industry’: the producers as a whole of the like or directly competitive products, operating in the Brazilian territory, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total national production of such products.

### **Chapter V THE INVESTIGATION**

Art. 7. The investigation to determine serious injury or threat thereof as a result of increased imports of a certain product shall take into consideration all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry being affected, particularly the following:

- (I) The amount and rate of the increase in imports of the product concerned in absolute and relative terms;
- (ii) The share of the domestic market taken by increased imports;
- (iii) The price of the imports, especially in order to determine if there has been a significant underpricing in relation to the price of the similar domestic product;
- (iv) The consequent impact on the domestic industry of the like or directly competitive products, evidenced by changes in economic factors such as: production, capacity utilization, stock, sales, market share, prices (decrease in prices or lack of increase in prices, which could have occurred in the absence of imports), profits and losses, return on invested capital, cash flow and employment;

- (v) Other factors that, although not related to the evolution of imports, have a causal relationship with the injury or the threat of injury to the domestic industry in question.

7.1 Determination of serious injury or the threat of serious injury shall be based on objective evidence, that demonstrates the existence of a causal link between the increased imports of the product concerned and the alleged serious injury or threat of serious injury.

7.2 When factors other than increased imports are causing threat of injury or serious injury to the domestic industry in question at the same time, such serious injury shall not be attributed to increased imports.

7.3 When there is an alleged threat of serious injury, SECEX shall examine whether it is clearly predictable that the case may become one of serious injury, taking into account factors such as the growth rate of exports to Brazil and the export capacity of the country of production or of origin, either existent or potential, and the probability that the resulting exports of that capacity will be destined to the Brazilian market.

## Chapter VI THE APPLICATION OF DEFINITIVE SAFEGUARD MEASURES

Art. 8. Safeguard measures will be applied only to the extent necessary to prevent the threat of injury or to remedy the serious injury and facilitate adjustment. Such measures may be adopted under the form of:

- (I) *Ad valorem* duties, application of a specific duty, or a combination of both;
- (ii) Quantitative restrictions.

8.1 In cases of quantitative restrictions, such measures shall not reduce the volume of imports below the level of a recent period, which shall be the average of the imports of the last three representative years for which statistical data is available, unless clear justification is given that a different level is necessary to prevent the threat of serious injury or to remedy the serious injury.

8.2 In cases where quotas are used, the Brazilian Government may seek agreements with the Governments of the countries directly interested in supplying the product, regarding quota distribution among them.

8.3 Should an agreement not be feasible, a quota shall be allocated for each country having a substantial interest, based on the relative share of each country, in terms of the value or the quantity of the imports of the product, taking into consideration a representative prior period and due account being taken of any special factors which may be affecting trade of this product.

8.4 Other criteria may be adopted for the allocation of quotas, through consultation with the Governments of the interested countries, made under the auspices of the Committee on Safeguards of the WTO, if the Committee finds that clear demonstrations is provided that the imports from certain countries have increased in greater proportion than the total increase of imports of the product concerned, in the representative period of time, and that the conditions for application of these criteria are equitable to all suppliers of the product concerned. Measures of this nature may be applied only in cases of determination of serious injury and will have a maximum duration limited to the four-year period established in paragraph 1 of Article 9.

## Chapter VII DURATION

Art. 9. Safeguard measures shall be applied only during the period necessary to prevent or to remedy the serious injury and to facilitate adjustment.

9.1 Safeguard measures shall not be applied for a period exceeding four years, unless an extension in terms of paragraph 2 occurs.

9.2 The period for application of the safeguard measures may be extended if the authorities referred to in the opening paragraph of Article 2 decide, in accordance with the provisions of this Regulation, and based on a determination by SECEX, that such application continues to be necessary to prevent or remedy the serious injury, and that there is evidence that the industry is undergoing adjustment, in the terms of the commitment signed with the Government, with due observance of the provisions of the WTO regarding consultations and notifications.

9.3 The total duration of the safeguard measure, including the initial application period and the entire extent of the same, shall not exceed 10 years, as provided for in paragraph 2 of Article 9 of the Agreement on Safeguards.

9.4 Safeguard measures which application period is over one year shall be progressively liberalized, at regular intervals during the period of application.

9.5 If the duration of the safeguard measure exceeds three years, SECEX, at the latest by mid-term of the application period, shall examine the concrete effects which have resulted from the safeguard measure and, if appropriate, shall prepare a demonstrative finding proposing to the authorities referred to in the opening paragraph of Article 2 the revocation of the measure or the acceleration of the liberalization process.

9.6 Measures extended shall not be more restrictive than those which were in effect at the end of the initial period and shall continue to be liberalized.

9.7 In exceptional cases, to be determined by the authorities referred to in the opening paragraph of Article 2, based on a finding by SECEX, the liberalization process may be initiated after the second year.

9.8 No safeguard measure shall be applied again to the same product, before the at least 2 years have elapsed from the end of the duration of a previous safeguard measure.

9.9 If the safeguard measure has been applied for a period of more than 4 years, the prohibition referred to in the preceding paragraph is applied to half of the period of its duration.

9.10 Notwithstanding the provisions of the preceding paragraphs, safeguard measures may again be applied to imports of the same product for a maximum period of 180 days, if:

- (a) At least 1 year has elapsed since the date of application of the safeguard measure on the import of that product;
- (b) Such a measure has not been applied on the same product more than twice within the 5 years immediately preceding the date of introduction of the safeguard measure.

## Chapter VIII MONITORING AND SUSPENSION OF THE MEASURE

Art. 10. SECEX will monitor the situation of the injured industry during the period of application of the safeguard measure, and it may propose to the

authorities referred to in the opening paragraph of Article 2, based on a founded determination, the suspension of the measure as long as it is established that the efforts to bring about the desired adjustment and changes in the circumstances which originally gave rise to the application of the measure are insufficient or inadequate.

### **Chapter IX**

#### **LEVEL OF CONCESSIONS AND OTHER OBLIGATIONS UNDER GATT 1994**

Art. 11. When applying safeguard measures or extending the period of their duration, the Brazilian Government shall endeavour to maintain the equilibrium of its tariff concessions and other obligations under GATT 1994.

11.1 For the purposes of this article, agreements may be made regarding any adequate means of trade compensation for the adverse effects of the safeguard measure on trade.

11.2 In taking the decision to introduce a safeguard measure, the Brazilian Government shall also consider the fact that, in cases in which there is no agreement concerning adequate compensation, the interested Governments may, under the terms of the Agreement on Safeguards, suspend substantially equivalent concessions under GATT 1994, as long as such suspension is not disapproved by the WTO Council for Trade in Goods.

11.3 The right to suspend equivalent concessions shall not be exercised during the first 3 years that the safeguard measure is in effect, provided that it has been adopted as the result of an absolute increase in imports.

### **Chapter X**

#### **DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES**

Art. 12. Safeguard measures shall not be applied to a product originating in a developing country:

- (I) When its share of the imports of the product concerned does not exceed 3%; and
- (ii) When developing countries with individual shares that are less than 3% of the imports do not account, collectively, a total of more than 9% of the imports of the product concerned.

### **Chapter XI**

#### **TRANSITORY PROVISIONS RELATING TO TEXTILE PRODUCTS**

Art. 13. During the transition period for integration of the textile and clothing sector established by the Agreement on Textiles and Clothing, 'transitional safeguards' may be applied to products that have not been integrated by Brazil into GATT – 1994 and for which the Brazilian Government has retained the rights to have use such measures.

13.1 Transitional safeguard may be taken under the present provisions when, by determination of the authorities mentioned in the opening paragraph of Article 2, and based on a finding by SECEX, it is demonstrated that a particular product is being imported in such increased quantities as to cause serious damage, or actual threat thereof, to the domestic industry producing like and/or directly competitive products.

13.2 It is the responsibility of SECEX to demonstrate that the serious damage or actual threat thereof are caused by the such increase in the total imports of the product and not by such other factors as technological changes or changes in consumer preference.

13.3 In issuing its finding with a determination of serious damage or the actual threat of serious damage, SECEX shall examine the effects of those imports on the particular domestic industry, as reflected in changes in such relevant economic variables such as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment levels, domestic prices, profits and investments; none of which, either alone or combined with other factors can necessarily give decisive guidance.

13.4 Any measure invoked pursuant to the provisions of this article shall be applied on a country by country basis.

13.5 The determination of the country or countries of origin to which the serious damage or actual threat thereof are attributed shall be made on the basis of a sharp and substantial increase, actual or imminent, in the imports from these countries considered individually, and on the basis of the level of imports as compared with imports from other sources, market share, and import and domestic prices at a comparable stage of commercial transaction; none of these factors, either alone or combined, can necessarily give decisive guidance.

13.6 The imminent increase shall be measurable and its occurrence shall not be determined to exist on the basis of allegation, conjecture or mere possibility, resulting, among other factors, from the existence of production capacity on the part of the exporting members.

13.7 A transitional safeguard shall not be applied to exports of any country whose exports of the particular product are already subject to restraint under other provisions of the Agreement on Textiles and Clothing.

13.8 The period of validity for the entire determination of the serious damage or of the actual threat of serious damage for the purposes of invoking safeguard measures shall not exceed 90 days from the date of the initial notification.

13.9 In the application of the transitional safeguard, particular account shall be taken of the interests of exporting countries in the following terms:

- (a) Least-developed countries, Members of the WTO, shall be accorded treatment significantly more favourable than that provided to other groups of Members referred to in this paragraph, preferably in all its elements but, at least, in overall terms;
- (b) When establishing the economic terms provided for in this article, differential and more favourable treatment shall be accorded to WTO Members whose total volume of exports of textiles and clothing is small, in comparison with the total volume of exports of other Members, and who account for only a small percentage of total imports of that product and, with respect to such suppliers, due account will be taken of the future possibilities for the development of their trade and the need to allow commercial quantities of imports from them;
- (c) With respect to wool products from developing countries whose economies and textiles and clothing trade consist almost exclusively of those products and whose volume of textile and clothing trade in the domestic market is comparatively small,

special consideration shall be given to the export needs of such countries when considering quotas levels, growth rates and flexibility.

- (d) More favourable treatment shall be accorded to re-imports of textile and clothing products that have been exported to another country for processing and subsequent re-export to Brazil, and subject to satisfactory control and certification procedures, when these products have been re-imported by a country for which this type of trade represents a significant proportion of its total exports of textiles and clothing.

13.10 When proposing the adoption of a transitional safeguard, the Ministry of External Relations shall seek consultation with the Government of the country or countries which would be affected by such a measure.

13.11 The request for consultation shall be accompanied by specific and relevant factual information, as up-to-date as possible, particularly in regard to:

- (a) The factors referred to in paragraph 3 on which the determination of serious injury or the actual threat of serious injury is based;
- (b) The factors referred to in paragraph 5, on the basis of which the Brazilian Government proposes to invoke the measure with respect to the country or countries concerned.

13.12 In respect of requests for consultation, the information shall be related as closely as possible to the identifiable segments of production and to the reference period set out in paragraph 16.

13.13 The Brazilian Government shall also indicate the specific level at which imports of the product in question from the country or countries concerned are proposed to be restrained; such level shall not be lower to that referred to in paragraph 16.

13.14 At the same time, the Ministry of External Relations shall communicate to the Chairman of the Textiles Monitoring Body – TMB the request for consultations, including all the relevant factual data outlined in paragraphs 3 and 5, together with the proposed restraint level.

13.15 The country or countries concerned shall respond to the request promptly and consultations shall be held without delay and will normally be concluded within a period of 60 days from the date on which the request was received.

13.16 If, in the consultations, there is mutual understanding that the situation calls for restraint on the exports of the particular product from the country or countries concerned, such a restraint shall be fixed at a level not lower than the actual level of exports or imports from the country concerned during the 12-month period terminating 2 months preceding to the month in which the request for consultation was made.

13.17 Details of the agreed restraint measure shall be communicated to the TMB within 60 days from the date of the conclusion of the agreement. The TMB shall determine whether the agreement is justified in accordance with provisions of the Agreement on Textiles and Clothing.

13.18 If, after the expiry of the period of 60 days from the date on which the request for consultations was received, there has been no agreement reached between the countries involved, the Brazilian Government may apply the

restraint by date of import or date of export, in accordance with the provisions of this Regulation, within 30 days following the period of 60 days for consultations, and at the same time refer the matter to the TMB.

13.19 Any of the involved countries, according to the provisions of Agreement on Textiles and Clothing, may refer the matter to the TMB before the expiry of the period of 60 days. The TMB shall make recommendations to the countries concerned within 30 days.

13.20 In highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair, the action provided for in paragraph 18 may be taken provisionally on the condition that the request for consultations and the notification to the TMB shall be effected within no more than 5 working days after taking the action.

- (a) If no agreement is reached during the consultations, the TMB shall be notified at the conclusion of consultations within a maximum period of 60 days from the date of the implementation of the action.
- (b) The TMB, in accordance with the provisions of the Agreement on Textiles and Clothing, shall promptly conduct an examination of the matter and make recommendations to the countries concerned within 30 days.
- (c) Should an agreement be reached during the consultations, the Ministry of External Relations shall notify the TMB of the conclusion of the consultations within a period of 90 days from the date of the application of the measure.

13.21 The measures invoked pursuant to these provisions may remain in effect for a maximum period of three years without extension, or until the product is integrated into GATT 1994, whichever comes first.

13.22 Should the restraint measure remain in force for a period of more than 1 year, the restraint level for the subsequent years shall be the level specified for the first year increased each year by a growth rate of not less than 6%, unless some other coefficient is justified before the TMB.

13.23 The restraint level for the product in question may be exceeded in one or the other of any of the 2 subsequent years, by carry forward of 5% or carryover of 10%, or by both.

13.24 No quantitative limits shall be imposed on the combined use of carryover, carry forward and the provision in the following paragraph.

13.25 When the Brazilian Government, based on these provisions, places under restraint more than one product coming from another country, the agreed level of restraint, pursuant to these provisions, may be exceeded by 7% for each of these products, provided that the total exports subject to restraint do not exceed the total of the levels established for all of the restrained products, on the basis of agreed common units. When the periods of application of the restraints on these products do not coincide, this provision shall be applied to any overlapping period on a *pro rata* basis.

13.26 When the authorities mentioned in the opening paragraph of Article 2, based on a finding from SECEX, decide to apply a restraint in accordance with these provisions to a product for which these are not applied due to Article 2 of the Agreement on Textiles and Clothing, appropriate measures shall be adopted that:

- (a) Take full account of factors such as established tariff classification and quantitative units based on normal

commercial practices in export and import operations, both as regards the composition of fibres composition and in terms of competing for the same segment of its domestic market;

(b) Avoid over-categorization.

13.27 For the purposes of this Regulation, the term 'industry' also includes the activities related to agriculture.

13.28 The authorities referred to in the opening paragraph of Article 2 shall give the necessary instructions for the compliance with the provisions of this Decree.

13.29 These transitory provisions regarding textile products shall remain in effect until the first day of the 121st month that the WTO Agreement is in effect, on which date the textiles and clothing sector shall be fully integrated into GATT 1994.

Art. 14. This Decree takes effect on the date of its publication.

## Appendix IV

# Overview of anti-dumping investigations (1998 – 2007)

No.	Product	NCM	Country	Initiation	Preliminary determination	Termination	Situation
1	Bicycle chain	7315.11.00	China	1 June 1999	-	19 April 1989	Imposition of duties
2			India				
3			USSR				
4			Czechoslovakia				
5	Portland cement (white cement)	2523.21.00	Argentina	10 October 1990	-	17 July 1991	Price undertaking
6			Uruguay				
7	Anhydrous aluminium chloride	2827.32.00	Canada	12 August 1991	23 August 1991	23 January 1992	Imposition of duties
8			United States				
9	Jute bag	6305.10.00	Bangladesh	11 November 1991	18 May 1992	2 October 1992	Imposition of duties (R)
10			India				
11	High carbon iron-chromium	7202.49.00	South Africa	28 November 1991	-	2 September 1994	Without the imposition of duties
12	Low carbon iron-chromium	7102.41.00	South Africa	28 November 1991	1 October 1992	19 February 1993	Imposition of duties (R)
13	Magnesium metallic	8104.11.00	Canada	12 December 1991	-	22 December 1993	Without the imposition of duties
14			United States				
15			Norway				
16	Barium carbonate	2836.60.00	China	16 January 1992	-	8 July 1992	Imposition of duties (R)
17	Polyvinyl chloride – PVC	3904.10.10	United States	7 April 1992	28 April 1992	30 December 1992	Imposition of duties (R)
18			Mexico				
19	Mono-ammonium – phosphate	3105.40.00	Russian Federation	26 June 1992	6 August 1992	18 February 1993	Imposition of duties, revoked in 1 November 1996 (R)
20	Tube for vacuum blood collection	3822.00.00	United States	23 November 1992	-	19 October 1993	Imposition of duties (R)
21	Low carbon iron-chromium	7202.49.00	Kazakhstan	11 December 1992	17 September 1993	28 April 1994	Imposition of duties (R)
22			Russian Federation				
23			Ukraine				
24	Diethalonamine	2922.12.99	United States	3 March 1993	-	9 September 1993	Imposition of duties
25	Triethalonamine	2911.13.10	United States	3 March 1993	-	9 September 1993	Imposition of duties

No.	Product	NCM	Country	Initiation	Preliminary determination	Termination	Situation
26	Monoethyleneglycol butyl-ether	2909.49.00	United States	18 March 1993	–	25 October 1994	Without the imposition of duties
27	Monoethyleneglycol	2905.31.00	United States	18 March 1993	–	25 October 1994	Without the imposition of duties
28	Sulphonic acid	3402.11.99 3824.90.00	France	7 June 1993	25 August 1993	1 September 1994	Without the imposition of duties
29	Polyether polyol	3907.20.39	United States	27 July 1993	–	30 May 1994	Without the imposition of duties
30	Mono-ammonium – phosphate	3105.40.00	Belarus Cyprus Finland Georgia Ukraine Uzbekistan	27 August 1993	–	6 September 1994	Without the imposition of duties
36	Aluminium powder and scale	7603.10.00	United States Malaysia Russian Federation	7 October 1993	–	26 December 1994	Without the imposition of duties
37							
38							
39	Vinyl acetate	2915.32.90	United States Mexico	1 November 1993	–	26 December 1994	Without the imposition of duties
40							
41	Coconut milk and rasped coconut	0801.10.10	Cote d' Ivoire Philippines Indonesia Malaysia Sri Lanka	8 November 1993	26 November 1993	13 September 1995	Without the imposition of duties
42							
43							
44							
45							
46	Coconut milk	2009.80.00	Sri Lanka	8 November 1993	26 November 1993	13 September 1995	Without the imposition of duties
47	Cotton yarn	5205	Pakistan	10 November 1993	–	26 December 1994	Without the imposition of duties
48	Peach preserves	2008.70.10 2008.70.90	Greece	10 November 1993	15 December 1993	9 June 1994	Without the imposition of duties
49	Artificial and synthetic textiles	5407 to 5408 5512 to 5516	Korea, Republic of	10 November 1993	28 January 1994	26 December 1994	Without the imposition of duties
50	Saw chain	8202.40.00	United States	12 November 1993	–	26 December 1994	Without the imposition of duties

No.	Product	NCM	Country	Initiation	Preliminary determination	Termination	Situation
51	Common pencil	9609.10.00	China	12 November 1993	–	26 December 1994	Without the imposition of duties
52	Desk fan	8414.51.10	China	13 January 1994	December 2 1994	21 August 1995	Imposition of duties (R)
53	Free simple bicycle wheel	8714.99.00	India	19 January 1994	14 November 1994	21 August 1995	Imposition of duties (R)
54	Artificial guts	3917.10.29	Spain	20 July 1994	–	1 June 1995	Without the imposition of duties
55			United States				
56	Padlock	8301.10.00	China	6 September 1994	21 August 1995	29 December 1995	Imposition of duties (R)
57	Fresh garlic	0703.20.10 0703.20.90	China	8 December 1994	30 August 1995	18 November 1996	Imposition of duties (R)
58	Magnesium metallic (rough form)	8104.11.00	Kazakhstan	16 December 1994	–	20 June 1996	Without the imposition of duties
59			United States				
60			Russian Federation				
61			Ukraine				
62	Mono-ammonium – phosphate	3105.40.00	Russian Federation	26 December 1994	–	18 January 1996	Revocation of duties (R)
63	Low carbon iron-chromium	7202.49.00	Federal Republic of Yugoslavia	20 January, 1995	–	30 April 1996	Imposition of duties
64			Bosnia and Herzegovina				
65			Croatia				
66			Slovenia				
67			the former Yugoslav Republic of Macedonia				
68	Graphite and colour pencil	9609.10.00	China	21 February 1996	26 August 1996	26 February 1997	Imposition of duties (R)
69	Common cement	2523.29.10	Cuba	5 July 1996	–	9 September 1997	Without the imposition of duties
70			Venezuela (Bolivarian Republic of)				
71	Bicycle tire	4011.50.00	China	5 July 1996	–	2 January 1998	Imposition of duties (R)
72			India				
73			Chinese Taipei				
74			Thailand				
75			Hong Kong	5 July 1996	–	2 January 1998	Without the imposition of duties
76	Sodium triphosphate	3835.31.00	United Kingdom	5 July 1996	–	5 August 1997	Imposition of duties (R)

No.	Product	NCM	Country	Initiation	Preliminary determination	Termination	Situation
77	Synthetic rubber (SBR)	4002.19.19	United States	23 September 1996	–	26 March 1997	Without the imposition of duties
78	Synthetic rubber (SBR)	4002.20.90	United States	23 September 1996	–	26 March 1997	Without the imposition of duties
79	Magnesium phosphate insecticide	3808.10.10 3808.10.29	Chile	23 September 1996	–	24 September 1997	Without the imposition of duties
80 81 82	Light barilla (light sodium carbonate)	2036.20.10	Bulgaria Poland Romania	23 September 1996	–	16 June 1998	Without the imposition of duties
83 84	Dense barilla (dense sodium carbonate)	2036.20.90	Spain United States	23 September 1996	–	30 June 1998	Without the imposition of duties
85	Mushroom	0711.90.00 2003.10.00	China	7 February, 1997	–	2 January 1998	Imposition of duties (R)
86	Forged steel sphere	7326.11.00 7326.90.00	Chile	7 April 1997	–	2 June 1998	Imposition of duties
87	Hydrometer for houses	9028.20.10	China	5 June 1997	–	2 June 1998	Without the imposition of duties
88	Ferrite magnetic ring	8505.19.10	China	5 June 1997	–	2 June 1998	Imposition of duties (R)
89	Barium carbonate (review)	2836.60.00	China	3 July 1997	–	6 July 1998	Imposition of duties (R)
90 91 92	High carbon iron-chromium	7202.41.00	South Africa Kazakhstan Russian Federation	9 September 1997	–	21 October 1998	Imposition of duties (R)
93 94	Tube for vacuum blood collection	3822.00.00 3926.90.40 7017.90.00	United States United Kingdom	15 September 1997 15 September 1997	–	16 October 1998 16 December 1998	Imposition of duties Without the imposition of duties
95 96	Jute bag (review)	6305.10.00	Bangladesh India	24 September 1997	–	24 September 1998	Imposition of duties (R)
97	Free simple bicycle wheel (review)	8714.99.00	India	11 December 1997	–	10 March 1998	Revocation of the duties
98 99	Polyvinyl chloride – PVC (review)	3904.10.10	United States Mexico	15 December 1997	–	22 December 1998	Imposition of duties (R)
100	Steel helicoidal drill	8207.50.11 8207.50.19 8207.50.90	China	9 January 1998	–	24 December 1998	Imposition of duties (R)

No.	Product	NCM	Country	Initiation	Preliminary determination	Termination	Situation
101	Mechanical petroleum bombing unit	8413.81.00 8413.82.00	Romania	12 February 1998	–	24 December 1998	Imposition of duties (R)
102 103	Polycarbonate resin	3907.40.00	Germany United States	12 February 1998	–	26 July 1999	Imposition of duties (R)
104	High carbon iron-chromium (review)	7202.41.00	South Africa	12 February 1998	–	21 October 1998	Imposition of duties (R)
105	Thermic bottle	9617.00.10	China	4 June 1998	31 December 1998	21 July 1999	Imposition of duties (R)
106	Glass ampoules	7012.10.00	China	4 June 1998	31 December 1998	21 July 1999	Imposition of duties
107	Glass tube for vacuum blood collection (review)	3822.00.00 3926.90.40 7017.90.00	United States	17 June 1998	–	6 October 1999	Without the imposition of duties
108	Plastic tube for vacuum blood collection	3822.00.00 3926.90.40 7017.90.00	United States	17 June 1998	–	6 October 1999	Without the imposition of duties
109	Welded stainless steel tube	7304.10.90	Romania	19 October 1998	–	20 October 1999	Imposition of duties (R)
110 111	Hydroxyethylcellulose	3912.39.10	Netherlands United States	19 October 1998	–	19 April 2000	Imposition of duties
112 113 114	Hot-laminated stainless steel	7219.13.00	South Africa Germany Japan	30 November 1998	23 November 1999	26 May 2000	Without the imposition of duties
115	Cold-laminated stainless steel	7219.33.00 7219.34.00	Italy	30 November 1998	–	26 May 2000	Without the imposition of duties
116		7219.35.00 7220.20.90	Germany	30 November 1998	23 December 1999	26 May 2000	Without the imposition of duties
117 118 119 120 121			South Africa Spain France Japan Mexico	30 November 1998	23 December 1999	26 May 2000	Imposition of duties (R)
122 123 124	Low carbon iron-chromium (review)	7202.49.00	Kazakhstan Russian Federation Ukraine	26 April 1999	–	25 May 2000	Without the imposition of duties
125 126	Portland cement	2523.29.10 2523.29.90	Mexico Venezuela (Bolivarian Republic of)	13 July 1999	–	27 July 2000	Imposition of duties (R)

No.	Product	NCM	Country	Initiation	Preliminary determination	Termination	Situation
127	Drug containing insulin	3004.31.00	Denmark	10 August 1999	5 December 2000	6 March 2001	Imposition of duties, suspended 7 March 2005
128			United States	10 August 1999	5 December 2000	6 March 2001	Price undertaking, suspended 7 March 2005
129			France	25 August 1999	12 December 2000	23 February 2001	Price undertaking (R)
130	Milk	0402.10.10	Argentina	25 August 1999	12 December 2000	23 February 2001	Without the imposition of duties
131			Australia	25 August 1999	12 December 2000	23 February 2001	Imposition of duties (R)
132		0402.21.10	New Zealand	25 August 1999	12 December 2000	23 February 2001	Imposition of duties and price undertaking (R)
133			European Union (Denmark)	25 August 1999	12 December 2000	23 February 2001	Price undertaking (R)
134		0402.29.10	Uruguay	25 August 1999	12 December 2000	4 April 2001	Imposition of duties (R)
135	Methyl methacrylate	2916.14.10	Germany	14 September 1999	-	22 March 2001	Imposition of duties (R)
136			Spain	14 September 1999	-	22 March 2001	Without the imposition of duties
137			France	14 September 1999	-	22 March 2001	Imposition of duties
138			United Kingdom	14 September 1999	-	22 March 2001	Price undertaking (R)
139			United States	14 September 1999	-	22 March 2001	Without the imposition of duties
140	Nylon yarn	5402.41.10	Korea, Republic of	12 January 2000	-	28 June 2001	Imposition of duties
141	Paperboard	4810.12.90	Chile	14 August 2000	4 June 2001	31 October 2001	Price undertaking (R)
142		4810.29.00					
143		4810.91.00					
144	Stainless steel tube	7305.90.00	Korea, Republic of	16 June 2000	-	18 May 2001	Without the imposition of duties
145	Desk fan (review)	7306.40.00	Chinese Taipei	14 October 2000	-	7 August 2001	Imposition of duties (R)
146		8414.51.10	China	14 October 2000	-	20 June 2001	Without the imposition of duties
147		3822.00.00	Austria	1 September 2000	-	28 November 2001	Imposition of duties (R)
148	Tube for vacuum blood collection	3926.90.40	United States	20 December 2000	-	26 April 2002	Imposition of duties, suspended 24 May 2002, re-imposition 7 March 2006 (R)
149	Padlock (review)	7017.90.00	United Kingdom	27 October 2000	-	21 December 2001	Imposition of duties (R)
150	Peach preserves	8301.10.00	China	20 December 2000	-	21 December 2001	Imposition of duties (R)
150	Garlic (review)	2008.70.10	Greece	27 October 2000	-	21 December 2001	Imposition of duties (R)
150		2008.70.90					
150		0703.20.20	China	9 January 2001	-	21 December 2001	Imposition of duties (R)
150		0703.20.90					

No.	Product	NCM	Country	Initiation	Preliminary determination	Termination	Situation
151 152	Phenol (hydroxybenzene)	2907.11.00	United States European Union	19 April 2000	–	16 October 2002	Imposition of duties (R)
153	Hexagonal metallic wire netting	4810.91.00	China	4 June 2000	–	7 August 2002	Without the imposition of duties
154	Ammonium nitrate	3102.30.00	Estonia	23 August 2001	–	21 November 2002	Without the imposition of duties
155 156			Russian Federation Ukraine	23 August 2001	–	21 November 2002	Imposition of duties (R)
157	Glyphosate	2931.00.32 2931.00.39 3808.30.23	China	30 August 2001	–	12 February 2003	Imposition of duties
158 159 160	Low linear density polyethylene	3901.10.10	Argentina Canada United States	3 October 2001	–	25 March 2002	Without the imposition of duties
161	Malleable cast iron connections with BSP thread	7307.19.10 7307.19.90	China	23 October 2001	–	10 October 2002	Without the imposition of duties
162 163 164 165 166 167	Polyvinyl chloride – PVC (review)	3904.10.10	Korea, Republic of Korea, Democratic People's Republic of Thailand Japan Colombia Venezuela (Bolivarian Republic of)	20 November 2001	–	19 November 2002	Without the imposition of duties
168 169	Benzothiazole	2934.20.10 2934.20.20 2934.20.31 2934.20.32 2934.20.34	Belgium United States	19 February 2002	–	18 July 2003	Without the imposition of duties
170	Pencil (review)	9609.10.00	China	21 February 2002	–	12 February 2003	Imposition of duties
171	Polyester film	3920.62.19 3920.62.91 3920.62.99 3920.63.00 3920.69.00	India	17 July 2002	–	9 July 2003	Without the imposition of duties

No.	Product	NCM	Country	Initiation	Preliminary determination	Termination	Situation
172	Jute bag (review)	6305.10.00	India	19 July 2002	-	9 July 2003	Imposition of duties (R)
173	Sodium bicarbonate	2836.30.00	China	23 July 2002	-	10 July 2003	Without the imposition of duties
174	Sodium triphosphate	2835.31.00	United Kingdom	30 July 2002	-	29 July 2003	Imposition of duties
175	Acrylonitrile	2926.10.00	United States	19 October 2002	-	18 February 2004	Without the imposition of duties
176	Stone cutting laminate	7211.19.00 8202.99.10 8208.90.00	Italy	23 October 2002	-	13 October 2003	Imposition of duties
177 178	Horseshoe nail	7317.00.90	Finland India	10 December 2002	-	3 June 2004	Imposition of duties
179	Mushroom (review)	0711.51.00 2003.10.00	China	19 December 2002	-	19 December 2003	Imposition of duties
180	Bicycle tire (review)	4011.50.00	China	19 December 2002	-	19 December 2003	Imposition of duties, suspended 19 January 2004, re-imposition 15 August 2005
181			India	19 December 2002	-	19 December 2003	Imposition of duties, suspended 19 January 2004
182			Thailand	19 December 2002	-	19 December 2003	Imposition of duties
183			Chinese Taipei	19 December 2002	-	19 December 2003	Without the imposition of duties
184	Magnesium powder	8104.30.00	China	29 April 2003	-	11 October 2004	Imposition of duties
185	Magnesium metallic	8104.11.00	China	29 April 2003	-	11 October 2004	Imposition of duties
186	Ferrite magnetic ring (review)	8505.19.10	China	5 June 2003	-	3 June 2004	Imposition of duties
187	Barium carbonate (review)	2836.60.00	China	1 July 2003	-	1 July 2004	Imposition of duties
188 189	Jute bag (review)	6305.10.00	Bangladesh India	11 September 2003	-	10 September 2004	Imposition of duties
190 191	Polycarbonate resin (review)	3907.40.00	Germany United States	11 September 2003	-	30 July 2004	Without the imposition of duties
192	Polycarbonate resin	3907.40.00	European Union (except Germany)	11 September 2003	-	30 July 2004	Without the imposition of duties

No.	Product	NCM	Country	Initiation	Preliminary determination	Termination	Situation
193 194	High carbon iron-chromium (review)	7202.41.00	South Africa Russian Federation	14 October 2003	–	11 October 2004	Imposition of duties, suspended 15 December 2004, re-imposition 16 April 2007
195			Kazakhstan	14 October 2003	–	11 October 2004	Imposition of duties, suspended 15 December 2004
196	Ethylene glycol monobutyl ether	2909.43.10	United States	10 November 2003	–	11 October 2004	Imposition of duties
197 198	Polyvinyl chloride – PVC (review)	3904.10.10	United States Mexico	15 December 2003	–	1 July 2005	Imposition of duties
199	Helicoidal drill (review)	8207.50.11 8207.50.19 8207.50.90	China	15 December 2003	–	14 December 2004	Without the imposition of duties
200	Mechanical petroleum bombing unit (review)	8413.81.00 8413.82.00 8479.89.99	Romania	15 December 2003	–	1 July 2005	Imposition of duties
201	Milk (review)	0402.10.10 0402.10.90 0402.21.10 0402.21.20 0402.29.10 0402.29.20	Argentina	20 February 2004	26 January 2005	18 February 2005	Price undertaking
202 203	Polyester terephthalate resin	3907.60.00	Argentina United States	03 March 2004	–	2 September 2005	Imposition of duties
204 205			Korea, Republic of Chinese Taipei	03 March 2004	–	7 July 2004	Without the imposition of duties
206	Milk (review)	0402.10.10 0402.10.90 0402.21.10 0402.21.20 0402.29.10 0402.29.20	Uruguay	05 April 2004	25 February 2005	5 April 2005	Price undertaking
207	Monocalcium phosphate	2835.26.00	Argentina	12 April 2004	–	10 October 2005	Imposition of duties
208	Methyl methacrylate	2916.14.00	United States	23 April 2004	–	22 September 2005	Without the imposition of duties

No.	Product	NCM	Country	Initiation	Preliminary determination	Termination	Situation
209	Ammonium nitrate (review)	3102.30.10	Russian Federation	07 July 2004	–	24 June 2005	Imposition of duties (R)
210	Ballpoint pen	9608.10.00	China	07 July 2004	–	12 December 2005	Without the imposition of duties
211	Thermic bottle (review)	9617.00.00	China	20 July 2004	–	19 July 2005	Imposition of duties
212	Stainless steel tube (review)	7304.10.90	Romania	20 October 2004	–	7 October 2005	Imposition of duties
213	Panel plywood	4410.32.00	Argentina	04 November 2004	–	13 January 2005	Without the imposition of duties
214	Stainless steel	7306.40.00	Chinese Taipei	27 April 2005	–	18 April 2006	Without the imposition of duties
215 216	N-Butanol	2905.13.00	South Africa United States	2 March 2005	–	19 April 2006	Without the imposition of duties
217 218 219 220 221	Stainless steel cold rolled (review)	7219.33.00 7219.34.00 7219.35.00 7220.20.90	South Africa Spain France Japan Mexico	25 May 2005	–	23 May 2006	Imposition of duties
222 223	Portland cement (review)	2523.29.10 2523.29.90	Mexico Venezuela (Bolivarian Republic of)	27 July 2005	–	28 July 2006	Imposition of duties, except for products disembarked in Romania and intended for consumption in that country
224 225 226	Polycarbonate resin	3907.40.90	Argentina United States European Union	9 August 2005	–	10 January 2006	Without the imposition of duties
227 228	Milk (review)	0402.10.10 0402.10.90 0402.21.10 0402.21.20 0402.29.10 0402.29.20	New Zealand European Union	21 February 2006	8 September 2006	15 February 2007	Imposition of duties
229 230 231 232	Methacrylate MMA (review)	2916.14.10	Germany Spain France United Kingdom	20 March 2006	–	26 February 2007	Imposition of duties
233	Electric smoothing irons	8516.40.00	China	18 April 2006	–	28 June 2007	Imposition of duties

No.	Product	NCM	Country	Initiation	Preliminary determination	Termination	Situation
234 235	Item made of pre-sensitized aluminium	3701.30.21 3701.30.31	China United States	18 April 2006	29 June 2007	8 October 2007	Imposition of duties
236	Table fan (review)	8414.51.10	China	7 August 2006	–	28 June 2007	Imposition of duties
237	Hairbrush	9603.29.00	China	15 September 2006	29 June 2007	13 December 2007	Imposition of duties
238	Loudspeaker	8518.21.00 8518.22.00 8518.29.00	China	15 September 2006	29 June 2007	13 December 2007	Imposition of duties
239	Eyeglass frames, with or without lenses brokerages	9003.11.00 9003.19.10 9003.19.90 9004.90.10 9004.90.90	China	15 September 2006	–	8 October 2007	Imposition of duties
240	Sunglasses	9004.10.00	China	15 September 2006	–	–	Investigation in course
241	Tree for Christmas decorations	9505.10.00	China	26 September 2006	–	26 September 2007	Without the imposition of duties
242	Ball for Christmas tree	9505.10.00	China	26 September 2006	–	26 September 2007	Without the imposition of duties
243	Hoist manual	8425.19.10	China	28 September 2006	–	24 August 2007	Imposition of duties
244	Carboard (review)	4810.13.89 4810.19.89 4810.92.90	Chile	30 October 2006	10 September 2007	11 October 2007	Imposition of duties
245	Drill SDS plus fit	8207.50.11	China	24 November 2006	24 August 2007	21 November 2007	Imposition of duties
246	Bicycle tire (review)	4011.50.00	China	3 November 2006	–	11 October 2007	Imposition of duties
247	Padlock (review)	8301.10.00	China	30 November 2006	–	14 November 2007	Imposition of duties
248	Bicycle crank	8714.99.90	China	8 December 2006	7 May 2007	11 October 2007	Imposition of duties
249	Garlic (review)	0703.20.10 0703.20.90	China	14 December 2006	–	14 November 2007	Imposition of duties
250 251	Polycarbonate resins	3907.40.90	United States European Union	24 January 2007	8 October 2007	–	Investigation in course, imposition of provisional duties
252	Indigo blue reduced	3204.15.90	Germany	2 March 2007	11 October 2007	–	Investigation in course, imposition of provisional duties

No.	Product	NCM	Country	Initiation	Preliminary determination	Termination	Situation
253 254	PET films	3920.62.19 3920.62.91 3920.62.99 3920.63.00 3920.69.00	India Thailand	8 March 2007	–	–	Investigation in course
255	Peach syrup (review)	2008.70.10 2008.70.90	Greece	26 April 2007	–	–	Investigation in course
256	Blankets of synthetic fibre	6301.40.00	China	13 July 2007	–	–	Investigation in course
257 258	Polyvinyl chloride resins (PVCs)	3904.10.10	China Republic of Korea	21 September 2007	–	–	Investigation in course
259 260	Phenol (review)	2907.11.00	United States European Union	3 October 2007	–	–	Investigation in course
261 262	Simple jute yarn	5307.10.10 5307.20.10	India Bangladesh	5 November 2007	–	–	Investigation in course
263 264	Supercalendered base siliconizing	48.06.40.00	United States Finland	19 November 2007	–	–	Investigation in course
265 266	Ammonium nitrate (review)	3102.30.00	Ukraine Russian Federation	21 November 2007	–	–	Investigation in course
267	Butyl acrylate	2916.12.30	United States	24 December 2007	–	–	Investigation in course

Source: DECOM.

(R) = Revised

## Appendix V

### Overview investigations related to subsidies (1998 – 2007)

No.	Product	NCM	Country	Initiation	Preliminary determination	Termination	Situation
1	Disposable diaper	4818.40.10	Argentina	7 January 1991	–	16 January 1992	Without the imposition of duties
2	Latex yarn	4007.00.00	Malaysia	12 March 1991	–	1 November 1991	Imposition of duties, phased out in 1 November 1996
3	Milk powder	0402.10.90 0402.21.10 0402.21.20 0402.29.10 0402.29.20	European Union	17 March 1992	9 April 1992	11 August 1992	Imposition of duties, revoked in 4 August 1994
4	Wheat	1104.29.00	United States	22 September 1992	19 November 1992	2 September 1994	Without the imposition of duties
5	Wheat	1104.29.00	Canada	12 November 1993	–	1 June 1995	Without the imposition of duties
6	Cotton feather	5201.00.00	United States	06 December 1994	–	5 March 1996	Without the imposition of duties
7	Rasped coconut	0801.10.10	Côte d'Ivoire Philippines Indonesia Malaysia Sri Lanka	22 June 1994	28 March 1995	21 August 1995	Imposition of duties, phased out in 21 August 2000
8							
9							
10							
11							
12	Coconut milk	2009.80.00	Sri Lanka	22 June 1994	28 March 1995	21 August 1995	Imposition of duties, phased out in 21 August 2000

No.	Product	NCM	Country	Initiation	Preliminary determination	Termination	Situation
13	Polyester film	3920.62.19 3920.62.91 3920.62.99 3920.63.00 3920.69.00	India	19 December 2001	–	17 December 2002	Without the imposition of duties
14	Steel bar	7222.11.00 7222.19.10 7222.19.90 7222.20.00 7222.30.00	India	08 April 2003	–	08 October 2004	Imposition of duties
15	PET films	3920.62.19 3920.62.91 3920.62.99 3920.63.00 3920.69.00	India Thailand	08 March 2007	–	–	Ongoing investigation

Source: DECOM.

## Appendix VI

### Overview of safeguard investigations (1998 – 2007)

No.	Product	NCM	Initiation	Preliminary determination	Termination	Situation
1	Toy	9501 to 9504.10.10	9 September 1996	4 July 1996	3 September 1997	Imposition of the measure (R)
2	Toy (review)	9501 to 9504.10.10	29 September 1999	–	29 December 1999	Imposition of the measure (R)
3	Coconut	0801.10.10	10 August 2001	–	31 July 2002	Imposition of the measure
4	Toy (review)	9501 to 9504.10.10	06 October 2003	–	30 December 2003	Imposition of the measure
5	Coconut (review)	0801.10.10	17 February 2006	–	27 July 2006	Imposition of the measure

Source: DECOM.

## Appendix VII

# Pre-analysis form – Request for initiation of an anti-dumping investigation

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*Form for the Pre-analysis of a Complaint*

*DUMPING*

*THIS FORM IS INTENDED TO HELP INTERESTED PARTIES IN DRAFTING A COMPLAINT REQUESTING AN ANTI-DUMPING INVESTIGATION.*

*The interested party shall complete the form and send it to DECOM ([decom@desenvolvimento.gov.br](mailto:decom@desenvolvimento.gov.br)). THERE IS NO NEED TO SHOW EVIDENCE OF THE INFORMATION HEREIN.*

*If DECOM considers there are the elements for an investigation, the interested party shall follow the instructions of the Department and must submit a complaint to MDIC accompanied with proofs of the alleged practice (this investigation is an administrative process and must follow the rules set forth in Decree No. 1602, 1995).*

*If you need further clarification, please contact DECOM by e-mail: [decom@desenvolvimento.gov.br](mailto:decom@desenvolvimento.gov.br) or by telephone +55 61 329-7770 or by fax +55 61 329-7445.*

## I. Qualification

### I.1. Complainant(s)

<i>Corporate name</i>		
<i>National Registry of Legal Entities (CNPJ)</i>		
<i>Telephone</i>		<i>Fax</i>
<i>E-mail</i>		
<i>Contact</i>		

i The complainant can be a company that produces goods, a group of companies that produce the same goods or a class entity that represents a group of producers. If the request is made by a group of companies, please indicate the contact details of the company in charge of contacting DECOM, indicating the name of the contact person.

### I.2. Period for the analysis of the existence of injury and dumping

	<i>Period</i>
<i>P1</i>	
<i>P2</i>	
<i>P3</i>	
<i>P4</i>	
<i>P5</i>	

ii A period for the analysis of injury and a period for the analysis of dumping shall be defined. The period for the analysis of injury will comprise the five twelve-month periods which were closest to the date the complaint is submitted, or at least the last three periods. These five twelve-month periods need not coincide with the civil year (from April to March; from October to September; etc.). The period for the analysis of dumping will be the last of the twelve-month periods of the injury analysis (P5 in the chart).

## 2. Product

### 2.1. Product under investigation

#### 2.1.1. Description of the product and its Mercosur Uniform Tariff Nomenclature (NCM)

<i>NCM</i>	<i>Description of the Product</i>
( )	<i>Please tick ( x ) if the NCM includes other products besides the ones under investigation</i>

iii Describe the imported product whose export price to Brazil may be dumped, including its technical and physical-chemical characteristics, such as: types, categories, models, dimensions, chemical composition, capacity, power and/or other particular element of the product.

#### 2.1.2. Origin(s) of the imports suspected of being dumped

<i>Countries of origin</i>

### 2.1.3. Uses and applications, in Brazil, of the dumped imported product

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iv Describe the main uses and applications of the imported product in Brazil.

## 2.2. Product manufactured in Brazil

### 2.2.1. Description of the like product manufactured in Brazil

--

v Describe the product manufactured in Brazil, including its technical and physical-chemical characteristics, such as: types, categories, models, dimensions, chemical composition, capacity, power and/or other particular element of the product.

### 2.2.2. Uses and applications of the product manufactured in Brazil

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vi Please provide such information only if it differs from what has been described in item 2.1.3, and, in this case, specify the differences.

## 3. Representativeness of the complainant(s)

### 3.1. Complainant(s) production

<i>Period</i>	<i>Production*</i>
<i>P1</i>	
<i>P2</i>	
<i>P3</i>	
<i>P4</i>	
<i>P5</i>	

\* Specify the unit: ton, piece, kg, litre, etc.

vii The complaint will be considered to be submitted by the domestic industry or on its behalf if supported by producers whose joint production represents more than 50% of the total production of the like product produced by the part of the domestic industry that supported or rejected the petition. DECOM will examine the support based on the information requested in items 3.1 and 3.2 and following items.

viii If the complaint is submitted by a class entity, the total production of the complainant(s) or of the companies they represent must be presented.

### 3.2. Production and sale by other domestic producers

<i>Period</i>	<i>Production*</i>	<i>Sales*</i>
<i>P1</i>		
<i>P2</i>		
<i>P3</i>		
<i>P4</i>		
<i>P5</i>		

\* Specify the unit: ton, piece, kg, litre, etc.

ix If the complaint is submitted by a class entity, please provide such information only if the complainant(s) does(do) not represent 100% of the domestic production. Specify the sum of the production and sales of the companies which are not complainants or supporting the petition.

x Information on sales of products produced in Brazil by producers that are not represented in this complaint is important to estimate the national consumption of the product. If there is no available data, these sales can be estimated but they will be limited to sales made in the internal market.

### 4. Information for the analysis of dumping

xi Information on dumping (normal value and export price) must cover the twelve-month period that is closest to the date of the submission of the complaint (P5). Normal value shall be understood as the price effectively charged for the like product in the ordinary course of trade destined for internal consumption in the exporting country. Export price shall be understood to be the price effectively paid or to be paid for the product exported to Brazil.

#### 4.1. Normal value

xii The methodology for the determination of the normal value will vary according to the country of origin of the exports. If this country is a market economy country, the information requested in item A.1 must be presented, and the options presented in item A.2 or A.3 can be used in special cases (see item A below). If the country of origin of the exports is not a market economy (see note xix), the complainant can indicate one of the alternatives listed in item B.

#### A – Exports from market economy countries

**A.1) Normal Value calculated based on the sales in the exporting country in the period of investigation of dumping, namely P5**

<i>Price per unit</i>		
<i>Description of the product</i>	<i>Local currency (*/*)</i>	<i>In (\$/*)</i>

\* Specify the unit: ton, piece, kg, litre etc.

xiii If the exporting country is a market economy country, one of the alternatives listed in A must be used. Please note that the legislation states that alternatives A.2 and A.3 may be used only if there are no sales of the like product in the ordinary course of trade in the exporting country's domestic market, or if, due to special market conditions, or due to the low volume of sales, an adequate comparison is not possible. In such cases, the normal value can be based on the export price for a third country (A.2), since this is a representative price, or on the constructed value in the origin country (A.3), considered as the production cost in the origin country plus administrative and selling costs, as well as the profit margin.

xiv Specify, where applicable, the prices of the types/models which represent the different classes, sizes, composition of the product, etc.

xv Include the prices and conditions of sale. If these are not ex-factory prices, indicate the necessary adjustments to achieve the ex-factory price, if available.

**A.2) Normal value calculated based on exports for a third country in the period of investigation of dumping, namely P5**

<i>Price per unit</i>		
<i>Description of the product</i>	<i>Local currency (*/*)</i>	<i>In (\$/*)</i>

\* Specify the unit: ton, piece, kg, litre, etc.

xvi Include the prices and conditions of sale. If these are not ex-factory prices, indicate the necessary adjustments to achieve the ex-factory price, if available.

**A.3) Normal value constructed in the exporting country, corresponding to the period of investigation of dumping, namely P5**

<i>Category</i>	<i>Local currency (*/*)</i>	<i>In (\$/*)</i>
<i>Raw materials</i>		
<i>Direct labour</i>		
<i>Other costs</i>		
<i>Total production cost (A+B+C)</i>		
<i>Administrative expenses</i>		
<i>Commercial expenses</i>		
<i>Total cost (D+E+F)</i>		
<i>Profit</i>		
<i>Ex-factory price (G+H)</i>		

\* Specify the unit: ton, piece, kg, litre, etc.

xvii Specify, where applicable, the prices of the types/models which represent the different classes, sizes, composition of the product, etc.

xviii In this hypothesis, the constructed value in the exporting country must be given. Specify, where applicable, the constructed prices of the types/models which represent the different classes, sizes, composition of the product, etc.

**B – Exports from non-market economy countries**

**B.1) Normal value calculated based on sales in the domestic market of a third market economy country in the period of investigation of dumping, namely P5**

<i>Price per unit</i>		
<i>Description of the product</i>	<i>Local currency (*/*)</i>	<i>In (\$/*)</i>

\* Specify the unit: ton, piece, kg, litre, etc.

xix When the dumped imports come from Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, China, the Democratic People's Republic of Korea, Croatia, Cuba, Estonia, Georgia, Kazakhstan, Yugoslavia (Serbia and Montenegro), Latvia, Lithuania, Macedonia, Moldova, Mongolia, Kyrgyzstan, Tajikistan, Turkmenistan, Ukraine, Uzbekistan or Viet Nam, the normal value can be determined based on one of the following alternatives.

xx The normal value can be determined based on the price charged for the like product in a third country that is a market economy country, in the ordinary course of trade, designed for internal consumption, and the choice of a third country must be justified (B.1). Specify, where applicable, the prices of the types/models which represent the different classes, sizes, composition of the product, etc.

xxi Include the prices and conditions of sale. If these are not ex-factory prices, indicate the necessary adjustments to achieve the ex-factory price, if available.

**B.2) Normal value calculated based on exports from a third market economy country to other countries (excluding Brazil) in the period of investigation of dumping, namely P5**

<i>Price per unit</i>		
<i>Description of the product</i>	<i>Local currency (*/*)</i>	<i>In (\$/*)</i>

\* Specify the unit: ton, piece, kg, litre, etc.

xxii The normal value can be determined based on the price charged by the producers or exporters located in a third market economy country when exporting to other countries, except Brazil. (B.2). The choice of a third country must be justified. Specify, where applicable, the prices of the types/models which represent the different classes, sizes, composition of the product, etc.

xxiii Include the prices and conditions of sale. If these are not ex-factory prices, indicate the necessary adjustments to achieve the ex-factory price, if available.

**B.3) Normal value constructed based on a third market economy country, corresponding to the period of investigation of dumping, namely P5**

<i>Category</i>	<i>Local currency (*/*)</i>	<i>In (\$/*)</i>
<i>Raw materials</i>		
<i>Direct labour</i>		
<i>Other costs</i>		
<i>Total production cost (A+B+C)</i>		
<i>Administrative expenses</i>		
<i>Commercial expenses</i>		
<i>Total cost (D+E+F)</i>		
<i>Profit</i>		
<i>Ex-factory price (G+H)</i>		

\* Specify the unit: ton, piece, kg, litre, etc.

xxiv The normal value can be determined based on the constructed value in a third market economy country (B.3), which means the production plus administrative expenses and sales beyond the profit margin. Specify, where applicable, the prices of the types/models which represent the different classes, sizes, composition of the product, etc.

#### 4.2. Export price to Brazil in the period of investigation of dumping, namely P5

<i>Price per unit</i>		
<i>Description of the product</i>	<i>Local currency (*/*)</i>	<i>In (\$/*)</i>

\* Specify the unit: ton, piece, kg, litre, etc.

xxv If, for any reason, the export prices recorded in the official import statistics cannot be used in the comparison with the normal value(s), please complete the chart below and specify, where applicable, the prices of the types/models which represent the different classes, sizes, composition of the product, etc.

xxvi Include the export prices and conditions of sale. If these are not ex-factory prices, indicate the necessary adjustments to achieve the ex-factory price, if available.

### 5. Information for the analysis of injury to the domestic industry

#### 5.1. Installed capacity

<i>Period</i>	<i>Installed capacity</i>
<i>P1</i>	
<i>P2</i>	
<i>P3</i>	
<i>P4</i>	
<i>P5</i>	

\* Specify the unit: ton, piece, kg, litre, etc.

xxvii Injury shall be understood to be material injury or threat of material injury to the existing domestic industry, or considerable retardation in the implementation of the industry. If there is a threat of injury the information requested in article 16, Decree No. 1602, 1995 must be presented.

xxviii In order to confirm the existence of injury caused by dumping, please present the information requested in this item. When the request is being submitted by a group of companies or by a class entity, the information must concern all companies.

#### 5.2. Sales and stocks

Unit: (\*)

<i>Initial stock in P1</i>				
<i>Period</i>	<i>Production*</i>	<i>Sales in the domestic market</i>	<i>Exports</i>	<i>Final stock</i>
<i>P1</i>				
<i>P2</i>				
<i>P3</i>				
<i>P4</i>				
<i>P5</i>				

\* Specify the unit: ton, piece, kg, litre, etc.

xxix P1 initial stock must include only the product actually produced by the company. Accordingly, sales and exports must refer only to the product produced by the domestic industry.

xxx The stock at the end of P1 will be the initial stock in P2 and so on. The final stock in a period will be the result of the following operation: initial stock + production – sales in the domestic market – exports. If there is captive consumption and/or devolution of the goods, the quantities must be specified separately for each period and the final stock must be calculated thus: initial stock + production – captive consumption – sales in the domestic market – exports + devolution = final stock (the complainant shall match the operation to the reality). If the complainant made imports, the information concerning the imported product must be presented on a separate chart where the stock of this material will be calculated thus: imported product stock in P1 + imports in P1 – sales in P1 – re-exportation in P1 = P1 final stock which is the same as P2 initial stock, and so on.

### 5.3. Turnover obtained with sales in the domestic market

<i>Period</i>	<i>Net turnover R\$)</i>
<i>P1</i>	
<i>P2</i>	
<i>P3</i>	
<i>P4</i>	
<i>P5</i>	

xxxi This turnover is obtained from the sale of products manufactured by the producing companies themselves. Turnover obtained from the sales of the imported product in Brazil shall be presented separately.

xxxii The value of the sales of the product must be tax free.

### 5.4. Total production cost

<i>Category</i>	<i>Cost R\$/*)</i>				
	<i>P1</i>	<i>P2</i>	<i>P3</i>	<i>P4</i>	<i>P5</i>
<i>Raw materials</i>					
<i>Direct labour</i>					
<i>Other costs</i>					
<i>Total production cost (A+B+C)</i>					
<i>Administrative expenses</i>					
<i>Commercial expenses</i>					
<i>Total cost (D+E+F)</i>					
<i>Profit</i>					
<i>Ex-factory price (G+H)</i>					

\* Specify the unit: ton, piece, kg, litre, etc.

xxxiii When there is more than one complainant or a class entity, the average cost shall be obtained from the evaluation of the costs of each complainant or companies represented and the production of each in the period.

### 5.5. Employment

<i>Number of employees</i>	<i>P1</i>	<i>P2</i>	<i>P3</i>	<i>P4</i>	<i>P5</i>
<i>Production line</i>					
<i>Administration</i>					
<i>Sales</i>					
<i>Total</i>					

xxxiv Please include only employees who work on the production line of the like product.

xxxv The number of employees with administrative functions must be limited to the employees whose activities are related to the like product. If it is impossible to separate the employees working in the administrative department by product, this total can be estimated based on turnover (turnover obtained from sales of the like product versus total turnover of the company) or based on any other methodology that the complainant believes is adequate, indicating the methodology used.

xxxvi The number of employees working in sales shall be limited to the employees related to the like product. If it is impossible to separate the employees working in the sales department by product, this total can be estimated based on turnover (turnover obtained from sales of the like product versus total turnover of the company) or based on any other methodology that the complainant believes is adequate, indicating the methodology used.

### 5.6. Salaries

<i>Salaries R\$)</i>	<i>P1</i>	<i>P2</i>	<i>P3</i>	<i>P4</i>	<i>P5</i>
<i>Production line</i>					
<i>Administration</i>					
<i>Sales</i>					
<i>Total</i>					

xxxvii Specify the value in reais corresponding to the total of the salaries of the employees related to the production, administration and sales of the like product, excluding taxes and benefits.

xxxviii Specify the value in reais corresponding to the total of the salaries of the employees related to the production of the like product.

xxxix Specify the value in reais corresponding to total of the salaries of the employees in to the administrative department exclusively related to the like product. If it is impossible to separate the employees working in the administrative department by product, this total can be estimated based on turnover (turnover obtained from sales of the like product versus total turnover of the company) or based on any other methodology that the complainant believes is adequate, indicating the methodology used.

xl Specify the value in reais corresponding to total of the salaries of the employees in the sales department exclusively related to the like product. If it is impossible to separate the employees in the sales department by product, the total salaries can be estimated based on turnover (turnover obtained from sales of the like product versus total turnover of the company) or based on any other methodology that the complainant believes is adequate, indicating the methodology used.

### 5.7. Evolution of the cash flow

<i>Category</i>	<i>Values R\$/*)</i>				
	<i>P1</i>	<i>P2</i>	<i>P3</i>	<i>P4</i>	<i>P5</i>
<i>Net profit in the period</i>					
<i>Depreciation</i>					
• <i>Stocks</i>					
• <i>Receivables</i>					
• <i>Suppliers</i>					
• <i>Others</i>					
• <i>Permanent assets</i>					
• <i>Long-term assets</i>					
• <i>Short-term loans</i>					
• <i>Long-term financing</i>					
<i>Capital increase</i>					

\* Specify the unit: ton, piece, kg, litre, etc.

xli Cash flow is one of the benchmarks of the domestic industry that should be taken into consideration, if available. Therefore, this information will be requested from the complainant if the turnover obtained from the sales of the product under investigation in the domestic market represents 70% or more of the company's total turnover. The cash flow must reflect the performance of the whole company, with no need for adjustment.

xlii The values must be in reais R\$). The values of the categories for each period are the difference between the values of the investigating period and the period before ( $\text{Stock P1} = \text{R\$ Stock P1} - \text{R\$ Stock P0}$ , etc.).

## Appendix VIII

# Sample questionnaire for exporters (anti-dumping investigation)

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FEDERATIVE REPUBLIC OF BRAZIL  
MINISTRY OF DEVELOPMENT, INDUSTRY AND TRADE  
SECRETARIAT OF FOREIGN TRADE  
DEPARTMENT OF COMMERCIAL DEFENSE

Process MDIC/SECEX – XXXXXXXXXXXXX

### QUESTIONNAIRE FOR THE PRODUCER/EXPORTER

Investigation of dumping, injury and causal link in the exports to Brazil of XXXXXXXX, classified in the NCM/SH as XXXXXXXXXXX, from XXXXXXXXXXXXXXX.

Period for the analysis of dumping: January XXXX to December XXXX

## I – Introduction

The objective of this questionnaire is to allow the Department of Commercial Defense (DECOM) of the Secretariat of Foreign Trade (SECEX) of the Ministry of Development, Industry and Trade to gather the necessary information for the investigation of dumping in the exports of XXXXX from XXXXXXXXXX, initiated by the SECEX Circular attached hereto.

Such procedure is in conformity with the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, enacted by Decree No. 1355, 30 December 1994, and governed by Decree No. 1602, 23 August 1995, published in the Brazilian Official Gazette on 24 August 1995.

DECOM stresses that it is important for the company to submit clear answers, indicating the sources of the information used and attaching documents that can confirm such information. Failure to respond in due time, or the non-observance of these requests, will lead to a decision based on the best information available, as set forth in § 3º of article 27, Decree No. 1602, 1995.

All documents submitted by the exporter/producer must indicate the investigation number mentioned above.

Note that the submission of any other relevant information relevant to this investigation is allowed, even if not requested in this questionnaire.

Even if the company controls, is controlled by, is associated with or is related to a Brazilian importer, the answer to the questionnaire shall exclusively refer to the transactions made by the company, regardless of the customer. Therefore, answers prepared jointly by the producer/exporter and by the Brazilian importer cannot be submitted, for any reason.

As indicated in § 2º of article 63, Decree No. 1602, 1995, the answers to the questionnaire must be submitted in Portuguese. Any document written in a foreign language attached to the questionnaire must be accompanied by a Portuguese version, duly translated by a sworn translator.

Information and/or evidence may be submitted as confidential, if identified as such by the company. A document containing the reasons for the confidential treatment must be attached to the questionnaire, as well as a non-confidential summary of the confidential answers and/or evidence, which must be identified as a '**non-confidential**' summary of the information submitted to DECOM.

Information submitted as confidential must be identified as follows:

- Confidential information and/or evidence and/or documents shall contain the word CONFIDENTIAL on all the pages; and
- Whenever possible, this identification must be centred on the top and bottom of each page, in a colour that contrasts with the colour of the document.

All information not identified as confidential will be attached to the process files and examination of the files will be allowed if requested by interested parties.

If the submission of non-confidential summaries is not possible, this must be justified.

According to § 2º of article 28, Decree No. 1602, 1995, confidential information may be disregarded if confidential treatment is not justifiable or if the non-confidential summary is not sufficient for a full comprehension of the situation.

According to article 27, Decree No. 1602, 1995, the public version of the answers to the questionnaire must be submitted in 4 sets of copies and the confidential version in 3 sets of copies, within 40 days from the date of this letter, addressed to:

Ministry of Development, Industry and Trade  
Secretariat of Foreign Trade  
Department of Commercial Defense – DECOM  
Praça Pio X, 54 – 6th Floor  
20.091-040 – Rio de Janeiro (RJ) – Brazil

The period for submitting the answer to the questionnaire is **40 days** and it is considered an adequate opportunity for the company to present its defence, without prejudice of other information that can be brought to the process within this period.

Whenever needed, requests for the extension of the deadline for submitting the answers to the questionnaire will take into consideration the deadlines of the investigation. Such requests must be justified and **submitted within the original deadline for the submission of the answers.**

The tables in the **ANNEXES** shall be delivered electronically, according to the following specifications: PC-compatible systems, EXCEL program version Office 2000, and on 3.5-inch disks, double sided and high density, 1.44 megabytes, or on CD-ROM. Hard copies of all the data delivered electronically must also be submitted. The disks/CD-ROM must be identified with a tag containing the following information:

- (a) Name of the company;
- (b) Investigation which it refers to;
- (c) Format of the data and the software used to create the data.

With regard to the answers to the questionnaire, please read all the instructions carefully. It is in your company's interest to answer the questionnaire as precisely and as completely as possible and to attach related documents. Feel free to complement the answers with additional data. If any of the questions do not apply to your company, please indicate the reason.

According to article 65, Decree No. 1602, 1995, we hereby state that the Department of Commercial Defense (DECOM) can conduct **verification visits** to examine the company's records, in order to confirm the information presented in the answers to the questionnaire.

If there are questions on how to complete this questionnaire or if any further clarification is needed, DECOM can be contacted by telephone (55 61 2109-7770), by facsimile (55 61 2109-7445) or by e-mail (decom@desenvolvimento.gov.br).

A company that wishes to receive an electronic copy of the questionnaire can request it by e-mail.

The answers to the questionnaire can be sent to DECOM electronically. In this case, according to Law No. 9800, 26 May 1999, the date of the submission of the response is the date the message reaches the receiver, namely DECOM. A hard copy of the response must be delivered to the address indicated above within five days from the date the e-mail was sent or before the expiry of the deadline set forth in article 27 mentioned above.

## **Section – A**

### **Company, accounting practices, markets and products**

#### **I. Quantity and value of sales**

When determining the normal value, information on quantity and value of sales is needed to evaluate the possibility of using (a) the prices of the comparable product in the domestic market; (b) the prices of the comparable product in sales to third country; or (c) the constructed value.

I.a. Specify the value and the global quantity sold during the investigation period (January to December XXXX), according to the model in Annex A, in:

- Brazil;
- The domestic market; and
- The three biggest export markets.

I.b. If the company believes there is any circumstance that impedes using the sales of the comparable product in its domestic market to determine the normal value, present the reasons. In this case, indicate the three biggest export markets for determining the normal value. Furthermore, if, for any reason, the price of the comparable product in the exports to the three biggest export markets is not suggested as a comparable price, indicate which is the best market for that and present the reasons.

I.c. Indicate separately the quantity and the value of the sales of the product under investigation made to related parties<sup>1</sup> in the domestic market and in third countries. Similarly, indicate separately the sales of the like product made to related parties that were destined for internal consumption and resale.

## II. Structure of the company and affiliation

The objective of questions involving the operating structure and the legal structure of the companies and affiliations is to give DECOM an overview of the company and its role in the manufacture, sale and distribution of the product under investigation. The Department needs information about your company and related parties, in their own countries and abroad, considering that such information may be necessary in order to determine prices, sales, general expenses and production costs.

II.a. Provide an organizational chart of the operating structure of your company. Describe the organizational structure of your company and of each of its operating units.

Even if it is possible to give an overview of the structure of the company as a whole, it is paramount to present detailed information on the development, manufacture, sales and distribution of the product under investigation, in order to give DECOM a perfect understanding of the company's units.

II.b. Provide a list containing all the production plants, addresses of sales offices, research and development sites and administrative offices involved in the manufacture and sale of the product under investigation operated by the company and affiliated in its home country and abroad. Provide a brief description of their functions.

II.c. Provide an organizational chart and a description of the legal structure of the company. In addition, provide a list of all affiliated companies, according to the definition in footnote 1. Describe the activities of each of the affiliated companies.

II.d. Provide a list with the names of the 10 major shareholders and respective equity interests in the social capital of the company. If the company is a subsidiary of another company, provide a list of the 10 biggest shareholders of the controlling company and of its subsidiaries. If the controller of your company is also a subsidiary of another company, list the 10 major shareholders of the parent company. List all shareholders holding more than 5% of the company's social capital (directly or indirectly), the parent company or the subsidiaries of the controller of your company.

II.e. The company can submit institutional, technical or commercial press releases containing details of the information requested.

## III. Distribution process

Information on distribution channels and sales process is essential, since it allows DECOM to make a comparison of sales at the same level of trade or to make adjustments to the normal value, in case of different levels of trade. If the company believes there is any reason to make adjustments to the level of trade, explain those reasons.

III.a. Present a flow chart and a description of all methods or distribution channels used in the sales to Brazil and to the comparison market. For example: the distribution channel for some sales and the shipment to the buyer may be custom-made; the distribution channel for other sales may involve the shipment of a product maintained in stock.

III.b. Describe the functions and the services offered by each intermediary in the distribution channel up to the final consumer, in the company's home country and in Brazil. Such services and functions include maintenance of stocks, technical assistance and other post-sales services, advertising and other supporting activities, among others. Specify which services are rendered or paid for by the company and which are rendered or paid for by the affiliates.

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1 Related parties can be defined as: (1) companies that, directly or indirectly, through one or more intermediate companies, control the company, are controlled by the company, or are controlled by the same company (including holding, subsidiaries and associates); (2) people with direct or indirect interest in the company's voting power, with a significant influence on the company and on its closest relatives; (3) essential people in the administration (with authority over and responsible for planning, conducting and controlling the activities of the company) and their closest relatives; (4) companies that have the same administrators or are able to influence and/or benefit from certain individual or general decisions of the companies mentioned above; (5) companies owned by directors or major shareholders; (6) customers, suppliers or financiers with whom they have an economic, financial or technological dependence relation.

III.c. Provide a list containing all types of buyers (local distributor, trading company, final consumer, etc.) with the respective methods or distribution channels used.

#### IV. Sale process

The date of sale for the sales<sup>2</sup> made in Brazil and in the comparison market is important for the analysis conducted by DECOM. Based on this date, the Department will determine the best way of comparing information on sales made by the company. Similarly, the exchange rate to be used will be determined according to this date.

IV.a. Specify the date selected (e.g. date of the agreement, date of the invoice) as the date of sale in Brazil and in the comparison market, explaining why those dates comply with the criteria set forth in footnote 2. If the company determines the date of sale differently, explain the reasons.

IV.b. Describe the sales process with regard to all methods and distribution channels described in item III above, including a brief description of each phase of this process.

IV.c. Describe how the company defines the final consumer or the market for the products sold by resellers. Regarding such sales, indicate the existence of any restrictions regarding the resellers' sales quantities or the geographical market. In addition, explain if the company gives the reseller a customer list, if they make sales together or if it provides post-sale assistance or any other type of service to resellers. Attach copies of the agreement or the terms of the sales executed between the company and the current resellers.

IV.d. Indicate whether there are different types of packaging for the products which are sold in the domestic market and those which are exported. In addition, describe any specific documents for the imported product. Also explain how the company classifies in its books the sales (exports and domestic sales) and specify the criteria used to describe them.

IV.e. Provide the percentage of sales of the product sold in Brazil and in the comparison market during the investigation period

IV.f. Provide a copy of the list of prices of the product under investigation used in sales to Brazil and to the comparison market, indicating the type of sale to which they refer. Indicate any discount or rebate given in each of those lists.

#### V. Sales to related parties in the comparison market

V.a. Provide a list of related parties that bought or resold the product in the comparison market. Specify also the average percentage of sales of the product under investigation to related parties.

V.b. Describe the services rendered by each of the related parties (the related party acts only as an agent, it buys and stocks the product, it buys and sells the product, etc.). Furthermore, specify any other kind of service offered to the consumer (technical assistance, transportation of the goods to unrelated buyers, etc.).

V.c. Provide a list of all related parties that acquired the product under investigation for self-consumption in the comparison market. Explain the price policy applied to related parties, indicating the approximate sales percentage for each of them.

#### VI. Accounting and financial practices

A perfect understanding of the accounting and financial practices of the company is essential for conducting a verification properly. It is also important to understand how the company records and allocates its expenses.

VI.a. Describe the company's accounting and financial practices, including how allocations and expenses are recorded and the accounting period used by the company.

<sup>2</sup> Given that the Department intends to compare the sales made in the same period of time, the date of the sales is an important part of the dumping investigation. Usually, the date of a sale is the date of the invoice. However, in long-term agreements, the date of sale might be the date of the agreement. The date of sale cannot be later than the shipment date. Therefore, DECOM considers any changes in the post-shipment price as adjustments in price.

VI.b. Provide copies of the documents listed below for the last two fiscal years. If the company's fiscal year does not coincide with the investigation period, attach monthly or quarterly balances, results statement, etc., from January to December XXXX.

1. Account chart used by the company;
2. Financial statements, including consolidated, audited accounts (include all the explanatory notes and auditors' opinions);
3. Balance sheet and internal results statement regarding the product under investigation prepared or maintained by the company, in the ordinary course of business;
4. Financial statements of the related parties involved in the production/sale of the product under investigation, in the domestic market or abroad;
5. Income declarations or other forms of financial records presented to governments, local or national, of the country in which the company is established.

## VII. Product

The following questions refer to the product under investigation sold in Brazil and in the comparison market.

VII.a. Provide a detailed description of the product manufactured and sold by the company, indicating the codification used in the ordinary course of transactions, including all the prefixes, and other notations that identify those products. Include a detailed description of the differences and similarities of the products offered in each of the markets mentioned above. Attach catalogues, bulletins or any other technical-commercial folder related to the products of the company.

## VIII. Exports made through third countries

If the company is aware of the existence of sales of the product to third countries that were then shipped to Brazil, indicate the companies and the countries involved.

## Annex A – Format for the submission of sales quantity and value

<i>Market</i>	<i>Unit</i>	<i>Quantity sold</i>	<i>Value of sales in local currency</i>	<i>Exchange tax rate used</i>	<i>Value of sales in \$</i>	<i>Terms of sale</i>
<i>Brazilian</i>						
<i>1. Unrelated</i>						
<i>2. Related</i>						
<i>Total</i>						
<i>Domestic</i>						
<i>1. Unrelated</i>						
<i>2. Related</i>						
<i>Total</i>						
<i>Foreign</i>						
<i>1. Unrelated</i>						
<i>2. Related</i>						
<i>Total</i>						

- Note:**
1. The date and exchange rate used must be indicated.
  2. As far as possible, the sales specified must be in the same terms (e.g. FOB).

## Section – B

### Sales in the comparison market

#### I. General explanation of Section B

This section contains instructions on how to record the sales of the product.

#### II. Electronic data on sales in the comparison market

Prepare, in accordance with the information provided in this section, electronic data on the sales of the product under investigation in the comparison markets during the investigation period.

Each field (fields 1.0 to 44.0) shall correspond to only one item described in the invoice.

From field 1.0 to field 44.0, each field shall contain the requested information regarding the product sold, sales conditions, sales expenses and other information. The information requested by the Department is described in section B below.

#### III. Summary of the fields regarding sales

The chart below is a summary of the fields to be completed by the company. This section also contains instructions on how to complete the fields and provide information that may be requested in order to complement the data specified in these fields.

Summary of the fields to be completed

<i>Field number</i>	<i>Field description</i>	<i>Field name<sup>3</sup></i>
1.0	<i>Code of the product</i>	<i>CODPROD</i>
2.0	<i>Characteristics of the product</i>	<i>CARPROD</i>
3.0	<i>Code of the customer</i>	<i>CLICOD</i>
4.0	<i>Relationship with the customer</i>	<i>RELCLI</i>
5.0	<i>Category of the customer</i>	<i>CATCLI</i>
6.0	<i>Distribution channels</i>	<i>CANAL</i>
7.0	<i>Date of sale</i>	<i>VENDT</i>
8.0	<i>Invoice number</i>	<i>FATURA</i>
9.0	<i>Date of the invoice</i>	<i>DTFAT</i>
10.0	<i>Date of shipment</i>	<i>EMBDT</i>
11.0	<i>Date of payment</i>	<i>PAGDT</i>
12.0	<i>Sales conditions</i>	<i>CONDVED</i>
13.0	<i>Payment terms</i>	<i>CONDPAG</i>
14.0	<i>Quantity</i>	<i>QTD</i>
15.0	<i>Gross price per unit</i>	<i>PRBRUTO</i>
16.1	<i>Discount for early payment</i>	<i>DESPANT</i>
16.2	<i>Discount related to quantity</i>	<i>DESQTD</i>
16.(3 to n)	<i>Other discounts</i>	<i>OUTDES (3 to n)</i>
17.(1 to n)	<i>Rebates</i>	<i>ABAT (1 to n)</i>
18.0	<i>Adjustments related to the level of trade</i>	<i>AJNICOM</i>
19.0	<i>Internal freight – production unit to storehouse</i>	<i>FINTFES</i>
20.0	<i>Storage expenses (pre-sale)</i>	<i>DESPEST</i>
21.0	<i>Internal freight – production unit to customer's storehouse</i>	<i>FINTCLI</i>
22.0	<i>Internal insurance</i>	<i>SEGINT</i>
23.0	<i>Destination</i>	<i>DESTIN</i>
24.0	<i>Commission</i>	<i>COMIS</i>

3 In domestic sales, after the name of the field insert letter 'D'. In sales to third countries, substitute the letter 'T' for 'D'. E.g. Field 1.0 – Product code – Name of the field: CODPRODD (domestic sales); CODPRODT (sales to country A).

<i>Field number</i>	<i>Field description</i>	<i>Field name</i>
25.0	<i>Sales agent</i>	<i>AGENT</i>
26.0	<i>Relationship with the agent</i>	<i>RELAGENT</i>
27.0	<i>Financial expenses</i>	<i>DESPFIN</i>
28.0	<i>Interest income</i>	<i>RECJUR</i>
29.0	<i>Storage expenses (post-sale)</i>	<i>DESPARM</i>
30.0	<i>Advertising expenses</i>	<i>DESPPRO</i>
31.0	<i>Technical assistance expenses</i>	<i>DESPASS</i>
32.(1 to n)	<i>Other direct sales expenses</i>	<i>DESPDIR(1 to n)</i>
33.0	<i>Indirect sales expenses</i>	<i>DESPIND</i>
34.0	<i>Stock maintenance expenses</i>	<i>CUSEST</i>
35.0	<i>Packaging cost</i>	<i>CUSTEMB</i>
36.0	<i>Total production cost</i>	<i>CUSTOT</i>
37.0	<i>Exchange rate</i>	<i>TXCAM</i>
<b>SALES TO THIRD COUNTRIES</b>		
38.0	<i>International freight</i>	<i>FRETINT</i>
39.0	<i>International insurance</i>	<i>SEGURIN</i>
40.0	<i>Freight in the third country – port to storehouse</i>	<i>FRETARM</i>
41.0	<i>Freight in the third country – storehouse to independent customer</i>	<i>FRETCLI</i>
42.0	<i>Insurance in the third country</i>	<i>SEGUTER</i>
43.0	<i>Load handling and brokerage</i>	<i>TERMA</i>
44.0	<i>Import tax in the third country</i>	<i>IMPTERP</i>
45.0	<i>Tax reimbursement</i>	<i>DRAW</i>

**Field No. 1.0 Code of the product**

Name of the field: CODPROD

Note: Specify the commercial codes used by your company in the ordinary course of trade for sales of the product under investigation.

Complement: The code of the product must be the code specified in item VII.a of Section A of this questionnaire.

**Field No. 2.0 Characteristics of the product**

Name of the field: CARPROD

**Field No. 3.0 Code of the customer**

Name of the field: CLICOD

Note: Specify the name or accounting code used for each of the customers.

Complement: Provide a list containing the names and codes of all customers, either in the domestic market or abroad.

**Field No. 4.0 Relationship with the customer**

Name of the field: RELCLI

Note: Use these codes to specify whether the customer is a related party.

- 1 = Unrelated customer
- 2 = Customer related to the consumer
- 3 = Customer related to the reseller

<b>Field No. 5.0</b>	<b>Category of the customer</b>
Name of the field:	CATCLI
Note:	1 = Transformation industries 2 = Trading companies 3 = Local distributors 4 = Retailers 5 to n = Any other customer category (specify)
Complement:	Identify any customers that fit into more than one category, and state the reasons.
<b>Field No. 6.0</b>	<b>Distribution channels</b>
Name of the field:	CANAL
Note:	The distribution channels specified in this field must be in accordance with those described in question III of Section A of this questionnaire. 1 = Channel 1 2 = Channel 2 3 to n = Channel 3 to channel n
<b>Field No. 7.0</b>	<b>Date of sale</b>
Name of the field:	VENDT
Note:	Specify the date of sale in accordance with the definition in footnote 2 and the information provided in item IV of Section A of this questionnaire. If the date of sale varies according to the type of transaction (e.g. the date of the invoice or the date of the agreement), create a file to relate the date to the type of transaction (e.g. CONT for agreement, FAT for invoice). Positions 1 & 2 = day Positions 3 & 4 = month Positions 5 to 8 = year
<b>Field No. 8.0</b>	<b>Invoice number</b>
Name of the field:	FATURA
Note:	Specify the number of the invoice related to the accounting system of the company.
Complement:	Describe the numbering system of the invoices that originated the number specified in this field. Specify whether it is a simple sequence of numbers or some other form of codification. In this case, provide a description of each of the components of the code.
<b>Field No. 9.0</b>	<b>Date of the invoice</b>
Name of the field:	DTFAT
Note:	Positions 1 & 2 = day Positions 3 & 4 = month Positions 5 to 8 = year
<b>Field No. 10.0</b>	<b>Date of shipment</b>
Name of the field:	EMBDT
Note:	Specify the date of shipment from factory to customer or from stock to customer. Positions 1 & 2 = day Positions 3 & 4 = month Positions 5 to 8 = year

**Field No. 11.0**                      **Date of payment**

Name of the field:                      PAGDT

Note:    Specify the date of the payment made by the customer that is recorded in your books.  
Positions 1 & 2 = day  
Positions 3 & 4 = month  
Positions 5 to 8 = year

Complement:                                  Indicate the source used to determine the date of payment and the book in which it was identified. If it is not possible to recover such data, specify the reasons for not completing this field. If a specific invoice has not been paid, leave it blank.

**Field No. 12.0**                      **Sales conditions**

Name of the field:                      CONDVED

Note:    1 = FOB  
2 = CIF  
3 = EX FACTORY  
4 to n = Specify other sales conditions

Complement:                                  Describe the sales conditions, indicating the codes used and their respective meaning.

**Field No.13.0**                      **Payment terms**

Name of the field:                      CONDPAG

Note:    Indicate the payment terms granted to the customers.  
1 = 30 days after the invoice  
2 = 60 days after the invoice  
3 to n = Specify other payment terms.

Complement:                                  Describe the payment terms granted by the company, indicating the codes used by each and explaining if they vary according to the distribution channel and how they are related. Indicate whether the payment terms are described on each invoice or, if not, how the customers accept the payment terms.

The codes listed above are mere examples. There is no need to use them.

**Fields No. 14 to 17**

Provide the information requested regarding the quantity sold and the price per unit paid in each transaction. All discounts and rebates must be specified in these fields. The gross price per unit, less the discounts and rebates, multiplied by the respective sales quantity, shall be equal to the net sales income.

**Field No. 14.0**                      **Quantity**

Name of the field:                      QTD

Note:    Specify the quantity sold (kg or unit) in this transaction. In general, this quantity shall be a specific quantity shipped or described in an specific invoice, refund free, if possible.

Complement:                                  Explain how the return of products, if allowed, affects your general sales records and your sales diary.

**Fields No. 15 to 44**

Specify the sales price after the deduction of taxes (except taxes that do not apply to products to be exported e.g. value-added tax (VAT)), discounts and rebates, as well as all income and expenses in the currency in which they were received or incurred.

- Field No. 15.0**                      **Gross price per unit**
- Name of the field:                      PRBRUTO
- Note:    Specify the price per unit recorded on the invoice of sales totally or partially shipped and paid. Regarding partially shipped sales, provide the price per unit of the quantity to be shipped. This value must be the gross price per unit in the measurement unit. Discounts and rebates must be recorded separately, in fields 16 and 17.
- Field No. 16.1**                      **Discount for early payment**
- Name of the field:                      DESPANT
- Note:    Specify the price per unit of any discount given to the customer for early payment.
- Complement:                                      Explain the policies and practices of the company concerning discounts for early payment. If the discounts vary according to distribution channel (field 6.0) or customer (field 5.0), provide a brief explanation of the discounts given for each category. Explain how the discount per unit was calculated. If available, provide a sample of the documents for this kind of discount.
- Field No. 16.2**                      **Discount related to quantity**
- Name of the field:                      DESQTD
- Note:    Specify the price per unit of any discount given to the customer according to the quantity purchased.
- Complement:                                      Explain the policies and practices of the company for giving discounts according to the quantity purchased. If the discounts vary according to distribution channel (field 6.0) or customer (field 5.0), provide a brief explanation of the discounts given for each category. Explain how the discount per unit was calculated. Provide a table displaying the discount per quantity or other equivalent document.
- Field No. 16.(3 to n)**                      **Other discounts**
- Name of the field:                      OUTDES (1 to n)
- Note:    Specify the value per unit of all discounts given to the customer. Specify each existing discount separately.
- Complement:                                      Explain the policies and practices of the company concerning additional discounts. If the discounts vary according to the distribution channel (field 6.0) or to the customer (field 5.0), give a brief explanation of the discounts given to each category. Explain how the discount per unit was calculated. Provide a sample of documents for each type of discount, if available.
- Field No. 17.(1 to n)**                      **Rebates**
- Name of the field:                      ABAT (1 to n)
- Note:    Specify the value per unit of each rebate given to the customer. Create a separate field for each rebate.

**Complement:** Explain the policies and practices of the company concerning rebates and describe them. If the rebates vary according to the distribution channel (field 6.0) or to the customer (field 5.0), give a brief explanation of the rebates given to each category. Provide samples of documents for each type of rebate, if available.

**Field No. 18 Adjustments related to the level of trade**

**Name of the field:** AJNICOM

**Note:** Specify the quantity the company believes necessary for the adjustment of the level of trade.

**Complement:** Explain why the company believes it is necessary to adjust the level of trade, providing plans that demonstrate how the adjustment was calculated. Create a field to specify the level of trade of each transaction in the domestic market and in three export markets, comparing them to the sales made in Brazil. If there were no exports of the product under investigation to Brazil from January to December XXXX, do not complete this field.

**Fields No. 19.0 to 22.0**

Present the information required involving the direct cost of transporting the product from the production unit to the place of delivery chosen by the customer. All indirect costs related to the transportation of the product must be specified in these fields. The company can add other fields, if necessary. The fields below involve the expenses usually incurred either in domestic sales or exports.

**Field No. 19.0 Internal freight – production unit to storehouse**

**Name of the field:** FINTFES

**Note:** Specify the cost per unit of the freight to transport the product from the production unit to the storehouses of the company, or any other intermediate location. If necessary, allocate this cost taking into consideration the base used for the calculation of the freight (e.g. volume, weight). If the product is shipped direct from the production unit to the customer, go to field 21.0.

**Complement:** Describe the means of transportation used to transport the product from the production unit to the storehouses or intermediate location and any affiliations with the transporters during the investigation period. If there is more than one independent transporter, provide the value of the freight for each transaction and the methodology used for allocating costs when several types of products are transported together. If it is not possible to identify specifically the cost for each shipment, describe how the freight per unit was calculated. Attach explanatory plans.

If the company uses its own vehicles, explain how the cost of the freight was calculated and specify the total expenses incurred (e.g. fuel). Attach explanatory plans.

**Field No. 20.0 Storage expenses – pre-sale**

**Name of the field:** DESPEST

**Note:** Specify the cost per unit of the direct storage expenses incurred before the sale. Post-sale expenses are to be presented in field 29.0. Costs specified in this field refer only to the direct expenses of a storage unit outside the production unit. Indirect expenses related to storage must be presented in field 33.0 (indirect sales expenses).

- Field No. 21.0**                    **Internal freight – production unit to customer’s storehouse**
- Name of the field:                FINTCLI
- Note:                                    Specify the cost per unit of the internal freight from the production unit to the storehouse (or other intermediate location) to the place of delivery set by the customer. When it is necessary to apportion the freight, given the diversity of products in the shipment, the allocation will be based on the freight calculation (e.g. volume, weight).
- Complement:                        Describe the means of transportation used to deliver the products to the customers, and any affiliations with transporters during the investigation period. When an independent transporter provides the transport, give the value of the freight for each transaction, specifying the allocation method if there is more than one type of product. If it is not possible to identify the cost of each shipment, describe how the freight per unit was calculated, attaching respective calculation plans.
- If the company uses its own vehicles, explain how the cost of the freight was calculated and specify the total expenses incurred (e.g. fuel). Attach explanatory plans.
- Field No. 22.0**                    **Internal insurance**
- Name of the field:                SEGINT
- Note:                                    Specify the internal insurance cost per unit from the production unit/storehouse to the place of delivery stipulated by the customer.
- Complement:                        Describe how the company calculated the insurance cost per unit and attach the respective calculation plans.
- Field No. 23.0**                    **Destination**
- Name of the field:                DESTIN
- Note:                                    Specify the postal code or other code that indicates the place of delivery stipulated by the customer.
- Complement:                        Provide a list of codes and respective destinations.
- Field No. 24.0**                    **Commission**
- Name of the field:                COMIS
- Note:                                    Specify the cost per unit of the commissions paid to affiliated and non-affiliated agents. If more than one commission has been paid, specify each commission in a separate field.
- Complement:                        Describe the payment terms of the commissions and how the percentages are calculated. Explain whether the quantity of commissions varies according to the party to which it is paid and the party’s affiliation to the company. Attach samples of commission agreements used by the company.
- Field No. 25.0**                    **Sales agent**
- Name of the field:                AGENT
- Note:                                    Provide the name of the agent and respective identification code used by the company. If more than one commission is paid, specify the name and the code for each agent in separate fields.
- Complement:                        Provide a list containing all sales agents and respective codes, specifying the commission percentage and whether the agent is affiliated or not.

**Field No. 26.0 Relationship with the agent**

Name of the field: RELAGEN

Note: Specify the code concerning the affiliation.  
 1 = Unrelated party  
 2 = Related party

**Field No. 27.0 Financial expenses**

Name of the field: DESPFIN

Note: Specify the cost per unit of any short-term loans taken by the company. If the company has not taken any short-term loans during the investigation period, use the commercial interest rates charged for short-term loans.

These expenses shall be calculated and specified on a transaction-by-transaction basis, using the number of days between the date the product was shipped to the customer and the date of payment. If the date of payment is not available in the company's accounting system, it can be calculated based on the average period for receiving payment.

Complement: Provide the formula used for calculating the financial expenses and a plan specifying how the average short-term interest rates were calculated. Explain the existence of any factors that may affect the cost of the money borrowed, such as deposits requested as a condition for giving the loan. Indicate the source of the short-term interest rates used in the calculations.

**Field No. 28.0 Interest income**

Name of the field: RECJUR

Note: Specify the cost per unit of interest received in case of delay in payment of the invoice.

Complement: Describe the conditions under which the company charges the customer interest in case of delay in payment of the invoice. If the practice varies according to the distribution channel or the category of the customer, explain how and why.

**Field No. 29.0 Storage expense – post-sale**

Name of the field: DESPARM

Note: Specify the direct cost per unit of the post-sale storage offered to the customer. Post-sale storage expenses include only the direct expenses charged and reimbursements made by the customer. Indirect storage expenses must be specified in field 33.0.

Complement: Describe the type of service rendered to the customer after the sale. Specify the names and respective codes of the customers to which the service is rendered, including the name and the location of the storehouse used. Indicate whether a party related to the company operates the storehouse and describe the kind of association. Present a copy of the agreement or other evidence that demonstrates that the expense was incurred as a condition of the sale.

Describe how the storage cost per unit was calculated, attaching the respective calculation plans. If the storehouse is owned by the company or by a related party, describe how the indirect and direct costs of this transaction are separated.

<b>Field No. 30.0</b>	<b>Advertising expenses</b>
Name of the field:	DESPRO
Note:	Specify the cost per unit of advertising regarding the like product. The company incurs this cost when advertising the like product to the final customer.  Indicate the advertising expenses incurred by the company looking at the customer as indirect sales expenses in field 33.0.
Complement:	Describe separately advertising focused on the customers of the company and on the final customer. Provide a list containing all expenses incurred by each of them, and attach calculation plans that demonstrate the allocation of the expenses of the final customer.
<b>Field No. 31.0</b>	<b>Technical assistance expenses</b>
Name of the field:	DESPASS
Note:	Specify the cost per unit of technical assistance expenses. Include only direct expenses charged from reimbursements made by the customer. Specify indirect expenses regarding technical assistance as indirect sales expenses (field 33.0).
Complement:	Describe the technical services rendered which were directly related to the like product. Include all reimbursements received from the customer for the services rendered. Provide a list containing all direct and indirect expenses incurred and include calculation plans that demonstrate the allocation of the direct expenses incurred in each sale of the like product.
<b>Field No. 32.(1 to n)</b>	<b>Other direct sales expenses</b>
Name of the field:	DESPDIR (1 to n)
Note:	Specify the cost per unit of other direct expenses concerning the sale of the like product that are not included in other fields. Indicate each additional direct sales expense in a separate field. Include only direct sales expenses charged from reimbursements made by the customer.
Complement:	Describe each type of direct sales expense incurred and the reason for considering it as directly related to the like product. Provide a list containing all direct and indirect expenses incurred and include calculation plans that demonstrate the allocation of the direct expenses incurred in each sale of the like product.

<p><b>Fields 33.0 and 34.0</b></p>
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<p>Provide the information requested concerning indirect sales expenses in field 33.0 and costs for the maintenance of stocks in field 34.0.</p>
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<b>Field No. 33.0</b>	<b>Indirect sales expenses</b>
Name of the field:	DESPIND
Note:	Specify the cost per unit of the indirect sales expenses (e.g. rent of the sales office, salaries of the salespeople) incurred to sell the product in the comparison market. When the expenses were paid jointly by the company and by an affiliated reseller, create separate fields for each company.
Complement:	Describe the general expenses incurred. Attach a list containing all the expenses and provide calculation plans that demonstrate the allocation of the expenses,

including those excluded from the conditions set forth in fields 29 to 32. If more than one company has covered those costs, attach separate plans for each of them.

**Field No. 34.0                      Stock maintenance expenses**

Name of the field:                CUSTEST

Note:                                 Specify the opportunity cost per unit of maintaining stocks for sale, including the real cost of the short-term loans taken by the company. If the company has not taken short-term loans during the investigation period, use the rate charged by a commercial bank for short-term loans.

Complement:                      Describe how the like product is stocked before the sale and indicate the average period the product is stocked and the average period between stock and the sale to the first independent customer (or affiliated customer, if the company is presenting information on the affiliated customer). The cost specified shall cover the period from the end of production to shipment to the customer. Indicate the source used for calculating the short-term interest rates.

**Field No. 35.0                      Packaging cost**

Name of the field:                CUSTEMB

Note:                                 Specify the cost per unit of packaging for the product under investigation. Include the costs related to labour, materials and general expenses. If the product is manufactured in more than one plant, specify the weighted average cost of all plants.

Complement:                      Specify the types of packaging used. Provide a plan for each type of packaging, explaining how the cost per unit of material, labour and general expenses used in the packaging was calculated.

The plans shall include a list of packaging materials, the average cost of each material and the quantity of each material used. In addition, specify the average number of work hours spent on each type of packaging and the average cost of labour (per hour), including benefits. Attach a list of general expenses incurred, demonstrating how those expenses were allocated to each type of packaging.

**Field No. 36.0                      Total production cost**

Name of the field:                CUSTOT

Note:                                 Specify the total production cost per unit, including materials, labour and general expenses (fixed and variable) derived from the company's accounting costs in the ordinary course of its transactions, according to the information presented in Section D of this questionnaire.

**Field No. 37.0                      Exchange rate**

Name of the field:                TXCAM

Note:                                 Specify the applicable exchange rate (United States dollars), according to item IV of Section A of this questionnaire.

**Fields 38.0 to 45.0**

Answer the following questions only regarding sales in third markets, where applicable.

**Field No. 38.0                      International freight**

Name of the field:                FRETINT

- Note: Specify the international freight (air or sea) incurred in the transportation of the product from the port of exit in the country of production to the port of entrance in a third country.
- Complement: Indicate whether the transporter is affiliated to the company. Attach any agreement signed with the transporter regarding the product under investigation. Describe how the freight cost per unit was calculated, including the respective calculation plans.
- Field No. 39.0 International insurance**
- Name of the field: SEGURIN
- Note: Specify the cost per unit of international insurance incurred from the port of exit in the country where the product was manufactured to the port of entrance in the third country.
- Complement: Describe how the insurance cost per unit was calculated, including the respective calculation plans.
- Field No. 40.0 Freight in the third country – port to storehouse**
- Name of the field: FRETARM
- Note: Specify the cost per unit of any freight expense incurred from the port in the third country to the affiliated reseller storehouse or any other intermediate place. If the sales are made direct to an unrelated customer in a third country, specify the cost per unit of freight from the port in the third country to the port of delivery of the independent buyer.
- Complement: Describe how the cost per unit of the internal freight was calculated, including the respective calculation plans.
- Field No. 41.0 Freight in the third country – storehouse to independent customer**
- Name of the field: FRETCLI
- Note: Specify the internal freight cost incurred from the affiliated reseller's storehouse in a third country to the place of delivery set by the independent buyer.
- Complement: Describe how the cost per unit of internal freight was calculated, including the respective calculation plans.
- Field No. 42.0 Insurance in a third country**
- Name of the field: SEGUTER
- Note: Specify the cost per unit of internal insurance in the third country.
- Complement: Describe how the cost per unit of internal insurance was calculated, including the respective calculation plans.
- Field No. 43.0 Load handling and brokerage**
- Name of the field: TERMA
- Note: Specify the cost per unit of load handling and brokerage expenses incurred in the third country.
- Complement: Describe how the cost per unit of load handling and brokerage was calculated, including the respective calculation plans.
- Field No. 44.0 Import tax in a third country**
- Name of the field: IMPTERP
- Note: Specify the quantity per unit paid to customs and respective tax paid for the product.

Complement: Describe how the quantity paid per unit to customs was calculated and include the respective calculation plans.

**Field No. 45.0 Tax reimbursement**

Name of the field: DRAW

Note: Specify the quantity received per unit by the company as tax reimbursement for the exportation of the product under investigation, from the country of production to a third country.

Complement: Explain how the quantity received as tax reimbursement was calculated, including the respective calculation plans.

**Other expenses and incomes**

If in the sale of the product under investigation the company receives any other income or incurs any other expenses that are not mentioned above, please create specific fields for each income and expense, describing them and including the respective calculation plans.

**Section – C  
Sales in Brazil**

**I. General explanation of Section C**

This section contains instructions on how to record the sales of the product in Brazil.

**II. Electronic data on sales in the comparison market**

Prepare, in accordance with the information provided in this section, electronic data on the sales of the product under investigation in the comparison markets during the investigation period.

Each field (fields 1.0 to 50.0) shall correspond to only one item described in the invoice.

Each field shall contain the requested information, from field 1.0 to field 50.0, regarding the product sold, sales conditions, sales expenses and other information. The information requested by the Department is described in Section C below.

**III. Summary of the fields regarding sales**

The chart below is a summary of the fields to be completed by the company. This section also contains instructions on how to complete the fields and indicates information that may be requested in order to complement the data specified in these fields.

Summary of the fields to be completed

<i>Field number</i>	<i>Field description</i>	<i>Field name<sup>4</sup></i>
1.0	<i>Code of the product</i>	<i>CODPROD</i>
2.0	<i>Characteristics of the product</i>	<i>CARPROD</i>
3.0	<i>Code of the customer</i>	<i>CLICOD</i>
4.0	<i>Relationship with the customer</i>	<i>RELCLI</i>
5.0	<i>Category of the customer</i>	<i>CATCLI</i>
6.0	<i>Distribution channels</i>	<i>CANAL</i>
7.0	<i>Date of sale</i>	<i>VENDT</i>
8.0	<i>Invoice number</i>	<i>FATURA</i>
9.0	<i>Date of the invoice</i>	<i>DTFAT</i>

<sup>4</sup> For sales in Brazil, insert the letters 'BR' at the end of the field name. Ex.: Field 1.0 – Code of the product – Name of the field: CODPRODBR (for sales in Brazil).

10.0	<i>Date of shipment</i>	EMBDT
11.0	<i>Date of payment</i>	PAGDT
<b>Field number</b>	<b>Field description</b>	<b>Field name</b>
12.0	<i>Sales conditions</i>	CONDVED
13.0	<i>Payment terms</i>	CONDPAG
14.0	<i>Quantity</i>	QTD
15.0	<i>Gross price per unit</i>	PRBRUTO
16.1	<i>Discount for early payment</i>	DESPANT
16.2	<i>Discount related to quantity</i>	DESQTD
16.(3 to n)	<i>Other discounts</i>	OUTDES(3 to n)
17.(1 to n)	<i>Rebates</i>	ABAT(1 to n)
18.0	<i>Internal freight – production unit to storehouse</i>	FINTFES
19.0	<i>Storage expenses – pre-sale</i>	DESPEST
20.0	<i>Internal freight – production unit/storehouse to port of shipment</i>	FINTCLI
21.0	<i>Internal insurance</i>	SEGINT
22.0	<i>Export expenses – load handling and brokerage</i>	DESPEXP
23.0	<i>International freight</i>	FRETINT
24.0	<i>International insurance</i>	SEGURIN
25.0	<i>Internal Freight in Brazil – port of entrance to storehouse</i>	FRETARM
26.0	<i>Internal Freight in Brazil – storehouse to independent customer</i>	FRETCLI
27.0	<i>Insurance in Brazil</i>	SEGUTER
28.0	<i>Other transportation expenses in Brazil</i>	OUTDEST
29.0	<i>Brazilian import tax</i>	IMPTEP
30.0	<i>Destination</i>	DESTIN
31.0	<i>Tax reimbursement</i>	DRAW
32.0	<i>Commissions</i>	COMIS
33.0	<i>Sales agent</i>	AGENT
34.0	<i>Relationship with the agent</i>	RELAGEN
35.0	<i>Financial expenses</i>	DESPFIN
36.0	<i>Interest income</i>	RECJUR
37.0	<i>Storage expenses – post-sale</i>	DESPARM
38.0	<i>Advertising expenses</i>	DESPPRO
39.0	<i>Technical assistance expenses</i>	DESPASS
40.(1 to n)	<i>Other direct sales expenses</i>	DESPDIR(1 to n)
41.0	<i>Indirect sales expenses incurred in the country of production</i>	DESPIND
42.0	<i>Indirect sales expenses incurred in Brazil</i>	DESINDI
43.0	<i>Stocks maintenance expenses incurred in the country of production</i>	CUSEST
44.0	<i>Stocks maintenance expenses incurred in Brazil</i>	MANUEST
45.0	<i>Package cost</i>	CUSTEMB
46.0	<i>Package cost in Brazil</i>	CUSTREM
47.0	<i>Total production cost</i>	CUSTOT
48.0	<i>Value of internalization</i>	VALENT
49.0	<i>Date of internalization</i>	DTENT
50.0	<i>Importer</i>	IMPORT

Field No. 1.0                      Code of the product

Name of the field:              CODPROD

- Note: Specify the commercial codes used by your company in the ordinary course of trade for sales of the product under investigation.
- Complement: The code of the product must be the code specified in item VII.a of Section A of this questionnaire.
- Field No. 2.0**                    **Characteristics of the product**
- Name of the field: CARPROD
- Field No. 3.0**                    **Code of the customer**
- Name of the field: CLICOD
- Note: Specify the name or accounting code used for each of the customers.
- Complement: Provide a list containing the names and codes of all customers, either in the domestic market or abroad.
- Field No. 4.0**                    **Relationship with the customer**
- Name of the field: RELCLI
- Note: Use these codes to specify whether the customer is a related party.  
 1 = Unrelated customer  
 2 = Customer related to the consumer  
 3 = Customer related to the reseller
- Field No. 5.0**                    **Category of the customer**
- Name of the field: CATCLI
- Note: 1 = Transformation industry  
 2 = Trading companies  
 3 = Local distributors  
 4 = Retailers  
 5 to n = Any other customer category (specify)
- Complement: Identify any customers that fit into more than one category and state the reasons.
- Field No. 6.0**                    **Distribution channels**
- Name of the field: CANAL
- Note: The distribution channels specified in this field must be in accordance with those described in question III of Section A of this questionnaire.  
 1 = Channel 1  
 2 = Channel 2  
 3 to n = Channel 3 to channel n
- Field No. 7.0**                    **Date of sale**
- Name of the field: VENDT
- Note: Specify the date of sale in accordance with the definition in footnote 2 and the information provided in item IV of Section A of this questionnaire. If the date of sale varies according to the type of transaction (e.g. the date of the invoice or the date of the agreement), create a file to relate the date to the type of transaction (e.g. CONT to agreement, FAT for invoice).  
 Positions 1 & 2 = day  
 Positions 3 & 4 = month  
 Positions 5 to 8 = year

<b>Field No. 8.0</b>	<b>Invoice number</b>
Name of the field:	FATURA
Note:	Specify the number of the invoice related to the accounting system of the company.
Complement:	Describe the numbering system of the invoices that originated the number specified in this field. Specify whether it is a simple sequence of numbers or some other form of codification. In this case, provide a description of each of the components of the code.
<b>Field No. 9.0</b>	<b>Date of the invoice</b>
Name of the field:	DTFAT
Note:	Positions 1 & 2 = day Positions 3 & 4 = month Positions 5 to 8 = year
<b>Field No. 10.0</b>	<b>Date of shipment</b>
Name of the field:	EMBDT
Note:	Specify the date of shipment from factory to customer or from stock to customer. Positions 1 & 2 = day Positions 3 & 4 = month Positions 5 to 8 = year
<b>Field No. 11.0</b>	<b>Date of payment</b>
Name of the field:	PAGDT
Note:	Specify the date of the payment made by the customer that is recorded in your books. Positions 1 & 2 = day Positions 3 & 4 = month Positions 5 to 8 = year
Complement:	Indicate the source used to determine the date of payment and the book in which it was identified. If it is not possible to recover such data, state the reasons for not completing this field. If a specific invoice has not been paid, leave it blank.
<b>Field No. 12.0</b>	<b>Sales conditions</b>
Name of the field:	CONDVED
Note:	1 = FOB 2 = CIF 3 = EX FACTORY 4 to n = Specify other sales conditions
Complement:	Describe the sales conditions, indicating the codes used and their respective meaning.
<b>Field No. 13.0</b>	<b>Payment terms</b>
Name of the field:	CONDPAG
Note:	Indicate the payment terms granted to the customers. 1 = 30 days after invoice 2 = 60 days after invoice 3 to n = Specify other payment terms.

**Complement:** Describe the payment terms granted by the company, indicating the codes used by each and explaining if they vary according to the distribution channel and how they are related. Indicate whether the payment terms are described on each invoice or, if not, how the customers accept the payment terms.

The codes listed above are mere examples. There is no need to use them.

**Fields No. 14 to 17**

Provide the information requested regarding the quantity sold and the price paid per unit in each transaction. All discounts and rebates must be specified in these fields. The gross price per unit, less the discounts and rebates, multiplied by the respective sales quantity, shall be equal to the net sales income.

**Field No. 14.0                      Quantity**

Name of the field:            QTD

**Note:** Specify the quantity sold (kg or unit) in this transaction. In general, this quantity shall be a specific quantity shipped or described in an specific invoice, refund free, if possible.

**Complement:** Explain how the return of products, if allowed, affects your general sales records and your sales diary.

**Fields No. 15 to 44**

Specify the sales price after the deduction of taxes (except taxes that do not applied to products to be exported e.g. value-added tax (VAT)), discounts and rebates, as well as all income and expenses in the currency in which they were received or incurred.

**Field No. 15.0                      Gross price per unit**

Name of the field:            PRBRUTO

**Note:** Specify the price per unit recorded in the invoice of sales totally or partially shipped and paid. Regarding partially shipped sales, provide the price per unit of the quantity to be shipped. This value must be the gross price per unit in the unit of measure. Discounts and rebates must be recorded separately, in fields 16 and 17.

**Field No. 16.1                      Discount for early payment**

Name of the field:            DESPANT

**Note:** Specify the value per unit of any discount given to the customer for early payment.

**Complement:** Explain the policies and practices of the company concerning discounts for early payment. If the discounts vary according to distribution channel (field 6.0) or customer (field 5.0), provide a brief explanation of the discounts given for each category. Explain how the discount per unit was calculated. If available, provide a sample of the documents for this kind of discount.

**Field No. 16.2                      Discount related to quantity**

Name of the field:            DESQTD

Note: Specify the value per unit of any discount given to the customer according to the quantity purchased.

Complement: Explain the policies and practices of the company for giving discounts according to the quantity purchased. If the discounts vary according to distribution channel (field 6.0) or customer (field 5.0), provide a brief explanation of the discounts given for each category. Explain how the discount per unit was calculated. Provide a table displaying the discount per quantity or other equivalent document.

**Field No. 16.(3 to n) Other discounts**

Name of the field: OUTDES (1 to n)

Note: Specify the value per unit of all discounts given to the customer. Specify each existing discount separately.

Complement: Explain the policies and practices of the company concerning additional discounts. If the discounts vary according to the distribution channel (field 6.0) or to the customer (field 5.0), give a brief explanation of the discounts given to each category. Explain how the discount per unit was calculated. Provide a sample of documents for each type of discount, if available.

**Field No. 17.(1 to n) Rebates**

Name of the field: ABAT (1 to n)

Note: Specify the value per unit of each rebate given to the customer. Create a separate field for each of the rebates.

Complement: Explain the policies and practices of the company concerning rebates and describe them. If the rebates vary according to the distribution channel (field 6.0) or to the customer (field 5.0), give a brief explanation of the rebates given to each category. Provide a sample of documents for each type of rebate, if available.

**Fields No. 18.0 to 29.0**

Present the information required involving the direct cost of transporting the product from the production unit to the place of delivery chosen by the customer. All indirect costs related to the transportation of the product must be specified in these fields. The company can add other fields, if necessary.

The fields below involve the expenses usually incurred either in domestic sales or in exports. However, the conditions of sale may specify the quantity that the company pays to only one transporter. In this case, it is not necessary to separate the information; it can be included in the same field. The company must present information to explain this.

**Field No. 18.0 Internal freight – production unit to storehouse**

Name of the field: FINTFES

Note: **Specify the cost per unit of the freight to transport the product from the production unit to the storehouses of the company, or any other intermediate location. If necessary, allocate this cost taking into consideration the base used for the calculation of the freight (e.g. volume, weight). If the product is shipped direct from the production unit to the customer, go to field 20.0.**

Complement: Describe the means of transportation used to transport the product from the production unit to the storehouses or intermediate location and any affiliations with the transporters during the investigation period. If there is more than one

independent transporter, provide the value of the freight for each transaction and the methodology used for allocating costs when several types of products are transported together. If it is not possible to identify specifically the cost for each shipment, describe how the freight per unit was calculated. Attach explanatory plans.

If the company uses its own vehicles, explain how the cost of the freight was calculated and specify the total expenses incurred (e.g. fuel). Attach explanatory plans.

**Field No. 19.0 Storage expenses (pre-sale)**

Name of the field: DESPEST

Note: Specify the cost per unit of the direct storage expenses incurred before the sale. Post-sale expenses are to be presented in field 37.0. Costs specified in this field refer only to the direct expenses of a storage unit outside the production unit. Indirect expenses related to storage must be presented in field 41.0 (indirect sales expenses in the country of production).

**Field No. 20.0 Internal freight – production unit/storehouse to port of shipment**

Name of the field: FINTCLI

Note: Specify the cost per unit of the internal freight from the production unit or storehouse (or other intermediate location) to the port of shipment. If necessary, allocate this cost taking into consideration the base used for the calculation of the freight (e.g. weight, volume).

Complement: Describe the means of transportation used to deliver the products to the customer and any affiliations with transporters during the investigation period. If there is more than one independent transporter, give the value of the freight for each transaction and the methodology used for the allocation when several types of products are transported together. If it is not possible to identify the cost of each shipment, describe how the freight per unit was calculated. Attach explanatory plans.

If the company uses its own vehicles, explain how the cost of the freight was calculated and specify the total expenses incurred (e.g. fuel). Attach explanatory plans.

**Field No. 21.0 Internal insurance**

Name of the field: SEGINT

Note: Specify the internal insurance cost per unit from the production unit/storehouse to the place of delivery stipulated by the customer.

Complement: Describe how the company calculated the insurance cost per unit and attach the respective calculation plans.

**Field No. 22.0 Export expenses (load handling and brokerage)**

Name of the field: DESPEXP

Note: Specify the cost per unit of load handling and brokerage incurred in the country of production and attach the respective calculation plans.

**Field No. 23.0 International freight**

Name of the field: FRETINT

Note: Specify the international freight (air or sea) incurred in the transportation of the product from the port of exit in the country of production to the port of entrance in a third country.

Complement: Indicate whether the transporter is affiliated to the company. Attach any agreement signed with the transporter regarding the product under investigation. Describe how the freight cost per unit was calculated, including the respective calculation plans.

**Field No. 24.0 International insurance**

Name of the field: SEGURIN

Note: Specify the cost per unit of international insurance incurred from the port of exit in the country where the product was manufactured to the port of entrance in the third country.

Complement: Describe how the insurance cost per unit was calculated, including the respective calculation plans.

**Field No. 25.0 Internal freight in Brazil – port of entrance to storehouse**

Name of the field: FRETARM

Note: Specify the cost per unit of freight expenses incurred from the port of entrance in Brazil to the affiliated reseller's storehouse or any other intermediate place. If the sales are made direct to an unrelated customer in a third country, specify the cost per unit of freight from the port of departure in Brazil to the port of delivery of the independent buyer.

Complement: Describe how the cost per unit of the internal freight was calculated, including the respective calculation plans.

**Field No. 26.0 Internal freight in Brazil – storehouse to independent customer**

Name of the field: FRETCLI

Note: Specify the cost per unit of freight incurred from the affiliated reseller's storehouse in Brazil to the in a third country to the place of delivery set by the independent buyer.

Complement: Describe how the cost per unit of internal freight was calculated, including the respective calculation plans.

**Field No. 27.0 Insurance in Brazil**

Name of the field: SEGUTER

Note: Specify the cost per unit of insurance in Brazil.

Complement: Describe how the cost per unit of insurance was calculated, including the respective calculation plans.

**Field No. 28.0 Other transportation expenses in Brazil**

Name of the field: OUTDEST

Note: Specify the cost per unit of other transportation expenses incurred in Brazil.

Complement: Describe how the cost per unit of additional transportation expenses was calculated, including the respective calculation plans.

**Field No. 29.0 Brazilian import tax**

Name of the field: IMPTERP

Note: Specify the quantity paid per unit to customs and the respective import tax.

Complement: Describe how the cost per unit related to the quantity paid to customs was calculated, including the respective calculation plans.

<b>Field No. 30.0</b>	<b>Destination</b>
Name of the field:	DESTIN
Note:	Specify the postal code or other code that indicates the place of delivery stipulated by the customer.
<b>Field No. 31.0</b>	<b>Tax reimbursement</b>
Name of the field:	DRAW
Note:	Specify the quantity per unit received by the company as a reimbursement of the export tax concerning the product under investigation in Brazil.
Complement:	Explain how the quantity received as tax reimbursement was calculated, including the respective calculation plans.  Provide a list of the codes and respective destinations.
<b>Field No. 32.0</b>	<b>Commissions</b>
Name of the field:	COMIS
Note:	Specify the cost per unit of the commissions paid to affiliated and non-affiliated agents. If more than one commission has been paid, specify each commission in a separate field.
Complement:	Describe the payment terms of the commissions and how the percentages are calculated. Explain whether the quantity of commission varies according to the party to which it is paid and the party's affiliation to the company. Attach samples of commission agreements used by the company
<b>Field No. 33.0</b>	<b>Sales agent</b>
Name of the field:	AGENT
Note:	Provide the name of the agent and respective identification code used by he company. If more than one commission is paid, state the name and the code for each agent in separate fields.
Complement:	Provide a list containing all sales agents and respective codes, specifying the commission percentage and whether the agent is affiliated or not.
<b>Field No. 34.0</b>	<b>Relationship with the agent</b>
Name of the field:	RELAGEN
Note:	Specify the code concerning the affiliation. 1 = Unrelated party 2 = Related party
<b>Field No. 35.0</b>	<b>Financial expenses</b>
Name of the field:	DESPFIN
Note:	Specify the cost per unit of any short-term loans taken by the company. If the company has not taken any short-term loans during the investigation period, use the commercial interest rates charged for short-term loans.  These expenses shall be calculated and specified on a transaction-by-transaction basis, using the number of days between the date the product was shipped to the customer and the date of payment. If the date of payment is not available in the company's accounting system, it can be calculated based on the average period for receiving payment.
Complement:	Provide the formula used for calculating the financial expenses and a plan specifying how the average short-term interest rates were calculated. Explain

the existence of any factors that may affect the cost of the money borrowed, such as deposits requested as a condition for giving the loan. Indicate the source of the short-term interest rates used in the calculations.

**Field No. 36.0****Interest income**

Name of the field:

RECJUR

Note:

Specify the cost per unit of interest rates received in case of delay in payment of the invoice.

Complement:

Describe the conditions under which the company charges the customer interest in case of delay in payment of the invoice. If the practice varies according to the distribution channel or the category of the customer, explain how and why.

**Field No. 37.0****Storage expense (post-sale)**

Name of the field:

DESPARM

Note:

Specify the direct cost per unit of the post-sale storage offered to the customer. Post-sale storage expenses include only the direct expenses charged and reimbursements made by the customer. Indirect storage expenses must be specified in field 41.0.

Complement:

Describe the type of service rendered to the customer after the sale. Specify the names and respective codes of the customers to which the service is rendered, including the name and the location of the storehouse used. Indicate whether a party related to the company operates the storehouse and describe the kind of association. Present a copy of the agreement or other evidence that demonstrates that the expense was incurred as a condition of the sale.

Describe how the storage cost per unit was calculated, attaching the respective calculation plans. If the storehouse is owned by the company or by a related party, describe how the indirect and direct costs of this transaction are separated.

**Field No. 38.0****Advertising expenses**

Name of the field:

DESPPRO

Note:

Specify the cost per unit of advertising regarding the like product. The company incurs this cost when advertising the product to the final customer.

Indicate the advertising expenses incurred by the company looking at the customer as indirect sales expenses in field 41.0.

Complement:

Describe separately advertising focused on the customers of the company and on the final customer. Provide a list containing all expenses incurred by each of them, and attach calculation plans that demonstrate the allocation of the expenses of the final customer.

**Field No. 39.0****Technical assistance expenses**

Name of the field:

DESPASS

Note:

Specify the cost per unit of technical assistance expenses. Include only direct expenses charged from reimbursements made by the customer. Specify indirect expenses regarding technical assistance as indirect sales expenses (field 41.0).

Complement:

Describe the technical services rendered which were directly related to the like product. Specify all reimbursements received from the customer for the services rendered. Provide a list containing all direct and indirect expenses incurred and include calculation plans that demonstrate the allocation of the direct expenses incurred in each sale of the product under investigation.

**Field No. 40.(1 to n) Other direct sales expenses**

Name of the field: DESPDIR (1 to n)

Note: Specify the cost per unit of other direct expenses concerning the sale of the product under investigation that are not included in other fields. Indicate each additional direct sales expense in a separate field. Include only direct sales expenses charged from reimbursements made by the customer.

Complement: Describe each type of direct sales expense incurred and the reason for considering it as directly related to the product under investigation. Provide a list containing all direct and indirect expenses incurred and include calculation plans that demonstrate the allocation of the direct expenses incurred in each sale of the product under investigation.

**Fields 41.0 to 43.0**

Provide the information requested concerning indirect sales expenses in fields 41.0 and 42.0 and costs for the maintenance of stocks in field 43.0.

**Field No. 41.0 Indirect sales expenses in the country where the product was manufactured**

Name of the field: DESPIND

Note: Specify the cost per unit related to indirect sales expenses (e.g. rent of the sales office, salaries of the salespeople) incurred in the country of production to sell the product in Brazil. When the expenses were paid jointly by the company and by an affiliated reseller, create separate fields for each company.

Complement: Describe the general expenses incurred. Attach a list containing all the expenses and provide calculation plans that demonstrate the allocation of the expenses, including those excluded from the conditions set forth in fields 37.0 to 40.0. If more than one company has covered those costs, attach separate plans for each of them.

**Field No. 42.0 Indirect sales expenses incurred in Brazil**

Name of the field: DESINDI

Note: Specify the cost per unit of indirect sales expenses incurred in Brazil. When the expenses were paid jointly by the company and by an affiliated reseller, create separate fields for each company.

Complement: Describe the general sales and administrative expenses (e.g. rent of the sales office, salaries of the salespeople) incurred in Brazil. Attach a list containing all the expenses and provide calculation plans that demonstrate the allocation of the expenses, including those excluded from the conditions set forth in fields 37.0 to 40.0. If more than one company has covered those costs, attach separate plans for each of them.

**Field No. 43.0 Stock maintenance expenses incurred in the country of production**

Name of the field: CUSTEST

Note: Specify the opportunity cost per unit incurred from the final production date in the country of production to the date the product arrived in Brazil, including the real cost of any short-term loans taken out by the company. If the company has not taken any short-term loans during the investigation period, use the rate charged by a commercial bank for short-term loans.

**Complement:** Describe how the like product is stocked before the sale and indicate the average period the product is stocked in the country of production and the average period from stock to the shipment to Brazil. The cost specified shall cover the period from the end of production to shipment to the customer. Indicate the source used for calculating the short-term interest rates.

**Field No. 44.0 Stock maintenance expenses incurred in Brazil**

**Name of the field:** MANUEST

**Note:** Specify the opportunity cost per unit incurred from the date the product under investigation arrives in Brazil to the date of shipment from the storehouse or other intermediate location in Brazil to the first independent buyer, including the real cost of any short-term loans taken out by the company. If the company has not taken any short-term loans during the investigation period, use the rate charged by a commercial bank for short-term loans.

**Complement:** Describe how the product under investigation is stocked in Brazil before the sale and indicate the average stock period in Brazil. Indicate the source used for calculating the short-term interest rates.

**Field No. 45.0 Packaging cost**

**Name of the field:** CUSTEMB

**Note:** Specify the cost per unit with package concerning the product under investigation shipped to Brazil. Include the cost related to labour, materials and general expenses. If the product is manufactured in more than one plant, specify the weighted average cost of all plants. Specify any other cost associated to of re-packaging in Brazil separately in field 46.0.

**Complement:** Specify the types of packages used. Provide a plan for each type of package, explaining how the cost per unit of material, labour and general expenses used in the packaging were calculated.

The plans shall include a list of packaging materials, the average cost of each material and the quantity of each material used. In addition, specify the average number of work hours spent on each type of packaging and the average cost of labour (per hour), including benefits. Attach a list of general expenses incurred, demonstrating how those expenses were allocated to each type of packaging.

**Field No. 46.0 Cost of re-packaging in Brazil**

**Name of the field:** CUSTREMB

**Note:** Specify the cost per unit of re-packaging in Brazil. Include the cost of material, labour and general expenses.

**Complement:** Describe the process of re-packaging in Brazil. Specify the types of packaging used. Provide a plan for each type of package, explaining how the cost per unit of material, labour and general expenses used in the packaging were calculated.

The plans shall include a list of packaging materials, the average cost of each material and the quantity of each material used. In addition, specify the average number of work hours spent on each type of packaging and the average cost of labour (per hour), including benefits. Attach a list of general expenses incurred, demonstrating how those expenses were allocated to each type of packaging.

**Field No. 47.0 Total production cost**

**Name of the field:** CUSTOT

**Note:** Specify the total cost per unit of production, including materials, labour and general expenses (fixed and variable), derived from the costs of the company in the ordinary course of trade.

<b>Field No. 48.0</b>	<b>Value of internalization</b>
Name of the field:	VALENT
Note:	Specify the real value per unit with internalization in Brazil (calculation base: import tax).
<b>Field No. 49.0</b>	<b>Date of internalization</b>
Name of the field:	DTENT
Note:	Specify the date of the import declaration.
<b>Field No. 50.0</b>	<b>Importer</b>
Name of the field:	IMPORT
Note:	Indicate the Brazilian importer recorded on the documents of exportation.
Complement:	Provide a list containing names of the Brazilian importers and respective codes and abbreviations used to identify them.

#### **Other expenses and incomes**

If in the sale of the product under investigation the company receives any other income or incurs any other expenses that are not mentioned above, please create specific fields for each income and expense, describing them and including the respective calculation plans.

## **Section – D**

### **Production cost and constructed value**

#### **I. General explanation of Section D**

This section contains instructions on how to provide information on the cost of production and constructed value of the product.

The cost of production referred herein is the total cost, structured in accordance with the model in annex B, regarding the product under investigation, sold by the company in the comparison market. If the company manufactures the product in more than one plant, the cost of production specified in the questionnaire will be the average costs incurred in each production unit.

Annex C contains the structure for determining the normal value based on the constructed value. This annex reproduces the information in annex B, except that the commercial expenses that have not been included in annex B. THE COMPANY DOES NOT HAVE TO COMPLETE ANNEX C IF IT BELIEVES IT IS NOT NECESSARY. HOWEVER, IF ANNEX C IS NOT COMPLETED AND IF IT IS NOT POSSIBLE TO DETERMINE THE NORMAL VALUE BASED ON THE SALES IN THE COMPARISON MARKET, THE NORMAL VALUE WILL BE DETERMINED BASED ON THE INFORMATION AVAILABLE, ACCORDING TO § 3º OF ARTICLE 27 AND ARTICLE 66, Decree No. 1602, 1995.

#### **II. General information**

The information requested below allows the Department to understand the transaction, the products, the production processes and the financial and accounting practices of the company.

##### **II.1. Product and production processes:**

Describe in detail the process used by the company to manufacture the product under investigation sold in the domestic market and abroad, indicating:

A. The technological basis of the process: describe the manufacturing process, indicating the raw materials, secondary materials and reactions occurring in the process. Provide a flow chart of the process,

describing the phases and the main equipment. Indicate the consumption per unit of the main intakes used in the process, including utilities. State whether it is a continuous process or not and which is the usual production regime.

B. If the product is manufactured in more than one plant, identify each plant and describe their respective activities.

C. Relate the subproducts and the waste resulting from the production process. Indicate whether the waste is reintroduced into the production cycle as a raw material, if it is sold or if it has no economic value.

D. List all the factors used in manufacturing the product under investigation, including raw materials and other intakes, labour, utilities, machines and equipment, subcontracted services, research and development, among others. For each factor provided by a related party, indicate the name of the company and the type of affiliation, if this has not been done in Section A.

E. Relate the main factors received from interested parties and used in the manufacture of the product under investigation. For each of the factors, provide the following information:

(a) Global value and quantity acquired from all sources by the company from January to December XXXX, and the global value and quantity acquired from each related party during this period.

(b) The transfer price per unit charged by the related party. If the related party sells the same product to other unrelated buyers for the same price, attach documents that confirm the price paid by the unrelated parties. If your company buys the same product from unrelated suppliers at the same price, attach documents confirming that.

## II.2 Accounting and financial practices

Describe the accounting practices and systems adopted by the company.

A. Provide a flow chart showing the accounting and financial systems adopted by the company and the respective books. Indicate all the auxiliary factors, including materials, stocks, sales and receivables.

B. Indicate in the flow chart how the financial data are summarized in the financial statements.

C. Describe the accounting system adopted by the company and how the costs incurred in manufacturing the product under investigation in the ordinary course of trade are classified, allocated, aggregated and recorded. The description must be presented as a narrative and accompanied by a flow chart that illustrates how the costs of the product during the production process are recorded and that indicates auxiliary costs maintained by the company and how to match them with the financial data.

## III. Instructions on how to complete annex B

Complete annex B, bearing in mind that the value per unit of the cost of production (monthly) is to be transferred to field 36 in section B of this questionnaire.

### Cost of raw material

The cost of raw material shall include transportation expenses, import taxes and other expenses usually associated with the acquisition of the product. Expenses related to indirect internal taxes (e.g. VAT) must be excluded.

#### Labour

The direct cost of labour shall include all the employees involved in production. It includes salaries, bonuses, overtime, vacations, holidays, insurance, sickness allowance and other benefits.

#### Utilities

Specify the total cost of utilities: electrical energy or any other source of energy; steam; industrial gas and others.

General expenses + Administrative + Financial

Specify all the expenses incurred by the company related to the manufacture of the product under investigation. Present a plan containing the expenses presented in the financial statements for each of the items described in item E of the structure of costs.

#### Depreciation

Specify how the company allocates expenses related to depreciation. Present a plan linking those expenses with the respective financial statements.

#### **IV. Instructions on how to complete annex C**

Complete annex C, bearing in mind that the total cost of production will be the total spent from January to December XXXX on manufacturing the product in question.

#### Cost of raw material

The cost of raw material shall include transportation expenses, import taxes and other expenses usually associated with the acquisition of the product. Expenses related to indirect internal taxes (e.g. VAT) must be excluded.

#### Labour

The direct cost of labour shall include all the employees involved in production. It includes salaries, bonuses, overtime, vacations, holidays, insurance, sickness allowance and other benefits.

#### Utilities

Specify the total cost of utilities: electrical energy or any other source of energy; steam; industrial gas and others.

#### General Expenses + Administrative + Commercial + Financial

Specify all the expenses incurred by the company related to the manufacture of the product under investigation. Present a plan containing the expenses presented in the financial statements for each of the items described in item E of the structure of costs.

#### Depreciation

Specify how the company allocates expenses related to depreciation. Present a plan linking those expenses with the respective financial statements.

## Annex B – Production cost

Ref.: \_\_\_\_/\_\_\_\_  
year/month

<i>Production cost</i>	<i>Units</i>	<i>Consumption per unit</i>	<i>Price per unit (local currency)</i>	<i>Price per unit (\$)</i>	<i>Final cost (local currency)</i>	<i>Final cost (\$)</i>
<b>A – VARIABLE COSTS</b>						
1 – Raw material	ton					
2 – Secondary materials • Specify	ton					
3 – Packages	unit					
4 – Utilities • Electrical energy • Steam – 15 kg/cm <sup>2</sup> • Others (specify)	KW h ton					
<b>B – LABOUR</b>						
<b>C – INDIRECT COSTS</b> • Maintenance costs • Indirect labour • Depreciation • Other indirect costs (specify)						
<b>D – PRODUCTION COSTS (A+B+C)</b>						
<b>E – EXPENSES</b> • Administrative • Financial • Others (specify)						
<b>F – TOTAL COST OF PRODUCTION (D+E)</b>						
<b>TOTAL PRODUCTION</b>						

Note<sub>1</sub>: Use the scheme provided in this annex to present the structure of the production costs, adapting it to the specifics of your industry.

Note<sub>2</sub>: Present this table on a monthly basis, from January to December XXXX.

Note<sub>3</sub>: Indicate the rate of use of the installed capacity in each of the tables.

Note<sub>4</sub>: Specify the administrative and financial expenses.

Note<sub>5</sub>: When doing the currency exchange to United States dollars, indicate the exchange rate.

## Annex C – Constructed value – base

<i>Production cost</i>	<i>Unit</i>	<i>Consumption per unit</i>	<i>Price per unit (local currency)</i>	<i>Price per unit (\$)</i>	<i>Final cost (local currency)</i>	<i>Final cost (\$)</i>
<b>A – VARIABLE COSTS</b>						
1 – Raw material	ton					
2 – Secondary materials • Specify	ton					
3 – Packages	unit					
4 – Utilities • Electrical energy • Steam – 15 kg/cm <sup>2</sup> • Others (specify)	KW h ton					
<b>B – LABOUR</b>						
<b>C – INDIRECT COSTS</b> • Maintenance costs • Indirect labour • Depreciation • Other indirect costs (specify)						
<b>D – PRODUCTION COSTS (A+B+C)</b>						
<b>E – EXPENSES</b> • Administrative • Financial • Others (specify)						
<b>F – TOTAL COST OF PRODUCTION (D+E)</b>						
<b>TOTAL PRODUCTION</b>						

Note<sub>1</sub>: Use the scheme provided in this annex to present the structure of the production costs, adapting it to the specifics of your industry.

Note<sub>2</sub>: Present this table on a monthly basis, from January to December XXXX.

Note<sub>3</sub>: Indicate the rate of use of the installed capacity in each of the tables.

Note<sub>4</sub>: Specify the administrative and financial expenses.

Note<sub>5</sub>: When doing the currency exchange to United States dollars, indicate the exchange rate.

## Appendix I

### Instructions for the submission of electronic data

The name of each file must contain eight characters. The first four positions are intended to identify the company, the following two identify whether the sales were made in the domestic market or in Brazil, and the last two designate the sequential number of the file. For instance, the first time the company presents information on sales to Brazil, the name of the file might be HYOSBRÆ1. If afterwards a new file containing information on sales to Brazil is presented, this file shall be identified as HYOSBRÆ2.

In the preparation of the data, alphabetic fields shall be aligned left, while numeric fields shall be aligned right. Sales, shipment and payment dates shall not be formatted as alphabetic fields, but as numeric fields. In these fields, the year must have four digits. If a certain field is not relevant to the information provided by the company, enter zero, if it is a numeric field, or leave it blank, if it is an alphabetic field.

The company must present the data on a CD-ROM or a 3.5-inch disk, 1.44 megabytes double sided and high density. The files should be presented in Excel Windows 2000, but they may be presented in the 98 version or in ACCESS. Files should not be zipped (if they have to be zipped, WINZIP should be used). The files must be readable on an IBM-compatible PC. The disk must be identified with a label containing the following information:

- (a) Name of the company;
- (b) Investigation which it refers to;
- (c) Format of the data and software used to create the data.

The disks shall be packaged in a proper way and contain a label stating the name, address and telephone number of the company, and must be presented together with the hard copies of the answers to the questionnaire.

## Appendix IX

# Sample questionnaire for importers (anti-dumping investigation)

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FEDERATIVE REPUBLIC OF BRAZIL  
MINISTRY OF DEVELOPMENT, INDUSTRY AND TRADE  
SECRETARIAT OF FOREIGN TRADE  
DEPARTMENT OF COMMERCIAL DEFENSE

Process MDIC/SECEX – XXXXXXXXXXXXX

### QUESTIONNAIRE FOR THE IMPORTER

Investigation of dumping, injury and causal link in the exports to Brazil of XXXXXXXX, classified in the NCM/SH as XXXXXXXXXXXX, from XXXXXXXXXXXXX.

Period for the analysis of dumping: January XXXX to December XXXX

## I – Introduction

The objective of this questionnaire is to allow the Department of Commercial Defense (DECOM) of the Secretariat of Foreign Trade (SECEX) of the Ministry of Development, Industry and Trade to collect the necessary information for the conclusion of the dumping investigation regarding imports of XXXXXXXX, from XXXXXXXXXXXXXXXX, initiated by SECEX Circular No. XX, of X XXXXXXXX, published in the Brazilian Official Gazette of XXXXXXXXX.

Such procedure is in conformity with the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994, enacted by Decree No. 1355, 30 December 1994, and governed by Decree No. 1602, 23 August 1995, published in the Brazilian Official Gazette on 24 August 1995.

DECOM stresses that it is important for the company to submit clear answers, indicating the sources of the information used, and attaching documents that can confirm such information. Failure to respond in due time, or the non-observance of these requests, may lead to decisions based on the best information available, as established in § 3º of article 27, Decree No. 1602, 1995.

All documents submitted must indicate the process number mentioned above.

Note that further information that the company considers relevant to this investigation may be submitted, even if not requested in the questionnaire.

Even if the company controls, is controlled by, is associated with or is related to a producer/exporter, the answers to the questionnaire shall exclusively refer to its own transactions. Therefore, **answers prepared jointly by the Brazilian importer and a producer/exporter cannot be submitted, for any reason.**

As indicated in § 2º of article 63, Decree No. 1602, 1995, the answers to the questionnaire must be submitted in Portuguese. Any document written in a foreign language attached to the questionnaire must be accompanied by a Portuguese version, duly translated by a sworn translator.

Information and evidence may be submitted as confidential, if identified as such by the company. In this case, appropriate justification must be attached for the confidential treatment of the information, and the response to the questionnaire must contain a non-confidential summary of the information and evidence considered as confidential, which must be identified as 'non-confidential' summary of the information submitted to DECOM.

Information submitted as confidential must be identified as follows:

- Confidential information and/or evidence and/or documents must contain the word CONFIDENTIAL on all pages; and
- Whenever possible, this identification must be centred on the top and bottom of each page, in a colour that contrasts with the colour of the document.

All the information not identified as confidential will be attached to the process files and examination of the files will be allowed if requested by interested parties.

The non-submission of a non-confidential summary must be justified.

According to § 2º of article 28, Decree No. 1602, 1995, confidential information may be disregarded if the confidential treatment is not justifiable or if the non-confidential summary is not sufficient for a full comprehension of the situation.

According to article 27, Decree No. 1602, 1995, the answers to the questionnaire must be submitted in 4 sets of copies of the public version and 3 sets of copies of the confidential version, within 40 days from the date of this letter, addressed to:

Ministry of Development, Industry and Trade  
Secretariat of Foreign Trade  
Department of Commercial Defense – DECOM  
Praça Pio X, 54 – 6th Floor Sala 608  
20.091-040 – Rio de Janeiro (RJ) – Brazil



2.5 Is there any direct or indirect relationship (relationship in terms of shareholding, same economic group, etc.) between the company and any other foreign producer/exporter of the product? Or between the company and the complainant?. If so, provide a summary description of the existing relationship.

2.6 Indicate whether the company, or any other associated company, imported under the tariff item XXXXXXXXXXXX, between January and December XXXX. If so, describe the imported product, referring the month of internalization of such imports, imported quantities (amount and weight), value (FOB and CIF), foreign producer and supplier (name and address of both), among other information, as specified in item 3 of this questionnaire.

2.7 Indicate whether the company imports the product under investigation for its own consumption, or whether it also acts as distributor or reseller. If imports are for own consumption, indicate the applications and the forms of storing the imported product by the company, and if the company is a distributor/reseller, indicate the major customers.

2.8 Clarify whether the company transforms the product by any method, or if it uses the product or resells the product in the same form in which it was imported. Indicate whether the product that the company imports or buys in the internal market is exported in a later stage (or is integrated into an exported product) or if it is solely for consumption in the internal market.

2.9 Indicate the average period between internalization of the imported product in the Brazilian territory and the availability of such product for use or resale in the domestic market.

2.10 Indicate, in case of own use, the main technical, financing or operational reasons, or any other reason, for the choice of the imported product.

2.11 Indicate the main elements in the price composition of the imported product.

2.12 Clarify whether the prices negotiated between the company and the foreign producer, according to the calendar year, or on a period basis, and in the year or period in course, are dependent on the quantities, product specifications, input prices, demand in relation to offer, or any other factors; explain.

2.13 Present, where possible, data related to global production of the product in question on a country basis, for the five-year period of XXXX to XXXX, listing major producers/exporters, and specify, if available, prices charged in their internal markets and their major customers.

2.14 Explain the commercial policy on product purchase: supply agreements and periodicity; any discount practice for distribution by region or by quantities purchased; prizes, credits, or annual or biannual bonus, etc.

2.15 Specify financial costs and average deadline for payments of imports of the product. Indicate whether the company benefits from any import financing programme by exporting companies, finance agencies for export promotion or other.

2.16 Specify, if applicable, the post-sales services (technical assistance, environmental control, etc.) rendered by the producer/exporter to its customers.

2.17 Explain the process related to trademarks of the company: a) with regard to quality requirements; b) whether the use of the trademark involves costs to the customer and, if so, how such cost is charged.

2.18 State stocking plants of the product and the average distance from major customers of the company.

### **3 – Information related to imports of the product**

3.1 Describe, in detail, the characteristics of the product imported by the company INCLUDING from origins other than those involved in this investigation. Provide additional information and relevant specifications that technically characterize the product: physical and chemical composition, commercial name, type, uses and further information so as to allow the exact identification of the imported product and of its origin. In order to harmonize the answers, follow the scheme below, with information considered important to identify the product:

- a) Name of the producer;
- b) Commercial code of the product;

- c) Product intrinsic viscosity;
- d) Product destination, in which transformation process applied; and
- e) Attach technical information (catalogues, bulletins or equivalent).

3.2 Indicate whether there is any difference in quality between the imported product and the product manufactured by the Brazilian company. State, in addition, why the company preferred the imported product under investigation.

3.3 Provide data by month, following the outline in annex A related to imports of the product, classified under NCM item XXXXXXXXXXXXX, made by the company, separately by country of origin, for the period of January to December XXXX.

3.4 The company must submit data on CD-ROM, or on 3.5-inch disks of 1.44 megabytes, double sided and high density. Files should be presented in Excel Windows 2000, or in version 98, or in ACCESS. Files should not be zipped (if they have to be zipped, WINZIP should be used). The files must be readable on an IBM-compatible PC.

- Column A: Commercial code of the product;
- Column B: Product characteristics;
- Column C: Name of the foreign manufacturer/producer;
- Column D: Country of origin;
- Column E: Name of the foreign exporter;
- Column F: Country of origin;
- Column G: Total imported quantity (in tons or kg);
- Column H: Total FOB value in \$;
- Column I: Total CIF value in \$;
- Column J: Sales conditions;
- Column K: International freight; and
- Column L: International insurance.

3.5 Consider the following instructions when completing columns A and B.

Column A Product code

Note: Specify the commercial code used by the producer/exporter company in the ordinary course of trade.

Column B Product characteristics

**Note:** Specify the characteristics of the product.

#### **4 – Information related to imports of the product under investigation**

4.1 The following chart is a summary of the fields to be completed by the company, if it has imported the product classified under the NCM item XXXXXXXXXXXX, from XXXXXXXXXXXXX, from January to December XXXX. See the instructions for completion of the fields and information that may be required as a complement to the data provided in these fields.

4.2 The company must submit data on CD-ROM, or on 3.5-inch disks of 1.44 megabytes, double sided and high density. Files should be presented in Excel Windows 2000, or in version 98, or in ACCESS. Files should not be zipped (if they have to be zipped, WINZIP should be used). The files must be readable on an IBM-compatible PC.

4.3 Describe, in detail, all characteristics of the product from XXXXXXXXXXXXX imported by the company. Add any further information and specifications that may be relevant to technically characterize the product.

## Summary of the fields to be completed

<i>Field number</i>	<i>Field description</i>	<i>Field name</i>
1.0	Product code	CODPROD
2.0	Product characteristics	CARPROD
3.0	Date of purchase	DTCMP
4.0	Date of the invoice	DTEATUR
5.0	Invoice number	FATURA
6.0	Date of shipment in the foreign country	DTEMBQ
7.0	Date of the import declaration	DTDIMP
8.0	Number of the import declaration	NUDIMP
9.0	Date of registration of the import declaration	DTREG
10.0	Foreign producer/exporter	FABRI
11.0	Country of origin	ORIGEM
12.0	Relationship with the producer/exporter	RELFAB
13.0	Company category	CATEMP
14.0	Distribution channel	CANAL
15.0	Date of payment of the invoice	DTPAG
16.0	Purchase conditions	CDCOMP
17.0	Payment conditions	CDPAG
18.0	Quantity	QTDE
19.0	Gross price per unit	PRBRUTO
20.0	International freight	FRETINT
21.0	International insurance	SEGURIN
22.0	Landing port	PTDESEM
23.0	Import tax	IMPIMP
24.0	Tax benefits	BENEF
25.0	Internalization expenses	DESPIN
26.0	Freight in Brazil	FRETBR
27.0	Insurance in Brazil	SEGUBR
28.0	Destination	DESTIN
29.0	Agent commission	AGENT
30.0	Exchange rate	TXCAM

**Field No. 1.0**      **Product code**

Name of the field:      CODPROD

Note:      Specify the commercial code of the product in question currently used by the manufacturer in commercializing XXXX.

**Field No. 2.0**      **Product characteristics**

Name of the field:      CARPROD

Note:      Specify the characteristics of the product.

**Field No. 3.0**      **Date of purchase**

Name of the field:      DTCMP

Note:      Specify the date of the purchase, transaction-by-transaction (date of invoice, date of the agreement, etc.).  
Positions 1 & 2 = day  
Positions 3 & 4 = month  
Positions 5 to 8 = year

<b>Field No. 4.0</b>	<b>Date of the invoice</b>
Name of the field:	DTFATURA
Note:	Positions 1 & 2 = day Positions 3 & 4 = month Positions 5 to 8 = year
<b>Field No. 5.0</b>	<b>Invoice number</b>
Name of the field:	FATURA
Note:	Specify the invoice number of the foreign producer/exporter related to the transaction.
<b>Field No. 6.0</b>	<b>Date of shipment in the foreign country</b>
Name of the field:	DTEMBQ
Note:	Specify the date expressed in the bill of landing. Positions 1 & 2 = day Positions 3 & 4 = month Positions 5 to 8 = year
<b>Field No. 7.0</b>	<b>Date of the import declaration</b>
Name of the field:	DTIMP
Note:	Positions 1 & 2 = day Positions 3 & 4 = month Positions 5 to 8 = year
Complement:	Specify the date of the import declaration.
<b>Field No. 8.0</b>	<b>Number of the import declaration</b>
Name of the field:	NUDIMP
Note:	Specify the number of the import declaration related to the transaction.
<b>Field No. 9.0</b>	<b>Date of registration of the import declaration</b>
Name of the field:	DTREG
Note:	Positions 1 & 2 = day Positions 3 & 4 = month Positions 5 to 8 = year
<b>Field No. 10.0</b>	<b>Foreign producer/exporter</b>
Name of the field:	FABRI
Note:	Indicate the name of the producer/exporter of the product.
<b>Field No. 11.0</b>	<b>Country of origin</b>
Name of the field:	ORIGEM
Note:	Indicate the country of origin of the product purchased by the company.
<b>Field No. 12.0</b>	<b>Relationship with the producer/exporter</b>
Name of the field:	RELFAB
Note:	Indicate the code specifying whether the producer/exporter is or is not a related party (explain the relationship, if applicable) 1 = Producer and exporter are not related to the company

- 2 = Producer and exporter are related to the company  
 3 = Only producer is related to the company  
 4 = Only exporter is related to the company

**Field No. 13.0****Category of the company**

Name of the field:

CATEMPI

Note:

- 1 = Transformation industry  
 2 = Trading company  
 3 = Local distributor  
 4 to n = Specify any other category

**Field No. 14.0****Distribution channel**

Name of the field:

CANAL

Note:

- 1 = Direct acquisition by the producer  
 2 = Purchase by the distributor, reseller, etc. (indicate)  
 3 = Other (indicate)

**Field No. 15.0****Date of payment of the invoice**

Name of the field:

DTPAG

Note:

- Specify the date indicated by your records as the date of payment to the exporter  
 Positions 1 & 2 = day  
 Positions 3 & 4 = month  
 Positions 5 to 8 = year

Complement:

Indicate the source used to determine the date of payment and the record book in which it was identified. If it is not possible to retrieve the date, indicate the reasons for the non-completion of this field. Leave the field blank for invoices which have not been paid yet.

**Field No. 16.0****Purchase conditions**

Name of the field:

CDCOMP

Note:

- 1 = FOB  
 2 = CIF  
 3 = EX-FACTORY  
 4 to n = Specify any other condition

Complement:

Describe the purchase conditions, indicating the codes used and the meaning of each one.

**Field No. 17.0****Payment conditions**

Name of the field:

CDPAG

Note:

- Indicate the payment condition to the exporter  
 1 = up to 29 days from the invoice  
 2 = 30 days from the invoice  
 3 = 31 to 59 days from the invoice  
 4 = 60 days from the invoice  
 5 = Specify other terms of payment

Complement:

Describe the agreed payment conditions, indicating the codes used for each of them.

It is not necessary to follow the list above, which is only a suggestion.

**Field No. 18.0****Quantity**

Name of the field:	QTDE
Note:	Specify the quantity (in weight, kg or tons) of this transaction.
Complement:	Explain how returns, if allowed by the exporter, affect the purchase record (indicate how frequent they are).
<b>Field No. 19.0</b>	<b>Gross price per unit</b>
Name of the field	PRBRUTO
Note:	Specify the price per unit recorded in the invoice for purchases totally or partially shipped and invoiced. When including parts of purchases not shipped, provide the price per unit which was agreed for the quantity to be shipped to complete the order. Such value shall be the gross price per unit in the unit of measure.
<b>Field No. 20.0</b>	<b>International freight</b>
Name of the field:	FRETINT
Note:	Specify the international freight for the transportation of the merchandise, from the point of departure in the country of production to the point of entry in Brazil.
Complement:	Indicate whether the transporter is affiliated to the exporter. Attach, if possible, any agreement with the transporter applicable to the product under investigation. Describe how the price per unit of the freight was calculated.
<b>Field No. 21.0</b>	<b>International insurance</b>
Name of the field:	SEGURIN
Note:	Specify the price per unit of the international insurance, from the point of departure in the country of production to the point of entry into Brazil.
Complement:	Describe how the insurance price per unit was calculated.
<b>Field No. 22.0</b>	<b>Landing port in Brazil</b>
Name of the field:	PTDESEM
Note:	Specify the landing port in Brazil.
<b>Field No. 23.0</b>	<b>Import tax in Brazil</b>
Name of the field:	IMPIMP
Note:	Specify the amount per unit paid to customs, in United States dollars.
Complement:	Describe how the price per unit of the amount paid to customs was calculated, including the rate applied.
<b>Field No. 24.0</b>	<b>Tax benefits</b>
Name of the field:	BENEF
Note:	Indicate whether the import benefits from tax incentives.
Complement:	Describe the kind of tax benefit to the import (drawback, etc.)
<b>Field No. 25.0</b>	<b>Expenses related to internalization</b>
Name of the field:	DESPIN
Note:	Specify the value per unit of the expenses related to internalization

Complement: Expenses related to internalization mean those expenses really necessary when the product is nationalized at the port: AFRMM, load management and brokerage expenses, customhouse broker expenses, storage, port fees etc.

**Field No. 26.0 Freight in Brazil**

Name of the field: FRETBR

Note: Specify the price per unit of the freight in Brazil, from the point of landing to the storehouse of the Brazilian importer.

Complement: Describe how the price per unit of the freight in Brazil was calculated.

**Field No. 27.0 Insurance in Brazil**

Name of the field: SEGUBR

Note: Specify the price per unit of insurance in Brazil.

Complement: Describe how the insurance price per unit was calculated

**Field No. 28.0 Destination**

Name of the field: DESTIN

Note: Specify the city and the Brazilian state to which the goods were delivered.

**Field No. 29.0 Agent commission**

Name of the field: AGENT

Note: Specify the amount of commission paid for agents, affiliated and non-affiliated. If more than one commission was paid, indicate each commission in a separate field.

Complement: Describe the conditions of payment of commission and how percentages were determined.

**Field No. 30.0 Exchange rate**

Name of the field: TXCAM

Note: Specify the applicable exchange rate, in relation with the United States dollar.

Complement: Expenses in Brazilian currency shall be converted into United States dollars at the same exchange rate used in the import declaration.

4.4 IPI and ICMS are not considered expenses for internalization of goods at the port and cannot be included in the values specified.

4.5 Attach legible copies of the complete import declarations.

4.6 Provide information regarding imports from the investigated countries that have been ordered but have not yet been effected, indicating weight (in kilos), values, date for shipment of the goods in the foreign country and the country of origin.

<i>Product*</i>	<i>Origin</i>	<i>Foreign producer/ exporter</i>	<i>Weight (kg)</i>	<i>Value (\$FOB)</i>	<i>Probable date for shipment</i>

\* According to fields 1.0 and 2.0 of this item.

## **5 – Domestic product**

5.1 Indicate whether the company has knowledge of the Brazilian production of the product under investigation and whether it has ever purchased the product in question from the domestic producer.

5.2 Present, according to the model suggested by annex C, a report on the bills of sale regarding the purchase of the domestic product, by producer code, for January to December XXXX, indicating the number of the bill of sale, date of issuance, quantity purchased (in tons or kg), according to product characteristics (see fields 1.0 and 2.0 of the previous item); value shown on the bill of sale; taxes involved (IPI, ICMS); and net price per unit. Data on values and prices shall be specified in reais and in United States dollars. In case of conversion of the values in Brazilian currency to United States dollars, indicate the exchange rate based on the official prices established by the Central Bank. The date of the exchange rate shall be the date the bill of sale was issued.

## **6 – Resale of the imported product from the investigated countries**

Complete this item only if the company resells the imported product in the Brazilian market.

6.1 Does the company resell the product under investigation?

6.2 What are the main factors that led the company to import the product for resale (price, lack of availability of the domestic product, lack of domestic production, etc.)? Explain in detail.

6.3 Provide a flow chart and a description regarding each method or distribution channel used for sales of the product from the investigated countries in the Brazilian market. For example, the distribution channel for some of the sales may involve the shipment of goods stored in storehouses owned by the company, or the direct forwarding of the product from the place of customs clearance to the customer, etc.

6.4 Describe the functions performed and the services offered by the company and those performed by the producer/exporter. Such services and functions would include, among others, maintenance of inventories and other post-sales services, advertising and other sales-support activities. Please specify which services the company is in charge of and which are under the responsibility of third companies.

6.5 Explain how the company defines the final customer or the market for the product imported by the company from the investigated countries. Regarding resales, indicate the existence of any restrictions in terms of volume of sales or geographic region imposed by the producer/exporter.

## **7 – Additional information**

7.1 Add further information considered relevant.





## Appendix X

# Sample questionnaire for domestic producers (anti-dumping investigation)

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FEDERATIVE REPUBLIC OF BRAZIL  
MINISTRY OF DEVELOPMENT, INDUSTRY AND TRADE  
SECRETARIAT OF FOREIGN TRADE  
DEPARTMENT OF COMMERCIAL DEFENSE

Process MDIC/SECEX – XXXXXXXXXXXXX

### QUESTIONNAIRE FOR THE DOMESTIC PRODUCER

Investigation of dumping, injury and causal link in the exports to Brazil of XXXXXXXX,  
classified in the NCM/SH as XXXXXXXXXXXX, from XXXXXXXXXXXXXXXX.

Period for the analysis of dumping: January XXXX to December XXXX

## I – Introduction

The objective of this questionnaire is to allow the Department of Commercial Defense (DECOM) of the Secretariat of Foreign Trade (SECEX) of the Ministry of Development, Industry and Trade to gather the necessary information for the investigation of dumping in the exports of XXXXX from XXXXXXXXXX, initiated by the SECEX Circular XX, of XXXXXXXXXX, published in the Brazilian Official Gazette on XXXXXX.

Such procedure is in conformity with the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994, enacted by Decree No. 1355, 30 December 1994, and governed by Decree No. 1602, 23 August 1995, published in the Brazilian Official Gazette on 24 August 1995.

DECOM stresses that it is important for the company to submit clear answers, indicating the sources of the information used and attaching documents that can confirm such information. Failure to respond in due time, as well as the non-observance of these requests, will lead to a decision based on the best information available, as set forth in § 3º of article 27, Decree No. 1602, 1995.

All documents submitted by the domestic producer must indicate the investigation number mentioned above.

Note that the submission of any other relevant information relevant to this investigation is allowed, even if not requested in this questionnaire.

As indicated in § 2º of article 63, Decree No. 1602, 1995, the answers to the questionnaire must be submitted in Portuguese. Any document written in a foreign language that is attached to the questionnaire must be accompanied by a Portuguese version, duly translated by a sworn translator.

Information and/or evidence may be submitted as confidential basis, if identified as such by the company. A document containing the reasons for the confidential treatment must be attached to the questionnaire, as well as a non-confidential summary of the confidential answers and/or evidence, which must be identified as a 'non-confidential' summary of the information submitted to DECOM.

Information submitted as confidential must be identified as follows:

- Confidential information and/or evidence and/or documents shall contain the word CONFIDENTIAL on all the pages; and
- Whenever possible, this identification must be centred on the top and bottom of each page, in a colour that contrasts with the colour of the document.

Information not identified as confidential will be attached to the process files and examination of the files will be allowed if requested by interested parties.

If the submission of non-confidential summaries is not possible, this must be justified.

According to § 2º of article 28, Decree No. 1602, 1995, confidential information may be disregarded if confidential treatment is not justifiable or if the non-confidential summary is not sufficient for a full comprehension of the situation.

According to article 27, Decree No. 1602, 1995, the public version of the answers to the questionnaire must be submitted in 4 sets of copies and the confidential version in 3 sets of copies, within 40 days from the date of this letter, addressed to:

Ministry of Development, Industry and Trade  
Secretariat of Foreign Trade  
Department of Commercial Defense – DECOM  
Praça Pio X, 54 – 6th Floor Sala 608  
20.091-040 – Rio de Janeiro (RJ) – Brazil

The period for submitting the answer to the questionnaire is 40 days and it is considered an adequate opportunity for the company to present its defence, without prejudice of other information that can be brought to the process within this period.

Whenever needed, requests for the extension of the deadline for submitting the answers to the questionnaire will take into consideration the deadlines of the investigation. Such requests must be justified and submitted within the original deadline for the submission of the answers.

The tables of the ANNEXES shall be delivered electronically, according to the following specifications: PC-compatible systems, EXCEL program version Office 2000 and on 3.5-inch disks, double sided and high density, 1.44 megabytes, or on CD-ROM. Hard copies of all the data delivered electronically must also be submitted. The disks/CD-ROM must be identified with a tag containing the following information:

- (g) Name of the company;
- (h) Investigation which it refers to;
- (I) Format of the data and the software used to create the data.

Regarding the answers to the questionnaire, please read all the instructions carefully. It is in your company's interest to answer the questionnaire as precisely and completely as possible and to attach related documents. Feel free to complement the answers with additional data. If any of the questions do not apply to your company, please indicate the reason.

According to article 65, Decree No. 1602, 1995, we hereby state that the Department of Commercial Defense (DECOM) can carry out verification visits to examine the company's records, in order to confirm the information presented.

If there are questions on how to complete this questionnaire or if any further clarification is needed, DECOM can be contacted by telephone (55 61 2109-7770), by facsimile (55 61 2109-7445) or by e-mail (decom@desenvolvimento.gov.br).

A company that wishes to receive an electronic copy of the questionnaire can request it by e-mail.

The answers to the questionnaire can be sent to DECOM electronically. In this case, according to Law No. 9800, 26 May 1999, the date of the submission of the response is the date the message reaches the receiver, namely DECOM. A hard copy of the answer must be delivered to the address indicated above, within five days from the date the e-mail was sent or before the expiry of the deadline set forth in article 27 mentioned above.

## **2 – General information on the company – structure, accounting practices, turnover and production**

### 2.1 General Information

#### 2.1.1 Corporate Name:

#### 2.1.2 Address:

#### 2.1.3 Telephone: Facsimile:

2.1.4 Representative authorized before DECOM specifically to act in the investigation process and application of the anti-dumping duties referred in the SECEX Circular.

##### 2.1.4.1 Name:

##### 2.1.4.2 Position:

##### 2.1.4.3 Address:

##### 2.1.4.4 Telephone: Facsimile:

Important: Attach documents that confirm the representation, such as: power of attorney, bylaws or articles of association, or other document.

### 2.2 Structure of the company and affiliations

The purpose of the questions on the organizational and legal structure of the company and its affiliations is to give DECOM an overview of the company and its role in the production, sale and distribution of the like products.

2.2.1 Provide an organizational chart and a complete description of the operating structure of your company.

2.2.2 Specify the structure of the social capital of the company, indicating the shareholders and respective equity interests.

<i>Name of the shareholder</i>	<i>Equity interest</i>

2.2.3 Provide a list containing all the subsidiaries and/or affiliated companies (name, address, date of association) and indicate whether any of the shareholders holds equity interest in those companies, if applicable:

<i>Name of the shareholder</i>	<i>Companies</i>	<i>Equity interest</i>

### 2.3 Distribution process

Information related to distribution channels and sales processes provided by the company is essential for DECOM. Based on this information, DECOM will be able to compare sales at the same level of trade, as well as to adjust the price of the imported product, if it finds there are different levels of trade.

2.3.1 Provide a list containing all types of customers (for instance, local distributor, final consumer) and their respective distribution methods or channels.

2.3.2 Describe the distribution channels used by the company in the sales of the product concerned, identifying the resale margin for different buyers (wholesalers, resellers, etc.). Indicate the quantity of direct and indirect sales.

2.3.3 Specify the function and the services rendered by each intermediary in the distribution channel of the product manufactured by the company to the final consumer in Brazil. Such services and functions include maintenance of stocks, technical assistance and other post-sales services, advertising and other supporting activities, among others. Specify which services are rendered/paid for by the company and which are rendered/paid for by the affiliates.

2.3.4 Indicate whether there are any restrictions on direct sales and on sales made by intermediaries, in terms of amount, geographical area or any other conditions (specify).

2.3.5 Explain whether the company gives intermediaries a customer list, if they make sales together or if it provides post-sales assistance or any other type of service to customers of the intermediaries. Attach copies of agreements or terms of sale executed between the company and these distributors/resellers/commercial representatives.

2.3.6 Describe the sales conditions offered by the company – cash, discounts, rebates and other modalities.

2.3.7. Describe the conditions of delivery by the company of the product in question and indicate the cost involved (cost of transportation, insurance, insurance, handling, etc.)

### 2.4 Accounting practices

A perfect understanding of the accounting and financial practices of the company is essential to conduct a verification properly. It is also important to understand how the company records and allocates its expenses.

2.4.1 Present a summary of the books used by the company for accounting purposes.

2.4.2 Describe briefly the methodology used for recording the values of the sales documents and expenses in the accounting books.

2.4.3 Provide copies of the following documents, from XXXX to XXXX:

Audited balance sheets and internal results statements regarding financial statements, as well as verification balance sheets, if applicable;

Results statements for the product line in question.

2.4.4 Specify the rate of return on investment and payback obtained in the years XXXX to XXXX. In addition, specify the historical rate of return on investment regarding this product.

## 2.5 Turnover

2.5.1 Specify the complete product line for the product manufactured by the company, identified by the respective commercial codes; indicate the total annual turnover related to the product in question and the corresponding share of total turnover of the company. Similarly, specify all other production lines of the company and indicate their respective turnover.

<i>Period</i>	<i>Turnover R\$</i>			
	<i>Line A</i>	<i>Line B</i>	<i>Line C</i>	<i>Total</i>

**Note:** This information must be compatible with the accounting statements of the company.

## 2.6 Installed and production capacity

Specify the installed capacity (tons per year), the effective annual global production (t) and the utilization rate (%) related to the product in question, from XXXX to XXXX. If the company manufactures this product in more than one plant, provide such information separately for each of the plants. Use the table below as a model.

<i>Year</i>	<i>Production (tons)</i>	<i>Total capacity (tons/year)</i>	<i>Utilization rate (%)</i>

## 3 – Information regarding the product and the production process

3.1 Describe the products manufactured and sold by the company in the domestic market, identifying them by the respective commercial codes and characteristics, indicating, where applicable, physical properties that differentiate them. Alternatively, or in order to complement such information, the company may present technical-commercial folders related to the product, containing all these information in details.

3.2 Describe briefly the production process of the like product manufactured by the company, including:

- (I) The technological base of the process;
- (ii) A description of the process – describe briefly the flow and the process diagram, indicating the production factors and the respective consumption per unit, namely: raw materials, secondary materials and utilities; indicate the sources of supply of the production factors.

3.3 Specify the date of initiation of the commercial production in each plant (where applicable); provide an overview of industrial activity since the initiation of operations, and provide information on capacity expansion, technological updates and investments incurred. Compare the technology used by the company and by the producers/exporters under investigation.

3.4 Provide a detailed comparative description of the imported product under investigation/review and the like product manufactured by the domestic industry, mainly related to commercial uses. In this item, indicate any differences regarding technical characteristics, production process, and technology applied, commercial forms of presentation or any other relevant factors that lead to a conclusion on the similarity between the products in question.

3.5 Clarify the main elements that determine the price of the product under investigation and the usual commercial lots (most frequent quantity commercialized in ordinary transactions).

3.6 Specify the reasons (technical, financial, operational, etc.) that may lead domestic consumers to prefer the imported product to the domestic product.

#### 4 – Production, stocks, sales and employment

4.1 Complete annexes A and B for the like product manufactured by the company. The values of the sales in the domestic market must be specified in Brazilian reais and in United States dollars. In order to convert the annual value of domestic sales (annex A) to United States dollars, use the monthly value, in reais, converted at the month's exchange rate. In case of exports, the values in United States dollars shall be the values recorded in the export records. The value in local currency shall be the value of the export bill of sale. Regarding annex B, note that the methodology used to convert the values from Brazilian reais to United States dollars shall be the same as that used in annex A. The information presented in annex A consists in a summary of the information presented in annex B.

4.2 Following the models in annexes C and D, list all sales of the like product manufactured by the company in the domestic market. In annex C, consider monthly sales, from XXXX to XXXX. In annex D, specify the total volume of sales, on a transaction-by-transaction basis, identifying the product by its commercial code. In this annex, in order to convert values from Brazilian reais to United States dollars, use the exchange rate of the date of issuance of the respective bill of sale.

##### Annex C

- Column A: specify the month and the year;
- Column B: specify the quantity (in t or kg);
- Column C: turnover (in R\$) – specify if it is IPI and ICMS free;
- Column D: specify the taxes (in R\$);
- Column E: specify the discounts and rebates incurred (in R\$)
- Column F: specify the net turnover  $[C - (D+E)]$  (in R\$ and in \$);
- Column G: specify the net price (in R\$ and in \$).  
[note: net price  $[F/B]$ ]

##### Annex D

This annex contains instructions on how to record the sales of the products manufactured by your company in the domestic market, during the investigation period.

The company must present the data on a CD-ROM or a 3.5-inch disk, 1.44 megabytes double sided and high density. The files should be presented in Excel Windows 2000, but they may be presented in the 98 version or in ACCESS. Files should not be zipped (if they have to be zipped, WINZIP should be used). The files must be readable on an IBM-compatible PC. The disk must be identified with a label containing the following information:

The chart below is a summary of the fields to be fulfilled by the company. This section also contains instructions on how to fulfil the fields and indicate information that may be requested in order to complement the data informed in these fields.

Summary of the fields to be completed

<i>Field number</i>	<i>Field description</i>	<i>Field name</i>
1.0	<i>Date of the invoice</i>	<i>DTFATURA</i>
2.0	<i>Invoice number</i>	<i>FATURA</i>
3.0	<i>Quantity</i>	<i>QTD/PESO</i>
4.0	<i>Payment terms</i>	<i>CONDPAG</i>
5.0	<i>Sales conditions</i>	<i>CONDVEND</i>
6.0	<i>Gross price per unit in R\$</i>	<i>PRBRUTO</i>
7.1	<i>Discount for early payment</i>	<i>DESPANT</i>
7.2	<i>Discount related to quantity</i>	<i>DESQTD</i>
7.(3 to n)	<i>Other discounts</i>	<i>OUTDES (3 to n)</i>
8.(1 to n)	<i>Rebates</i>	<i>ABAT (1 to n)</i>
9.0	<i>Internal freight – production unit/storehouse to customer</i>	<i>FINTCLI</i>
10.0	<i>Internal insurance</i>	<i>SEGINT</i>
11.0	<i>Destination</i>	<i>DESTIN</i>
12.0	<i>Financial expenses</i>	<i>DESPFIN</i>
13.0	<i>Interest income</i>	<i>RE CJUR</i>
14.0	<i>Value-added tax on sales, interstate and intermunicipal transport services and communications (ICMS)</i>	<i>ICMS</i>
15.0	<i>Tax on manufactured products (IPI)</i>	<i>IPI</i>
16.0	<i>Exchange rate</i>	<i>TXCAM</i>
17.0	<i>Commercial code/identification of the product</i>	<i>CODCOM</i>

**Field No. 1.0****Date of the invoice**

Name of the field: DTFATURA

Note: Positions 1 & 2 = day  
 Positions 3 & 4 = month  
 Positions 5 to 8 = year

**Field No. 2.0****Invoice number**

Name of the field: FATURA

Note: Specify the number of the invoice related to the accounting system of the company.

Complement: Describe the numbering system of the invoices that originated the number specified in this field. Specify whether it is a simple sequence of numbers or any other form of codification. In this case, provide a description of each of the components of the code.

**Field No. 3.0****Quantity**

Name of the field: QTD

Note: Specify the quantity sold (kg or metric ton) in this transaction.

Complement: Explain how the return of products, if allowed, affects your general sales records and your sales diary.

**Field No. 4.0****Payment terms**

Name of the field: CONDPAG

Note: Specify the payment conditions given to the customers.  
 1 = Up to 29 days after the invoice  
 2 = 30 days after the invoice

3 = 31 to 59 days after the invoice

4 = 60 days after the invoice

5 = Specify other payment terms

**Complement:** Describe the payment terms granted by the company, indicating the codes used by each and explaining if they vary according to the distribution channel and how they are related. Indicate whether the payment terms are described on each invoice or, if not, how the customers accept the payment terms.

The codes listed above are mere examples. Therefore, there is no need to use them.

**Field No. 5.0                      Sales conditions**

**Name of the field:**            CONDVEND

**Note:**                              1- ex-factory  
    2- customer (involves freight and insurance)  
    3- other (specify)

**Fields No. 6.0 to 8.0**

Provide the information requested regarding the quantity sold and the price per unit paid in each transaction. All discounts and rebates must be specified in these fields.

**Field No. 6.0                      Gross price per unit in R\$**

**Name of the field:**            PRBRUTO

**Note:**                              Specify the price per unit recorded on the invoice. This value must be the gross price per unit in the unit of measure. Discounts and rebates must be recorded separately, in fields 9 and 10.

**Field No. 7.1                      Discount for early payment**

**Name of the field:**            DESPANT

**Note:**                              Specify the price per unit of any discount given to the customer for early payment.

**Complement:**                  Explain the policies and practices of the company concerning discounts for early payment. Explain how the discount per unit was calculated.

**Field No. 7.2                      Discount related to quantity**

**Name of the field:**            DESQTD

**Note:**                              Specify the price per unit of any discount given to the customer according to the quantity purchased.

**Complement:**                  Explain the policies and practices of the company for giving discounts according to the quantity purchased. Explain how the discount per unit was calculated. Provide a table displaying the discount per quantity or other equivalent document.

**Field No. 7.(3 to n)            Other discounts**

**Name of the field:**            OUTDES (1 to n)

**Note:**                              Specify the value per unit of all discounts given to the customer. Create a separate field for each existing discount.

Complement: Explain the policies and practices of the company concerning additional discounts. Explain how the discount per unit was calculated. Provide a sample of documents for each type of discount, if available.

**Field No. 8.(1 to n) Rebates**

Name of the field: ABAT (1 to n)

Note: Specify the value per unit of each rebate given to the customer. Create a separate field for each rebate.

Complement: Explain the policies and practices of the company concerning rebates and describe them. Provide a sample of documents for each type of rebate, if available.

**Fields No. 9.0 and 10.0**

Present the information required involving the direct cost of transporting the product from the production unit to the place of delivery chosen by the customer. All indirect costs related to the transportation of the product must be specified in these fields.

The company can add other fields. The fields below involve the expenses usually incurred in the domestic market.

**Field No. 9.0 Internal freight – production unit/storehouse to customer**

Note: Specify the cost per unit of freight to transport the product from the production unit or storehouses (or other intermediate location) to the place of delivery stipulated by the customer. If necessary, allocate this cost taking into consideration the basis used for the calculation of the freight (e.g. volume, weight).

Complement: Describe the means of transportation used to deliver the product to the customer, as well as the existence of any affiliations with the transporters during the investigation period. When the transport is made by an independent transporter, provide the value of the freight regarding each transaction and the methodology used for allocating costs when several types of products are transported together. If it is not possible to identify specifically the cost for each shipment, describe how the freight per unit was calculated. Attach explanatory plans.

If the company uses its own vehicles, explain how the cost of the freight was calculated and specify the total expenses incurred (e.g. fuel). Attach explanatory plans.

**Field No. 10.0 Internal insurance**

Name of the field: SEGINT

Note: Specify the internal insurance cost per unit from the production unit/storehouse to the place of delivery stipulated by the customer.

Complement: Describe how the company calculated the insurance cost per unit and attach the respective calculation plans.

**Field No. 11.0 Destination**

Name of the field: DESTIN

Note: Specify the postal code or other code that indicates the place of delivery stipulated by the customer.

Complement: Provide a list of codes and respective destinations.

**Field No. 12.0            Financial expenses**

Name of the field:        DESPFIN

Note:                        These expenses shall be calculated and specified on a transaction-by-transaction basis, using the number of days between the date the product was shipped to the customer and the date of payment. If the date of payment is not available in the company's accounting system, it can be calculated based on the average period for receiving payment.

Complement:            Provide the formula used for calculating the financial expenses and a plan specifying how the average short-term interest rates were calculated. Explain the existence of any factors that may affect the cost of the money borrowed, such as deposits requested as a condition for giving the loan. Indicate the source of the short-term interest rates indicated in the calculations.

**Field No. 13.0            Interest income**

Name of the field:        RECJUR

Note:                        Specify the cost per unit of interest received in case of delay in the payment of the invoice.

Complement:            Describe the conditions under which the company charges the customer interest in case of delay in payment of the invoice. If the practice varies according to the distribution channel or the category of the customer, explain how and why.

**Field No. 14.0            Value-added tax on sales, interstate and intermunicipal transport services and communications (ICMS)**

Name of the field:        ICMS

**Field No. 15.0            Tax on manufactured products (IPI)**

Name of the field:        IPI

**Field No. 16.0            Exchange rate**

Name of the field:        TXCAM

Note:                        Specify the exchange rate applicable to this transaction, regarding United States dollars, based on the Brazilian Central Bank's daily rates.

**Field No. 17.0            Commercial code/identification of the product**

Name of the field:        CODCOM

Note:                        Specify the commercial code of the product or any information that identifies the type of the product.

**5 – Cost of production of the like product**

5.1 Provide the cost structure according to the models in annexes E and F, indicating production costs incurred by the company in the production of the like product. In annex E, specify the semester weighted average production cost (CPMS), which is the found by taking the sum of the monthly costs (CM), multiplied by the respective quantities produced in a month (QM) divided by the total produced in a semester (QS), namely,  $CPMS = C_{mi} \times Q_{mi} / QS$  ( $i = 1, 2, \dots, 6$ ), from XXXX to XXXX. In annex F, provide the monthly cost structure, from XXXX to XXXX. To make the conversion to United States dollars, use the average monthly exchange rate.

5.2 The production cost plans in annexes E and F represent a model used by DECOM. If their structure does not apply to your accounting system, your company may present a different arrangement of the costs more adequate to your particular situation. This information and the data used to determine the costs shall be filed and made available, in the form of calculation memory, in case it is necessary to verify such data in a verification visit conducted at your company.

## 6 – IMPORTS OF THE PRODUCT

Complete this item only if the company has imported the product under investigation from XXXX to XXXX.

6.1 Indicate the main characteristics and specifications of the product imported by the company that are relevant to characterize and define the product technologically. In order to provide answers, indicate the commercial code used by the foreign manufacturer.

6.2 List all the imports made from XXXX to XXXX, according to the model in annex G. Attach the relevant import declarations.

6.3 Complete annex H, according to the information below:

- Column A: commercial code/identification of the product;
- Column B: number of the import declaration;
- Column C: date of internalization;
- Column D: name of the foreigner producer;
- Column E: quantity (in tons or in kg);
- Column F: total FOB value (in \$);
- Column G: total CIF value (in \$);
- Column H: import tax;
- Column I: internalization expenses;
- Column J: date of payment.

6.5 List all imports made from XXXX to XXXX, according to the model in annex I. Attach the relevant import declarations.

- Column A: commercial code/identification of the product;
- Column B: number of the entry bill of sale in chronological order;
- Column C: date of issuance;
- Column D: total value in R\$;
- Column E: taxes (IPI, ICMS mentioned in the respective bill of sale, specifying the amount of each tax);
- Column F: net value, in R\$;
- Column G: quantity (tons);
- Column H: number of the respective import declaration;
- Column I: date of issuance of the import declaration;
- Column J: name of the producer;
- Column L: data of shipment;
- Column M: effective payment date;
- Column N: specify the discounts, deductions and rebates;
- Column O: exchange rate used in the import declaration;
- Column P: total FOB value (in \$);
- Column Q: insurance value (in \$);
- Column R: freight value (in \$);
- Column S: total CIF value (in \$);
- Column T: total import tax value (in \$);
- Column U: total internalization expenses value (specify in R\$ and in \$, according to the exchange rate of the import declaration);
- Column V: deadline for payment.

6.6 Specify the existence of any tax incentives or benefits related to imports (drawback, etc.).

6.7 If the imported product is resold by the company in the domestic market, present a report of the bills of sale of the imported products from XXXX to XXXX, as indicated in annex J.

- Column A: commercial code/identification of the product;
- Column B: number of the bill of sale;
- Column C: customer;
- Column D: deadline for payment;
- Column E: quantity (in tons or kg);
- Column F: total value (in R\$);
- Column G: taxes (specify all the taxes involved on the resale, including the value of each tax, in R\$);
- Column H: costs incurred (specify);
- Column I: net value (specify in R\$ and in \$);
- Column J: net price per unit (all prices per unit must be free from taxes and other costs, in R\$ and in \$).

6.8 In order to convert the local currency into United States dollars, the criteria adopted shall be the same used in annex D, namely the exchange rate of the date of issuance of the respective bill of sale.

## **7 – Additional information**

7.1 Present the monthly evolution of the labour cost, from XXXX to XXXX, in local currency and in United States dollars, using the average monthly exchange rate.

7.2 Present data on salaries (by semester), from XXXX to XXXX, in local currency and in United States dollars, using the average monthly exchange rate.

7.3 Present results statements concerning the production line of the product in question, separated into domestic and foreign markets, if possible.

7.4 Provide any other additional information the company considers to be necessary.

**Annex A – Production, stocks and sales**

Level of employment

Product: \_\_\_\_\_ (NCM \_\_\_\_\_)

	Period	Period	Period	Period
<i>1. Production</i>				
• <i>Quantity (tons)</i>				
<i>2. Stock (tons)</i>				
• <i>Initial</i>				
• <i>Final</i>				
<i>3. Sales</i>				
• <i>Domestic market</i>				
– <i>Quantity (tons)</i>				
– <i>Value (domestic currency)</i>				
– <i>Value (\$)</i>				
• <i>Foreign market</i>				
– <i>Quantity (tons)</i>				
– <i>Value (domestic currency)</i>				
– <i>Value (\$)</i>				
<i>4. Employment</i>				
• <i>Production</i>				
• <i>Fixed employees</i>				
• <i>Temporary employees</i>				
• <i>Administration</i>				
• <i>Sales</i>				

Notes: 1. The value of sales in the internal market shall exclude ICMS and IPI, as well as discounts and reductions in price.

2. Figures related to employment shall be based on the last day of the year.

**Annex B – Production, turnover and sales**

Product: \_\_\_\_\_ (NCM \_\_\_\_\_)

	Month													
<i>1. Production</i>														
• <i>Quantity (tons)</i>														
<i>2. Sales</i>														
• <i>Domestic market</i>														
– <i>Quantity (tons)</i>														
– <i>Value (domestic currency)</i>														
– <i>Value (\$)</i>														
• <i>Foreign market</i>														
– <i>Quantity (tons)</i>														
– <i>Value (domestic currency)</i>														
– <i>Value (\$)</i>														

**Note:** The value of sales in the internal market shall exclude ICMS and IPI, as well as discounts and reductions in price.

**Annex C – Domestic sales**

Product: \_\_\_\_\_ (NCM \_\_\_\_\_)

Period: \_\_\_\_\_

Month/ year	Quantity (tons or kg (A))	Turnover R\$ (B)	Taxes R\$) – specify (C)	Discounts/ rebates R\$) – specify (D)	Net turnover (E) = B (C+D)		Net price (F)	
					R\$	\$	R\$	\$

Note: In the column related to taxes, specify and separate values related to ICMS and IPI. *Do not* refer to PIS and COFINS.

**Annex E – Annual average cost**

Product:

Commercial code:

Quantity produced (tons):

	Period:			
	Total cost		Average annual cost	
	\$	R\$	\$/ton	R\$/ton
1. Direct materials (specify)				
2. Direct labour				
3. General (fixed and variable) expenses (indirect materials, indirect labour, utilities, depreciation, etc.)				
A – PRODUCTION COSTS (1 + 2 + 3)				
B – OPERATIONAL EXPENSES (4 + 5 + 6 + 7)				
4. General and administrative				
5. Sales				
6. Financial results				
7. Other income and operational expenses (specify)				
TOTAL COST (A + B)				

## Annex F – Production cost

Ref.: \_\_\_\_/\_\_\_\_  
year/month

<i>Production cost</i>	<i>Unit</i>	<i>Consumption per unit</i>	<i>Price per unit (local currency)</i>	<i>Price per unit (\$)</i>	<i>Final cost (local currency)</i>	<i>Final cost (\$)</i>
<b>A – VARIABLE COSTS</b>						
1 – Raw material						
• Specify	ton					
2 – Secondary materials						
• Specify	ton					
3 – Packages	unit					
4 – Utilities						
• Specify	m <sup>3</sup>					
• Others (specify)						
<b>B – LABOUR</b>						
<b>C – INDIRECT COSTS</b>						
• Maintenance costs						
• Indirect labour						
• Depreciation						
• Other indirect costs (specify)						
<b>D – PRODUCTION COSTS (A+B+C)</b>						
<b>E – EXPENSES</b>						
• Administrative						
• Financial						
• Others (specify)						
<b>F – TOTAL COST OF PRODUCTION (D+E)</b>						
<b>TOTAL PRODUCTION</b>						

Notes: 1. Follow this annex for the structure of the production cost, adapting for the conditions of the company.

2. Present this chart month to month for the period of \_\_\_\_\_-.
3. Indicate the utilization rate of the capacity installed for each table presented.
4. Refer to administrative and financing expenses.
5. Indicate the exchange rate in the conversion of local currency into United States dollars.

**Annex G – Global annual imports**

Product: \_\_\_\_\_ (NCM \_\_\_\_\_)

Country of origin: \_\_\_\_\_ Year: \_\_\_\_\_

<i>Commercial code/ Identification of the product (A)</i>	<i>Name of the manufacturer (B)</i>	<i>Total quantity (tons or kg) (C)</i>	<i>Total value (\$)</i>	
			<i>FOB (D)</i>	<i>CIF (E)</i>

**Note:** Complete one table per year.





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The following materials may be found on the Internet at <http://www.desenvolvimento.gov.br/sitio/secex/defComercial/areAtuacao/areAtuacao.php>:

- Introduction to the Brazilian trade remedy system;
- Institutional and legal framework;
- Decisions of the governmental bodies regarding trade remedies (Resolutions CAMEX and SECEX Circulars);
- DECOM Annual Reports;
- Electronic form for the pre-analysis of anti-dumping investigations;
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