

# FEDERAL OFFICIAL GAZETTE

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Department: Acts of the Executive Power

## DECREE NO. 10839, OF 18 OCTOBER 2021

Regulates the administrative procedures relating to the investigation of subsidies and the application of countervailing measures.

**THE PRESIDENT OF THE REPUBLIC**, in the exercise of the duties and powers conferred by [article 84, subparagraphs IV and VI, of the Brazilian Federal Constitution](#), and taking into account the provisions of the Agreement on Subsidies and Countervailing Measures, the Agreement on Agriculture and the General Agreement on Tariffs and Trade – GATT/1994, approved by [Legislative Decree No. 30, of 15 December, 1994](#), and enacted by [Decree No. 1.355, of 30 December, 1994](#), and of [Law No. 9.019, of 30 March, 1995](#), under the section governing the application of the measures provided for in the Agreement on Subsidies and Countervailing Measures,

### HEREBY DECREES:

Article 1 This Decree regulates the administrative procedures relating to the investigation of subsidies and the application of countervailing measures.

### CHAPTER I

#### PRINCIPLES AND ATTRIBUTIONS

Article 2. Countervailing measures may be applied when imports subject to direct or indirect subsidies cause injury to the domestic industry.

Paragraph 1 The countervailing measures referred to in the Caput will be applied pursuant to investigations initiated and conducted in accordance with the provisions of this Decree.

Paragraph 2 No imported product shall be simultaneously subject to an anti-dumping duty and a countervailing measure to neutralize the same situation of dumping or export subsidy.

Article 3 Based on the recommendations of SDCOM, the Chamber of Foreign Trade shall render decisions on:

I - applying or extending the duration of provisional or definitive countervailing measures;

II - accepting or extending the duration of price undertakings;

III - the retroactive collection of definitive countervailing duties;

IV - extending the scope of definitive countervailing duties;

V - the form of application of countervailing duties and their alterations;

VI - suspending investigations against producers or exporters for which price undertakings have been accepted, pursuant to the provisions of article 63; and

VII - suspending the imposition of countervailing duties in the case provided for in article 106.

Article 4 Under exceptional circumstances, the Chamber of Foreign Trade may, for reasons of public interest:

I - suspend the enforcement of a definitive countervailing duty or undertaking in force;

II - not impose provisional countervailing measures; or

III - accept an undertaking or apply a definitive countervailing duty in an amount other than that recommended, subject to Paragraph 4 of article 63 and the **Caput** of article 74.

Paragraph 1 In the cases provided for in subparagraphs I and III of the **Caput**, if the act of suspension or alteration does not expressly establish the term, the suspension or alteration will remain in force for the remaining effective period of the countervailing measure.

Paragraph 2 In the case provided for in subparagraph I of the **Caput**, the act of suspension may expressly establish the automatic reapplication of countervailing duties or undertakings at the end of the suspension period established.

Paragraph 3 The countervailing duties or undertakings suspended as provided for in subparagraph I of the **Caput**:

I - may be reapplied at any time by decision of the Chamber of Foreign Trade; or

II - if not reapplied within the period established in the **Caput** of article 108, will be automatically terminated after the end of their effective period.

Paragraph 4 National interested parties, industrial sectors that use the product under investigation and consumers whose interests are adversely affected may provide information deemed relevant regarding the effects of imposing countervailing measures.

Paragraph 5 The guidelines on public interest analysis referred to in this article shall be established by the Chamber of Foreign Trade.

Paragraph 6 The decisions of the Chamber of Foreign Trade, including those based on cases of public interest, shall set forth the reasons and grounds for such decisions.

Article 5 It falls to SECEX to:

I - initiate investigations of subsidies;

II - conclude investigations without applying countervailing measures in the cases provided for in subparagraphs I, II and III of the **Caput** of article 70;

III - extend the deadline for completion of the investigations ;

IV - conclude and set aside an investigation without a decision on the merits, by request of the applicant or in the case provided for in subparagraph IV of the **Caput** of article 70;

V - initiate a review of the definitive countervailing duty or undertaking;  
and

VI - terminate the countervailing measure in the cases of review provided for in Section II of Chapter IX.

Article 6 As the investigating authority, SDCOM shall have the attribution of conducting the administrative procedure provided for in this Decree.

## CHAPTER II

### DEFINITIONS

Article 7 For the purposes of this Decree:

I - exporting country means the country, of origin or of export, where the subsidy is granted;

II - like product means a product which is identical, i.e. alike in all respects to the product under investigation, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under investigation.

III - subsidized product means a product that benefits from a subsidy;

IV - granting authority means a government or public body in the territory of the exporting country that grants subsidies, at all levels, national or subnational; and

V - country means a foreign country or political subdivision, dependent territory, or possession of a foreign country.

Paragraph 1 The concept of country referred to in subparagraph V of the **Caput** may encompass the association, in a customs union, of two or more foreign countries or political subdivisions, dependent territories or possessions of countries.

Paragraph 2 If the country of origin and the country of export grant subsidies to the same product, both may be simultaneously investigated.

Paragraph 3 In the event that the products are exported to Brazil through an intermediary country, the procedures mentioned in this Decree may be applied and the transactions may be considered as occurring between the country of origin and Brazil.

Paragraph 4 The likeness of the products will be evaluated on the basis of objective criteria, including:

I - raw materials;

II - chemical composition;

III - physical characteristics;

IV - technical standards and specifications;

V - production process;

- VI - uses and applications;
- VII - degree of substitutability;
- VIII - distribution channels; and
- IX - consumer preferences and habits.

Paragraph 5 The objective criteria referred to in Paragraph 4 constitute an illustrative list and none of them, on its own or together, can necessarily give decisive guidance.

Article 8 For the purposes of this Decree, except when otherwise provided, the parties shall be deemed to be related or associated if:

I - one of them occupies a position of responsibility or a management post in a company held by the other;

II - the parties are legally recognized as business associates;

III - the parties consist of an employer and an employee;

IV - any person, directly or indirectly, holds, controls or owns five percent or more of the voting shares or bonds of both parties;

V - one of the parties, directly or indirectly, controls the other, including through shareholders' agreement;

VI - both parties are, directly or indirectly, controlled by a third person;

VII - both parties directly or indirectly control a third party;

VIII - both parties are members of the same family; or

IX - the parties maintain a relationship of economic, financial or technological dependence with customers, suppliers or lenders, that configures operational control.

## **Section I**

### **Subsidies**

Article 9 For the purposes of this Decree, a subsidy shall be deemed to exist when a benefit is conferred as a result of:

I - a financial contribution by a government or public body within the territory of the exporting country, henceforth "government", in cases where:

a) the government practice involves the direct transfer of funds (grants, loans, equity infusion, among others) or potential direct transfers of funds or obligations (loan guarantees, among others);

b) the government revenue otherwise due (tax incentives, among others) is foregone or not collected, not being deemed as subsidies the exemptions, in favor of products destined for export, from duties or taxes born by the like product when destined for domestic consumption, nor the return or remission of such duties or taxes in amounts not in excess of those which have accrued, in accordance with Article XVI of the General Agreement on Tariffs and Trade, dealt with in the Decree No. 93962, of 22 January 1987, and Annexes I through III to the World Trade Organization Agreement on Subsidies and Countervailing Measures;

c) a government provides goods or services other than general infrastructure, or purchases goods;

d) a government makes payments to a funding mechanism to provide a financial contribution, or entrust or directs a private body to provide a financial contribution referred to in items "a" to "c", which would normally be the vested in the government, and the practice does not significantly differ from the practices normally followed by governments; or

II - there is, in the exporting country, any form of income or price support that, directly or indirectly, contributes to increase exports or reduce imports of any product.

## **Section II**

### **Specificity**

Article 10. In order to determine whether a subsidy, pursuant to article 9, is specific to an enterprise or industry, or to a group of enterprises or industries, hereinafter referred to as "certain enterprises", in the jurisdiction of the granting authority, the following principles shall apply:

I - where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific;

II - where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions spelled out in law, regulation or other official document are strictly adhered to, so as to be capable of verification; and

III - if, notwithstanding any appearance of non-specificity resulting from the application of subparagraphs I and II, there are reasons to believe that the subsidy under analysis in fact specific, the following factors may be considered:

a) use of a subsidy programme by a limited number of certain enterprises;

b) predominant use of a subsidy programme by certain enterprises;

c) the granting of disproportionately large amounts of subsidy to certain enterprises; and

d) the manner in which the granting authority exercised its discretion in the decision to grant a subsidy, considering information on the frequency with which applications for a subsidy are refused or approved and on the reasons for such decisions.

Paragraph 1 The objective conditions or criteria referred to in subparagraph II of the **Caput** mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise.

Paragraph 2 For the purposes of subparagraph III of the **Caput**, account shall be taken of the extent of diversification of economic activities within

the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme was in operation.

Article 11 Subsidies which are limited to an enterprise or an industry, or a group of enterprises or industries, located within a designated geographic region within the jurisdiction of the granting authority shall be considered specific.

Sole Paragraph The setting or change of generally applicable tax rates by all levels of government entitled to do so will not be deemed to be a specific subsidy.

Article 12 Any determination of subsidy specificity under the provision of this Section shall be clearly substantiated on the basis of positive evidence.

### **Section III**

#### **Prohibited subsidies**

Article 13 Except as provided in the Agreement on Agriculture of the World Trade Organization, the following subsidies shall be prohibited:

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 to the Agreement on Subsidies and Countervailing Measures of the World Trade Organization, subject to the provisions of Annexes II and III of said Agreement; and

II - subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

Paragraph 1 De facto subsidies will occur under the terms of subparagraph I of the **Caput** when the facts demonstrate 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.

Paragraph 2 The *de facto* granting of a subsidy to enterprises that export shall not, for that reason alone, be considered an export subsidy.

Paragraph 3 Any subsidy falling under the definition of prohibited subsidies shall be deemed to be specific.

### **Section IV**

#### **Countervailable subsidies**

Article 14 The subsidy will be countervailable and subject to countervailing measures if deemed specific pursuant to Section II or Section III of this chapter.

### **CHAPTER III**

#### **CALCULATION OF THE AMOUNT OF A COUNTERVAILABLE SUBSIDY**

Article 15 The amount of subsidies will be calculated by volume or by value of sales of the subsidized product, based on the benefit conferred during the investigation period of subsidy referred to in Paragraph 1 of article 43

Article 16 For the purposes of this Decree, the following will not be considered benefits:

I - government provision of equity capital, unless the investment decision can be regarded as inconsistent with the usual investment practices of private investors in the territory of the exporting country, including for the provision of risk capital;

II - a loan by the government, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount that the firm would pay on a comparable commercial loan which the firm could actually obtain in the market;

III - a loan guarantee by the government, unless there is a difference between the amount that the firm receiving the guarantee pays on the loan and the amount the firm would pay on a comparable commercial loan without the government guarantee; or

IV - the provision of goods and services or purchase of goods by the government, except if the provision is made for less than adequate remuneration or if the purchase is made for more than adequate remuneration, in which case the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase, including price, quality, availability, marketability, transportation and other conditions of purchase or sale.

Paragraph 1 In the case provided for in subparagraph II of the **Caput**, the benefit shall be the difference between the two amounts.

Paragraph 2 In the case provided for in subparagraph III of the **Caput**, the benefit shall be the difference between the two amounts, adjusted for any difference in fees.

Article 17 In determining the amount of subsidies, the following elements may be deducted from their value:

I - expenses necessarily incurred to qualify or to obtain the subsidy;  
and

II - taxes levied on the export of the product to Brazil specifically intended to offset the subsidy.

Sole Paragraph. Any claimed deduction must be justified.

Article 18 For purposes of calculating the amount, the subsidy will normally be considered:

I - recurring - when it is related to current production or sales and its effects are observed immediately, so that, in general, the amount must be fully attributed to the period in which the benefit is conferred; or

II - non-recurring - when it is granted exceptionally or with irregular frequency and its effects are related to future production or sales (e.g. may be related to the acquisition of fixed assets), lasting for a period longer than the period in which the benefit is conferred, so that, in general, the amount must be allocated over the periods in which the occurrence of such benefits is observed.

Article 19 Pursuant to chapter II, upstream subsidies will be understood as any countervailable subsidies that:

I - are granted by a government to the inputs used in the manufacture or production of the investigated subsidized product in the exporting country; and

II - confer a benefit on the investigated subsidized product.

Sole Paragraph. Only upstream subsidies that have a significant effect on the manufacturing or production cost of the investigated subsidized product will be investigated.

Article 20 Preferably, an individual subsidy amount will be determined for each known producer or exporter of the subsidized product.

Article 21 If the number of exporters, producers, importers, transactions or types of the product under investigation is so large as to render impracticable the determination referred to in article 20, individual determination may be limited to:

I - a statistically valid sample that includes a reasonable number of interested parties, transactions or types of products, based on the information available at the time of selection; or

II - selection of those producers or exporters who account for the largest percentage of the volume of exports from the exporting country which can be reasonably investigated.

Paragraph 1 The selection referred to in subparagraph II of the **Caput** shall include the producers or exporters who, listed in decreasing order of volume, account for the largest export volumes to Brazil.

Paragraph 2 In the case provided for in subparagraph II of the **Caput**, those producers or exporters who request their exclusion from the selection after confirming their participation or who fail to respond to the questionnaire may have the amount of the countervailable subsidy calculated on the basis of the best information available.

Paragraph 3 SDCOM may include, at its discretion, another producer or exporter in the selection provided for in subparagraph II of the **Caput**.

Paragraph 4 Any selection of producers or exporters, importers, transactions or types of product made pursuant to the **Caput** shall, preferably, be accomplished after consultation with the government of the exporting country, the producers, the exporters or the importers and the obtainment of their consent.

Paragraph 5 An individual subsidy amount will also be determined for each producer or exporter not included in the selection who submits the information referred to in Subsection I of Section IV of chapter VI in time to be taken into consideration during the investigation.

Paragraph 6 The provision of Paragraph 5 shall not apply to situations in which the number of exporters or producers is so large that the analysis of individual cases would prevent the completion of the investigation within the established time limits.

Paragraph 7 Any measures to discourage the submission of information as provided for in paragraph 5 is prohibited.

Paragraph 8 For the purposes of determining the individual amount of subsidies and of applying countervailing duties, different legal entities may be treated as a single producer or exporter when it is demonstrated that the



structural or trade relationship between such entities or with a third entity, is sufficiently close.

Article 22 Notice of SECEX shall establish a methodology for calculating the amount of subsidies referred to in this chapter.

#### CHAPTER IV

#### DETERMINATION OF INJURY

Article 23 For the purpose of this Decree, injury shall be interpreted to mean:

- I - the material injury to the domestic industry;
- II - the threat of material injury to the domestic industry; or
- III - the material retardation of the establishment of the domestic industry.

Article 24 The determination of injury shall be based on evidence and will include the objective examination of:

- I - the volume of the imports of the product under investigation;
- II - the effects of the imports of the product under investigation on the prices of the like product in the Brazilian market; and
- III - the consequent impact of the imports of the product under investigation on the domestic industry.

Paragraph 1 For the purpose of subparagraph I of the **Caput**, consideration shall be given to whether there has been a significant increase in imports of the product under investigation, either in absolute terms or relative to production or consumption in Brazil.

Paragraph 2 For the purpose of subparagraph II of the **Caput**, the following shall be considered:

- I - whether there has been a significant undercutting caused by the imports of the product under investigation when compared to the price of the like product in the Brazilian market;
- II - whether the effect of such imports is to depress prices to a significant degree; or
- III - whether the effect of such imports is to prevent price increases to a significant degree, which otherwise would have occurred in the absence of such imports.

Paragraph 3 The examination of the impact of the imports of the product under investigation on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the concerned industry, including:

- I - actual or potential decline in:
  - a) sales;
  - b) profits;
  - c) output;

- d) market share;
- e) productivity;
- f) return on investments; and
- g) utilization capacity;
- II - factors affecting domestic prices;
- III - actual or potential negative effects on:
  - a) cash flow;
  - b) inventories;
  - c) employment;
  - d) wages;
  - e) growth of the domestic industry; and
  - f) ability to raise capital or investments; and

IV – whether there has been an increased burden on government support programmes, in the case of agriculture.

Paragraph 4 None of the factors or economic indices referred to in paragraph 3 can on their own or together necessarily give decisive guidance.

Article 25 When imports of a product from more than one country are simultaneously subject to investigations whose periods of investigation of subsidy coincide, the effects of such imports may be assessed cumulatively if it is demonstrated that:

I - the amount of countervailable subsidy established in relation to the imports of the product object of the investigation from each country is not *de minimis*;

II - the volume of imports of the product under investigation from each country is not negligible; and

III - the cumulative assessment of the effects of these imports is appropriate in the light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like product in the Brazilian market.

Paragraph 1 The amount of countervailable subsidy shall be considered to be *de minimis* if this amount is less than one percent (1%) *ad valorem*.

Paragraph 2 The amount of countervailable subsidy shall be considered to be *de minimis* for developing countries if this amount does not exceed two percent (2%) *ad valorem*.

Paragraph 3 The volume of imports of the product under investigation from a particular country shall be regarded as negligible if such volume is found to account for less than three percent (3%) of total Brazilian imports of the product under investigation and of the like product.

Paragraph 4 If the group of countries that individually account for less than three percent (3%) of total Brazilian imports of the product under

investigation and of the like product collectively account for more than seven percent (7%) of total Brazilian imports of the product under investigation and of the like product, the volume of subsidized imports from each country shall not be considered negligible.

Paragraph 5 For developing countries, the volume of imports shall be considered negligible if it accounts for less than four percent (4%) of total Brazilian imports of the product under investigation and of the like product, unless those countries that individually account for less than four percent percent of such imports collectively account for more than nine percent (9%) of total Brazilian imports of the product under investigation and of the like product.

Article 26 It must be demonstrated that, through the effects of the subsidy, imports of the product under investigation have significantly contributed to the injury affecting the domestic industry.

Paragraph 1 The demonstration of the causal link referred to in the **Caput** shall be based on the examination:

I - the relevant evidence submitted; and

II - any known factors other than the imports of the product under investigation which at the same time might be injuring the domestic industry, and the injury caused by the factors other than the imports of the product under investigation must not be attributed to the imports of the product object of investigation.

Paragraph 2 It is necessary to separate and distinguish the effects of imports of the product under investigation from the effects of other possible factors causing injury to the domestic industry.

Paragraph 3 Other possible causes of injury are understood to be those specifically brought to the attention of SDCOM by the interested parties, provided that they are accompanied by reasonable justification and relevant evidence, and any other causes known by SDCOM.

Paragraph 4 Factors which may be relevant for the purposes of the examination provided for in subparagraph II of paragraph 1, *inter alia*:

I - the volume and price of imports of non-subsidized products;

II - the impact of possible import liberalization processes on domestic prices;

III - contraction in demand or changes in the patterns of consumption;

IV - trade restrictive practices of domestic and foreign producers;

V - competition between domestic and foreign producers;

VI - developments in technology;

VII - export performance;

VIII - productivity of the domestic industry; and

IX - captive consumption.

Paragraph 5 The effect of the imports of the product under investigation shall be assessed in relation to the domestic production of the like

product when available data permit the separate identification of that production on the basis of criteria such as:

I – the production process; and

II – producers' sales and profits.

Paragraph 6 In the event such separate identification of production is not possible, the effects of the imports of the product under investigation shall be assessed by the examination of the production of the narrowest group or range of products, which includes the domestic like product, for which the necessary data can be provided.

Article 27 The determination of threat of material injury to the domestic industry shall be based on the possibility of the occurrence of clearly foreseeable and imminent facts.

Paragraph 1 The expectation as to the occurrence of future events referred to in the **Caput** shall be based on the evidence set forth in the case file and not on unsubstantiated allegations, conjectures or remote possibilities.

Paragraph 2 The future events referred to in the **Caput** must be capable of changing the current circumstances, thus creating a situation in which material injury to the domestic industry would result from additional imports of the product under investigation.

Paragraph 3 The assessment of the material injury provided for in paragraph 2 shall be based on the criteria established in article 24, paragraph 3.

Paragraph 4 The following factors may be considered when assessing the effect of further imports of the product under investigation on the domestic industry referred to in paragraph 2, *inter alia*:

I - the nature of the subsidy and the effects on trade likely to arise therefrom;

II - the significant rate of increase of the imports of the product under investigation indicating the likelihood of a substantial increase in these imports;

III - sufficient spare capacity, or an imminent, substantial increase of the productive capacity in the exporter country, indicating the likelihood of a significant increase in exports of the product under investigation to Brazil;

IV - whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase significantly the demand for further import; and

V - the existence of inventories of the product under investigation.

Paragraph 5 In the analysis referred to in paragraph 4, subparagraph III, the existence of other markets able to absorb any potential increase of exports shall be considered. The existence of trade remedy measures in effect or ongoing investigations in third countries which could explain the redirection of sales of the product to Brazil may also be taken into consideration.

Paragraph 6 The determination that additional imports of the product under investigation are imminent and that, unless a countervailing measure is applied, material injury to the domestic industry would occur must be based on

the consideration of the totality of the factors mentioned in paragraph 4, with no one of the factors by itself being able to necessarily give decisive guidance.

## CHAPTER V

### DOMESTIC INDUSTRY

Article 28 For the purposes of this Decree, except as provided in article 31, domestic industry is interpreted as referring to the totality of producers of the domestic like product or the group of producers whose collective output of the products constitutes a major proportion of the total domestic production of the like product.

Article 29 The following may be excluded from the concept of domestic industry:

I - domestic producers associated with or related to foreign producers, exporters, or importers; and

II - domestic producers importing the allegedly subsidized product or like product from other countries.

Paragraph 1 For the purpose of subparagraph I of the **Caput**, domestic producers shall be considered associated or related to foreign producers, exporters or importers only in the following cases:

I - one party directly or indirectly controls the other party;

II - both parties are directly or indirectly controlled by a third party; or

III - both parties directly or indirectly control a third party.

Paragraph 2 For the purpose of paragraph 1, a party shall be considered to control the other when the former possesses legal or operational conditions to restrict or influence the decisions of the latter.

Paragraph 3 The provisions of subparagraph I of the **Caput** shall only result in the exclusion of the associated or related producer from the concept of domestic industry if there is reason to suspect that the relationship is such as to cause said producer to behave differently from producers without such relationship would otherwise behave.

Article 30 In exceptional circumstances in which the Brazilian territory may be divided into two or more competitive markets, the domestic industry may be interpreted as referring to the group of domestic producers from each of those markets separately.

Paragraph 1 The group of domestic producers on each of the markets referred to above may be considered an isolated domestic industry if:

I - the producers sell all or almost all the production of the like product in the that market; and

II - the demand in that market is not to any in substantial degree supplied by producers of the like product located outside that market.

Paragraph 2 In the case set forth in paragraph 1, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of imports of the product under investigation

into an isolated and provided further that these are causing injury to such isolated market.

## CHAPTER VI

### INVESTIGATION

#### **Section I**

#### **Application and admissibility**

Article 31 The investigation to determine the existence, the amount and the effect of the alleged subsidy shall be requested upon a written application by or on behalf of the domestic industry.

Paragraph 1 For the purpose of this article, domestic industry shall be interpreted as referring to all domestic producers of the like product, subject to the provisions of article 29 and article 30.

Paragraph 2 The application shall be considered to have been made by the domestic industry or on its behalf when:

I - consultations have been held with other domestic producers within the domestic industry engaged in producing the like product during the period of investigation of subsidy; and

II - the application has been supported by those domestic producers whose collective output constitutes more than fifty per cent (50%) of the total production of the like product produced by the portion of the domestic industry which expressed either support for or opposition to the application in the consultation referred to in subparagraph I of paragraph 2.

Paragraph 3 The application shall not be considered to have been made "by or on behalf of the domestic industry" when domestic producers expressly supporting the application account for less than twenty-five percent (25%) of total production of the like product produced by the domestic industry during the period of investigation of subsidy.

Paragraph 4 In the case of fragmented industries involving an exceptionally large number of domestic producers, the degree of support for or opposition to the application may be determined by using statistically valid sampling techniques.

Paragraph 5 A statement of support for or opposition to the application shall only be considered when accompanied by information on the volume or value of production and on the volume of sales in the domestic market during the period of injury investigation.

Paragraph 6 The application shall contain all information needed to determine the injury to the domestic industry related to the domestic producers expressly stating support for the application.

Paragraph 7 In the case of a fragmented industry involving an exceptionally large number of domestic producers, an application containing information on domestic producers accounting for less than twenty-five percent (25%) of total production of the like product during the period of investigation of subsidy may be accepted.

Article 32 The application under article 31 shall include evidence of the subsidy, and, if possible, its amount, injury to the domestic industry and a causal link between the subsidized imports and the injury.

Sole Paragraph. For the purpose of this article, unsubstantiated allegations shall not be considered as evidence.

Article 33 Notice of the Secretary of Foreign Trade shall set forth the following elements of the application referred to in article 31:

I - the format in which it shall be presented; and

II - the information required for its presentation.

Article 34 Applications that do not meet the requirements set forth in this section, in article 47 and in the notice of the Secretary of Foreign Trade referred to in article 33 shall not be considered.

## **Section II**

### **Examination of the application**

Article 35 The application filed in accordance with the provisions in section I of this chapter shall be examined within twenty (20) days from the date of filing.

Paragraph 1 Where the application is properly documented and does not require supplementary information, the applicant shall be notified of the initiation of the investigation or denial of the application within an additional period of forty-five (45) days.

Paragraph 2 If supplementary information, corrections or adjustments to the application are needed, the applicant shall be required to amend it within twenty (20) days from the date of the request.

Paragraph 3 The supplementary information, corrections, or adjustments shall be examined within twenty (20) days from the date of receipt thereof.

Paragraph 4 After the examination of the supplementary information, the applicant shall be notified of the initiation of the investigation or denial of the application within an additional period of forty-five (45) days.

Paragraph 5 A confidential version and a non-confidential version of the application shall be filed simultaneously.

Paragraph 6 Documents filed without the indication of confidential or restricted shall be treated as public.

Article 36. After the application is filed in accordance with the provisions of article 35 and in any event before the initiation of the investigation, an opportunity for consultations with the government of the country whose allegedly subsidized product is being imported into Brazil and causing injury to the domestic industry shall be given.

Paragraph 1 The consultations referred to in the **Caput** shall aim to clarify doubts about the information and evidence contained in the application, with a view to arriving at a mutually agreed solution.

Paragraph 2 The governments of exporting countries shall be notified and shall have a period of five (5) days from the date of acknowledgment of the notification to express interest in carrying out consultations, which must take place within thirty (30) days from the date of the notifications.

Paragraph 3 For the purpose of the initiation of the investigation, only the comments of the government of the exporting country filed within five (5) days from the date of the consultations referred to in paragraph 2 shall be taken into account.

Article 37. The application shall be examined regarding evidence of the subsidy, injury to the domestic industry and a causal link between the subsidized imports and the injury.

Paragraph 1 The accuracy and adequacy of data and evidence in the application shall be examined on the basis of information from reasonably available sources, with a view to determining whether initiation of the investigation is justified.

Paragraph 2 Applications shall be denied when:

I - lacking the evidence referred to in the **Caput**;

II - failing to meet the requirements and time-limits set forth in article 35 for interested parties; or

III - requiring substantial supplementary information, corrections or adjustments.

Article 38. The identification of producers or exporters, exclusively within the realm of the investigation of subsidy for which there is a duly formalized administrative proceeding, regardless of whether they are listed in the application, shall be made on the basis of the detailed import data provided by the Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy, pursuant to article 198. paragraph 1, subparagraph II of Law No. 5,172, of October 25<sup>th</sup>, 1966.

### **Section III**

#### **Initiation of the investigation**

Article 39 In exceptional and duly justified circumstances, SECEX may initiate an investigation ex officio, provided it has sufficient evidence of the existence of subsidy, injury and a causal link between the subsidized imports and the injury.

Sole Paragraph. Subsidy programmes other than those indicated in the application may be investigated.

Article 40 SECEX shall publish a notice of the initiation of the investigation in the Federal Official Gazette and SDCOM shall notify the known interested parties of the initiation of the investigation.

Paragraph 1 The following information shall be included in the notice referred to in the **Caput**:

I - the countries of the exporters or producers subject to investigation;

II - the product under investigation;



III - the date of initiation of the investigation;

IV - the time-limits for the interested parties to submit statements; and

V - the information on subsidy programmes, injury to domestic industry and the causal link between the subsidized imports and the injury.

Paragraph 2 The following shall be considered interested parties:

I - domestic producers of the like product and their representative trade associations;

II - Brazilian importers who imported the product under investigation during the period of investigation of subsidy and their representative trade associations;

III - foreign producers or exporters who exported the product under investigation to Brazil during the period of the investigation of subsidy and their representative trade associations;

IV - the government of the country exporting the product under investigation; and

V - other domestic or foreign parties affected by the investigation, at the discretion of SDCOM.

Paragraph 3 A period of twenty (20) days from the date of publication of the notice referred to in the **Caput** shall be granted for the parties referred to in paragraph 2, subparagraph V, to express interest in participating in the investigation.

Paragraph 4 Upon initiation of the investigation, the full contents of the application which originated the investigation shall be sent to all known producers or exporters and to the government of the exporting country and attached to the case file.

Paragraph 5 For the purposes of the obligations established in this Decree, all official communications with the government of the exporting country shall be sent to the official representation of the exporting country in Brazil.

Paragraph 6 In the absence of an official representation in Brazil, official communications with the government of the exporting country shall be submitted through the Ministry of Foreign Affairs.

Article 41 The investigation of subsidy shall not constitute a barrier to customs clearance.

Article 42 Prior to the determination of initiation of the investigation referred to in this section, the application shall not be publicized, except as provided in article 36.

## **Section IV**

### **Fact-Finding Phase**

Article 43 During the investigation, the existence of subsidy, injury to domestic industry and causal link between the subsidized imports and the injury shall be analyzed.

Paragraph 1 The period of investigation of subsidy:

I - shall comprise twelve (12) months, preferably ending in March, June, September or December;

II - may coincide with the most recently ended fiscal year and for which consolidated financial data and other reliable accounting data are available in the exporting country; and

III - in exceptional and duly justified circumstances, it may comprise between six (6) and twelve (12) months.

Paragraph 2 The period of investigation of injury shall comprise sixty (60) months, divided into five (5) intervals of twelve (12) months ending in March, June, September or December, and shall necessarily include the period of investigation of subsidy, where:

I - the most recent interval shall preferably coincide with the period of investigation of subsidy; and

II - the other intervals shall comprise the forty-eight (48) months prior to the most recent interval.

Paragraph 3 In exceptional and duly justified circumstances, the period of investigation of injury may comprise between thirty-six (36) and sixty (60) months.

Paragraph 4 The applicant shall have until the last business day of the fourth month following the end of the injury investigation period.

Paragraph 5 Throughout the fact-finding phase, domestic interested parties, including industrial users of the product subject to investigation and the most representative consumer organizations of the product subject to investigation, in cases where it is usually sold at retail, may provide information deemed relevant on subsidy, injury and the causal link between the subsidized imports and the injury.

Article 44. Throughout the investigation, the governments of exporting countries whose products are subject to investigation shall be afforded the opportunity to continue consultations, with a view to clarifying the facts and arriving at mutually agreed solutions.

## **Subsection I**

### **Information**

Article 45 The known interested parties in an investigation shall be notified of the information required for the investigation and shall have ample opportunity to submit any written evidence they deem relevant to the investigation.

Paragraph 1 Difficulties experienced by interested parties, in particular by small companies, in providing the requested information shall be taken in due account, and assistance practicable shall be provided.

Paragraph 2 The documents presented by the interested parties shall be attached to the case file in chronological order.

Paragraph 3 The receipt of documents submitted after the due date or noncompliant with the applicable rules shall be registered, and the interested

party shall be notified of the rejection of the attachment of such documents to the case file by SDCOM.

Article 46 The known producers or exporters, the governments of exporting countries, known importers and other domestic producers, as defined in article 40, paragraph 2, shall receive questionnaires with the indication of the information necessary for the investigation and shall have a period of thirty (30) days from the date of acknowledgment to return such questionnaires, without prejudice to the sending of questionnaires to other interested parties.

Paragraph 1 Upon request and whenever possible, an extension of the time-limit established in the **Caput** for up to thirty (30) days shall be granted.

Paragraph 2 Additional information to that provided in the responses to the questionnaires may be requested. A period of ten (10) days from the date of acknowledgment of the request shall be granted for the interested parties to respond to such request. The period may be extended for a further ten (10) days, upon request and when duly justified.

Paragraph 3 In the event that any interested party refuses access to the necessary information, fails to provide such information in a timely manner, or creates obstacles to the investigation, the preliminary or final determination shall be based on the best information available, in accordance with chapter XV.

Article 47 All confidential information shall be attached to the confidential case file.

Paragraph 1 Information identified as confidential by the interested parties shall be treated as such, provided the request for confidentiality is duly justified, in which case the information shall not be disclosed without the express authorization of the submitting party.

Paragraph 2 Interested parties that provide confidential information shall submit restricted summaries with details as to enable an understanding of the information provided, under penalty of disregarding the confidential information.

Paragraph 3 In the event of impossibility of presenting the summary referred to in paragraph 2, the parties must justify it in writing.

Paragraph 4 The justifications referred to in paragraph 1 and paragraph 3 do not constitute confidential information.

Paragraph 5 Justifications for the confidentiality of documents, data, and information shall not be considered adequate if, among other factors:

I - such information has a notorious public nature in Brazil or is in the public domain in Brazil or abroad; or

II - such information is related to:

a) the shareholding structure and the identification of the controlling party;

b) the corporate organization of the group to which the entity belongs;

c) the volume of production, domestic sales, exports, imports and inventories;

d) contracts entered into by public deed or filed with a notary public or a commercial registry office in Brazil or abroad; and

e) the equity, financial, and business statements of a publicly-held company, of a company equivalent to a publicly-held company, or of companies controlled by publicly-held companies, including foreign companies, and their wholly-owned subsidiaries, which must be published or disclosed under the applicable corporate or securities market laws.

Paragraph 6 The restricted summary concerning confidential numerical information shall be submitted in numerical format, in the form of index numbers.

Paragraph 7 All versions of documents, responses to questionnaires and other statements shall be submitted simultaneously for the purpose of meeting the time-limits and requirements established in this Decree.

Paragraph 8 At the discretion of SDCOM, documents, data, and information submitted as confidential shall be disregarded, when the respective confidential treatment may result in restriction of the right of other interested parties to a full defense and to an adversarial proceeding.

Paragraph 9 In the event SDCOM deems the confidentiality request unjustified and the submitting interested party refuses to adjust the information submitted as confidential for the purpose of its attachment to the non-confidential case file, such information may be disregarded, except where satisfactorily demonstrated by an appropriate source that the information is correct.

Paragraph 10 The interested party is responsible for the classification of confidentiality of the documents submitted, which must be displayed on all pages.

Paragraph 11 Confidential documents and their restricted versions shall be submitted simultaneously.

Article 48 SDCOM shall verify the accuracy of the information provided by the interested parties in the course of the investigations.

Paragraph 1 On-the-spot investigations may be carried out in the territory of other countries:

I - in companies, provided that their authorization is obtained and the government of the corresponding country is notified and does not raise any objections to the procedure; and

II - in governments, provided that they are notified and do not raise any objections to the procedure.

Paragraph 2 The procedures referred to in chapter XIV shall be applied to the on-the-spot investigations carried out in the territory of the exporting country.

Paragraph 3. On-the-spot investigations may be carried out in companies located within the national territory, provided that their authorization is obtained.

Article 49. SDCOM shall take into consideration studies submitted by interested parties, provided that the following conditions are met:

I - tables and graphs shall include detailed references of the respective sources of information and specify the calculations and adjustments used for their preparation, in a way to permit their reproduction based on the original data;

II - submissions must indicate the corresponding references and sources used;

III - statistical and econometric estimates, as well as simulations, shall include all methodological information, such as:

a) the database used, by electronic means, which reports the source of the data and identifies the variables and the period to which they refer;

b) the specification of the computer program used for the estimate;

c) the justification of the period chosen for the estimate;

d) the justification for the exclusion of an observation in the sample, if applicable;

e) the explanation for the assumptions of the econometric analysis or simulation, justifying the functional forms adopted;

f) the explanation of how the proposed tests relate to the question raised in the investigation to which they refer;

g) the data provided by the party itself, duly accompanied by a statement of responsibility for the veracity of the information provided signed by the respective legal representative;

h) any and all data, detailed calculations, methodologies, and information, regardless of how they were stated, which are necessary for a full understanding and reproduction of the results submitted; and

i) other information, at the discretion of SDCOM.

Sole Paragraph. SDCOM may disregard studies with confidential information or those submitted in noncompliance with the provisions of this article.

## **Subsection II**

### **Defense**

Article 50 Interested parties shall be assured ample opportunity to defend their interests.

Article 51 Hearings shall be held, upon request by one or more of the interested parties or by the initiative of SDCOM, in order to ensure the right to an adversarial proceeding and ample defense.

Paragraph 1 Hearings shall be requested in writing, within a period of six (6) months from the date of initiation of the investigation, and the request shall be accompanied by a list of the specific topics to be addressed.

Paragraph 2 Only requests for hearings involving matters related to the granting of subsidy, injury or the causal link between the subsidized imports and the injury shall be accepted.

Paragraph 3 The known interested parties shall be notified of the hearing and of the matters to be addressed at least thirty (30) days in advance.

Paragraph 4 Attendance at the hearing shall be optional and the absence of any interested party shall not be used against such party.

Paragraph 5 Interested parties shall submit in writing at least ten (10) days in advance, the arguments they wish to address and indicate, at least three (3) days in advance, the legal representatives who will be attending the hearing, who may present additional information orally at the hearing.

Paragraph 6 The information presented orally during the hearing shall only be considered by SDCOM if submitted in writing and filed within five (5) days following the hearing, in order to be attached to the restricted case file.

Paragraph 7 If the hearing is recorded, the oral statements made by the interested parties may be used by SDCOM in the preparation of its determinations, in which case the interested parties shall not be required to submit such statements in writing.

Paragraph 8 The recordings referred to in paragraph 7 or the respective transcripts shall be attached to the restricted case file.

Article 52 At the discretion of SDCOM, the number of representatives per interested party at the hearing may be limited.

Article 53 The hearings shall not affect the time-limits established in this Decree.

Article 54 All of the interested parties shall be assured the right to procedural follow-up of the restricted case file.

### **Subsection III**

#### **Final procedures concerning the fact-finding phase**

Article 55 The period for submitting information of the investigation shall be concluded within a period not exceeding one hundred and twenty days (120) from the date of publication of the preliminary determination.

Sole Paragraph. The evidence submitted following the conclusion of the period for submitting information shall not be considered for the purposes of determinations.

Article 56 The period for submission of statements on the data and the information in the restricted case file shall end within twenty (20) days, from the date of conclusion of the period for submitting information.

Article 57 SDCOM shall provide the interested parties a technical note containing the essential facts under analysis which are to be considered in the final determination provided for in article 59, within thirty (30) days from the date of conclusion of the period for submission of statements mentioned in the paragraph above.

Article 58 Interested parties shall have twenty (20) days from the date of disclosure of the technical note to submit their final written statements.

Sole Paragraph. Upon termination of the period provided for in the Caput, the fact-finding phase of the proceeding shall be concluded and subsequent information submissions shall not be considered for the purpose of the final determination, which shall include all of the factual and legal elements

relating to the investigation and the final conclusions regarding the existence of subsidy, injury and causal link between the subsidized imports and the injury.

Article 59 SDCOM shall prepare the final determination on the investigation within twenty (20) days from the date of conclusion of the period referred to in article 58.

Article 60 Documents submitted after the due date shall not be considered in for the purpose of the determinations and may be destroyed after the investigation is closed.

## **Section V**

### **Preliminary determinations and provisional countervailing measures**

Article 61 SDCOM shall prepare the preliminary determination, including all factual and legal elements available on the existence of subsidy, injury and the causal link between between the subsidized imports and the injury, within one hundred and fifty (150) days, counting from the date of the initiation of the investigation

Paragraph 1 The term referred to in the **Caput**:

I - cannot be less than sixty (60) days; and

II - in exceptional circumstances, it may be extended for up to two hundred and ten (210) days.

Paragraph 2 Paragraph 1 shall be applied, among others, when the domestic industry specified upon the initiation of the investigation accounts for less than fifty percent (50%) of the production of the like product produced by the totality of domestic producers during the period of subsidy investigation.

Paragraph 3 Preliminary negative determinations of injury or causal link may provide grounds for terminating the investigation, observing the obligation to disclose the technical note containing the essential facts referred to in article 57.

Paragraph 4 SECEX shall publish the preliminary determination in the Federal Official Gazette within a period of up to three (3) days from the date of such determination, which shall establish the time limits provided for in articles 55 to 59.

Paragraph 5 Having published the preliminary positive or negative determination of the existence of subsidy, injury to domestic industry and the causal link between the subsidized imports and the injury, the opinion of SDCOM shall be added to the case file.

Paragraph 6 The recommendation regarding the application of provisional countervailing measures shall be forwarded to the Chamber of Foreign Trade, which shall publish the corresponding act immediately after the decision on its application.

Paragraph 7 Preliminary determinations shall be made based on the evidence submitted within a period of sixty (60) days from the date of initiation of the investigation.

Paragraph 8 Evidence submitted after the period mentioned in Paragraph 7 may be used by SDCOM if the respective analysis does not jeopardize the fulfillment of the time limit established in the **Caput**.

Article 62. Provisional measures may be applied only if:

I - an investigation has been initiated in accordance with the provisions contained in Section III of chapter VI, the public notice authorizing initiation of the investigation has been published and the interested parties have been granted adequate opportunity to submit information and make comments;

II - a preliminary affirmative determination has been made that a subsidy exists and that there is injury to a domestic industry caused by subsidized imports; and; and

III - the Chamber of Foreign Commerce deems such measures necessary to prevent injury being caused during the investigation.

Paragraph 1 The amount of the provisional countervailing duties shall not exceed the amount of subsidy, provisionally calculated, granted to the product under investigation.

Paragraph 2 Provisional countervailing measures shall be applied in the form of provisional duty, guaranteed by cash deposit or bonds equal to the amount of the provisionally calculated amount of subsidization

Paragraph 3 The guarantees shall be provided by means of cash deposit or bonds.

Paragraph 4 The Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy shall define the procedures related to the provision of guarantees referred to in Paragraph 3.

Paragraph 5 The Chamber of Foreign Trade shall decide on the application of provisional countervailing measures, which must be published in the Federal Official Gazette, in accordance with chapter XI.

Paragraph 6 Customs clearance of the products subject to provisional countervailing measures shall be contingent on the provision of the guarantee referred to in Paragraph 3.

Paragraph 7 The application of provisional countervailing measures referred to in this Section shall not exceed four (4) months.

## **Section VI**

### **Undertakings**

Article 63. Proceedings may be suspended without the imposition of provisional countervailing measures or definitive duties, if the authorities referred to in article 3 are convinced that the undertaking is satisfactory to eliminate the injury to the domestic industry resulting from imports of the product under investigation, in the following cases:

I - if the government of the exporting country agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

II - if the producers or exporters voluntarily assume an undertaking to revise prices of their exports to Brazil.



Paragraph 1 The undertaking referred to in this article shall be celebrated before SDCOM and submitted for approval by the Chamber of Foreign Trade.

Paragraph 2 The undertaking shall include express authorization for on-the-spot investigation by SDCOM and provide for the submission of periodic information for its fulfillment.

Paragraph 3 The investigation of subsidy, injury to the domestic industry and a causal link between the subsidized imports and the injury may be continued upon request of the producer, exporter or government or at the discretion of SDCOM.

Paragraph 4 Price increases under the undertaking shall not exceed the amount of subsidy calculated.

Paragraph 5 Price increases provided for in Paragraph 4 shall be equal to or less than the determined amount of subsidies, with the sole purpose of eliminating the effects of the imports of the product under investigation on the domestic industry.

Paragraph 6 Producers, exporters or governments shall only offer Undertakings or accept those offered by SDCOM during the period between the date of publication of the affirmative preliminary determination of the existence of subsidy, injury to the domestic industry and the causal link between the subsidized imports and the injury, and the end of the period for submitting information.

Paragraph 7 The government of the exporting country and the exporters shall only offer or accept Undertakings offered by SDCOM after the affirmative preliminary determination of the existence of subsidy and injury caused by it, and, in the case of an undertaking with exporters, after obtaining the consent of the government of the exporting country.

Paragraph 8 The Secretary of Foreign Trade shall publish an act with the information that must be included in Undertaking proposals and the conditions for their presentation.

Paragraph 9 Producers, exporters or governments shall not be required to offer undertakings or be forced to accept adjustments or undertakings offered by SDCOM.

Paragraph 10 Undertaking proposals shall not harm the course of the investigation or alter the preliminary determination.

Paragraph 11 SDCOM may refuse to accept any undertakings deemed ineffective or impracticable, including reasons of general policy.

Paragraph 12 The decision to refuse acceptance of the undertakings provided for in Paragraph 11, shall take into account, among other factors:

I - the degree of homogeneity of the product;

II - the number of undertakings offered; and

III - the existence of association or relationship between the interested parties, in accordance with the provisions of article 8, or other reasons of general policy.

Paragraph 13 Producers, exporters or governments will be informed of the reasons why the undertaking has been rejected and will be given a period of ten days for a written statement.

Paragraph 14 The analysis of the possibility of approval of the price undertaking shall take into account whether the undertaking was offered by the producers or the exporters of the Member States of MERCOSUR.

Paragraph 15 The proposing parties shall make a restricted version of the undertaking available to other interested parties.

Article 64 The Chamber of Foreign Trade shall publish in the Federal Official Gazette the notice approving the undertaking, which must include:

I - the name of the producers, exporters or governments for which the undertaking shall apply;

II - a description of the product subject to the undertaking; and

III - the terms of the undertaking.

Article 65 The producer, the exporter or the government subject to the undertaking shall provide, if requested, information related to the fulfillment of the undertaking and allow the on-the-spot investigation of relevant data, under penalty of being considered violated the terms of the undertaking.

Article 66 If evidence of the violation of the price undertaking emerges, the producer or the exporter shall be given the opportunity to submit comments thereon.

Article 67 Where the violation of the undertaking is verified, SDCOM shall notify the producer, exporter or government in question and the Chamber of Foreign Trade shall publish in the Federal Official Gazette a notice on the resumption of the investigation and on the immediate application of provisional duties or on the application of definitive duties.

Sole Paragraph. The interested parties shall be notified of the termination of the undertaking and of the provisional or definitive countervailing duties applied.

## **Section VII**

### **Conclusion of the investigation**

Article 68 The investigation shall be concluded within twelve months from the date of initiation of the investigation.

Sole Paragraph. In exceptional circumstances, the deadline for completing the investigation referred to in the **Caput** may be extended by up to six (6) months.

Article 69 The applicant may, at any time and upon justification, request the termination of the investigation.

Paragraph 1 Where the request is granted, the proceeding shall be filed and SECEX shall publish in the Federal Official Gazette a notice announcing the termination of the investigation without a decision on the merits.

Paragraph 2 When an investigation is terminated by request of the applicant, a new application on the same product shall only be examined if filled no sooner than twelve (12) months following the termination of the investigation.

Article 70 The investigation shall be terminated without the imposition of duties where:

I - there is a negative determination of the existence of a subsidy, injury to the domestic industry or causal link between the subsidized imports and the injury;

II - the amount of subsidy is *de minimis*;

III - the actual or potential volume of imports of the product subject to the investigation, pursuant Paragraph 3, Paragraph 4 and Paragraph 5 of article 25, or the injury to the domestic industry is negligible; or

IV - the analysis of merit is impaired due to the inaccuracy or inadequacy of the timely information provided by the domestic industry.

Paragraph 1 Where the investigation is terminated based on a negative determination, pursuant to the provisions of subparagraph I of the **Caput**, a new application on the same product shall only be examined if filed no sooner than twelve (12) months following the conclusion of the investigation.

Paragraph 2 In exceptional cases and upon justification, the period referred to in Paragraph 1 may be reduced to six (6) months.

Article 71 SDCOM shall only recommend the imposition of countervailing duties when it has reached a final affirmative determination of the existence of subsidy, injury to the domestic industry and a causal link between the subsidized imports and the injury .

Article 72 Where a undertaking has been approved, followed by continuation of the investigation, if SDCOM reaches a:

I – negative determination of the existence of a subsidy, injury to the domestic industry or causal link between the subsidized imports and the injury, the investigation shall be terminated and the undertaking shall be automatically extinct, except where such negative determination is substantially due to the existence of the undertaking. In such cases, the undertaking may be maintained for a reasonable period and the Chamber of Foreign Trade shall publish the corresponding notice; or

II – affirmative determination of the existence of subsidy, injury to the domestic industry and causal link between the subsidized imports and the injury, the investigation shall be concluded and the imposition of the definitive duty suspended while the undertaking remains in effect.

Article 73 The Chamber of Foreign Trade shall decide on the application of definitive countervailing duties, which shall be published in the Federal Official Gazette, pursuant to the provisions of chapter XI.

## CHAPTER VII

### IMPOSITION AND COLLECTION OF COUNTERVAILING DUTIES

#### **Section I**

#### **Imposition**

Article 74 For the purpose of this decree, countervailing duty shall be understood as the monetary amount equal to or less than the amount of subsidies determined.

Paragraph 1 Except in the cases provided for in paragraph 2 and the decisions of the Chamber of Foreign Trade under article 4, the countervailing duty applied may be less than the amount of subsidies determined where such amount is sufficient to remove the injury to the domestic industry caused by imports of the product subject to investigation.

Paragraph 2 The amount of countervailing duty shall necessarily correspond to the amount of subsidies in the following cases:

I - producers or exporters whose amount of subsidies has been calculated on the basis of the best available information or whose countervailing duty was imposed in accordance with article 76;

II - affirmative redeterminations in respect of subparagraph II of the **Caput** of article 150; and

III - reviews:

a) by changed circumstances strictly involving the calculation of the subsidy amount, under subsection I of section II of chapter IX;

b) that are expedited, under subsection I of section III of chapter IX;  
or

c) anti-circumvention, under subsection II of section III of chapter IX, provided the countervailing duty in force has been applied on the basis of the subsidy amount.

Paragraph 3 The countervailing duty shall be applied in the form of *ad valorem* or specific rates, fixed or variable, or by the combination of both.

Paragraph 4 The *ad valorem* rate shall be applied on the customs value of the goods, on a Cost, Insurance & Freight - CIF basis.

Paragraph 5 The specific rate, fixed or variable, shall be established in foreign currency and converted into national currency, as provided for in the legislation.

Article 75 The imposition of countervailing measures in force may be extended to imported products from third countries, as well as to imported parts, pieces and components of the product subject to the countervailing measure, where trade practices are found to undermine the effectiveness of the countervailing measures in force, in accordance with the anti-circumvention review set forth in subsection II of section III of chapter IX.

Article 76 In situations where it has been determined that the analysis of individual cases would result in an unreasonable burden for SDCOM or would prevent the conclusion of the investigation within the established time-limits, pursuant to article 21, individual countervailing duties in the same amount shall be imposed to all known producers or exporters who, although not included in the sampling selection, have submitted the information required.

Paragraph 1 The individual countervailing duties in the same amount referred to in the **Caput** shall be calculated on the basis of the weighted average

of the amount of subsidies calculated for producers or exporters included in the sampling selection carried out under article 21.

Paragraph 2 The calculation of the amount of subsidies referred to in the **Caput** shall not take into account zero, *de minimis* nor amounts fully calculated on the basis of the best information available.

Paragraph 3 In the case provided for in article 21, paragraph 5, an individual countervailing duty calculated based on the data reported by the corresponding producers or exporters shall be applied, with the exception of the provisions of article 46, paragraph 3.

Paragraph 4 The countervailing duties calculated in accordance with paragraph 3 shall not be used in the calculation of the countervailing duty to be applied to producers or exporters not included in the sampling selection referred to in paragraph 1.

Article 77 For producers or exporters whose countervailing duties are not applied under the provisions of article 74 or article 76, countervailing duties calculated on the basis of the best available information shall be applied.

Article 78 For the purpose of article 30, countervailing duties shall be collected only for imports of the product subject to investigation if destined for final consumption in the market considered in the definition of isolated domestic industry.

## **Section II**

### **Collection or enforcement**

Article 79 Irrespective of any tax obligations relative to the imported product subject to investigation, provisional countervailing duties guaranteed by deposit or bond and definitive countervailing duties shall be collected from such product where a preliminary or final affirmative determination has been made and all other requirements for the application of duties have been met.

Article 80 No guarantees shall be required nor duties shall be applied to imports of products subject to the undertakings referred to in article 63.

## **Section III**

### **Retroactive collection**

Article 81 Except in the cases provided for in this section, provisional and definitive countervailing measures shall only be applied to imported products which enter for consumption from the date of publication of the notice setting forth the decisions referred to in article 62, paragraph 5, and article 73.

Article 82 Countervailing duties may be applied retroactively only in cases of a final affirmative determination of material injury to the domestic industry.

Sole Paragraph. In the event of a final affirmative determination of threat of material injury to the domestic industry, the retroactive application of countervailing duties shall only occur when it is demonstrated that the effect of the subsidized imports would, in the absence of the provisional measures, have led to a affirmative determination of material injury to the domestic industry.

Article 83 The amount of the provisional duty guaranteed by deposit or bond shall be refunded, reimbursed or terminated in an expedited manner, in the following cases of:

I - a final affirmative determination of threat of material injury to the domestic industry;

II - material retardation to the establishment of the domestic industry;  
or

III - final negative determination of the existence of a subsidy, injury to the domestic industry or a causal link between the subsidized imports and the injury.

Article 84 If the amount of the definitive duty is higher than the amount of the provisionally guaranteed duty, the difference shall not be collected.

Article 85 If the amount of the definitive duty is less than the amount of the provisionally guaranteed duty, the conversion of the guarantee shall be adjusted.

Article 86 Definitive countervailing duties may only be levied on imports of the subsidized product whose bill of lading date is up to ninety (90) days prior to the date of application of the provisional countervailing measures, and provided that the injury is caused by massive imports of the subsidized product in a relatively short period of time, which, in light of the timing and the volume of the subsidized imports and other circumstances, such as a rapid build-up of inventories of the imported product, is likely to seriously undermine the remedial effect of the definitive countervailing duty to be applied.

Paragraph 1 No duties shall be levied on imports whose bill of lading date is prior to the date of the initiation of the investigation or to the violation of the undertaking.

Paragraph 2 The importers involved shall be granted a non-extendable period of ten (10) days to submit comments on the countervailing measure.

Article 87 The matters of fact and law which have led to the retroactive collection of definitive countervailing duties shall be included in the decision of the Chamber of Foreign Trade ordering the retroactive collection of definitive duties.

## CHAPTER VIII

### DURATION OF COUNTERVAILING DUTY AND UNDERTAKINGS

Article 88 Countervailing duties and undertakings shall remain in force only to the extent necessary to counteract subsidization which is causing injury.

Article 89 Any definitive countervailing duty shall be terminated on a date not later than five years from the date of its imposition or from the conclusion of the most recent review that has covered the subsidization, the injury to the domestic industry and the causal link between the subsidized imports and the injury, as established in section II of chapter IX.

## CHAPTER IX

### REVIEW OF COUNTERVAILING DUTIES AND UNDERTAKINGS

## **Section I**

### **Applicable principles and provisions**

Article 90 The reviews of the countervailing duties and undertakings set forth in this chapter shall comply with, as appropriate:

I - the provisions of chapters I to IV and chapters XI to XV; and

II - the principles, time-limits and procedures established in chapter VI.

Sole Paragraph. The provisions of article 69 may apply to the reviews referred to in section II of this chapter.

Article 91 The reviews mentioned in this chapter shall be requested by means of a written application, grounded in evidence, submitted by the interested parties.

Paragraph 1 SDCOM may conduct, at its discretion and provided that it is duly justified, the review proceedings referred to in this chapter simultaneously or in combination.

Paragraph 2 Except as otherwise provided for in this chapter, interested parties shall be considered those listed in article 40, paragraph 2.

Article 92 SDCOM shall notify interested parties of the initiation of the review under this chapter.

Article 93 Interested parties shall be granted ample opportunity to submit written evidence deemed relevant to the review.

Article 94 Except as otherwise provided for in this chapter, the period of review shall be established in accordance with article 43.

Article 95 As a result of the review, the countervailing duty may:

I - be terminated or continued in accordance with the provisions of subsection II of section II of chapter IX; or

II - be terminated, continued or modified in accordance with the provisions of subsection I of section II and subsection I of section III of chapter IX.

Article 96 Notice of the Secretary of Foreign Trade shall provide for the application model to be adopted for the reviews under this chapter.

Article 97 The provisions of this chapter shall apply to reviews of undertakings.

## **Section II**

### **Reviews relating to the imposition of the duty**

#### **Subsection I**

#### **Review of Duties Based on Changed Circumstances**

Article 98 At the request of any interested party to the original investigation or to the last review of the countervailing duty in which the existence of subsidy, injury and causal link between the subsidized imports and the injury has been investigated who submits a written application with evidence indicating

a change in the circumstances which justified the imposition of the countervailing duty, SDCOM may initiate a review under this subsection, provided that a period of at least one (1) year has elapsed, since the imposition, modification, extension of the duration, or extension of the scope of a definitive countervailing duty.

Paragraph 1 The change in the circumstances referred to in the **Caput** must be significant and lasting.

Paragraph 2 The change in the circumstances referred to in the **Caput** shall not constitute factors such as mere oscillations or fluctuations inherent to the market.

Paragraph 3 In exceptional circumstances, a review may be initiated under this subsection within a period shorter than that referred to in the **Caput**, provided that it is duly justified.

Article 99 Based on the determination established by SDCOM:

I - the countervailing duty may be terminated where:

a) countervailable subsidy; or

b) injury

Is considered unlikely to continue or resume; and

II - the countervailing duty may be modified if:

a) it is found to be insufficient or excessive for the purpose of neutralizing the effects of the subsidy; or

b) it is found to be insufficient to neutralize the injury to the domestic industry caused by the imports of the product subject to the duty.

Article 100 In the cases set forth in "a" of subparagraphs I and II of the **Caput** of article 99, the analysis shall be based on objective examination of all relevant factors, such as:

I - the existence of a countervailable subsidy while the countervailing measure was in force;

II - the imposition or termination of countervailing measures on the like product by other countries during the review period; and

III - government plans, public policies and other relevant documents or instruments on the granting of subsidies.

Paragraph 1 Applications that involve the calculation of a new amount of subsidies shall include, among other information, evidence of the modification of the programme related to the subsidies granted during the review period.

Paragraph 2 The duty levied as a result of the review of changed circumstances shall not exceed the new amount of subsidies calculated for the review period.

Article 101 In the cases set forth in "b" of subparagraphs I and II of the **Caput** of article 99, the analysis shall be based on objective examination of all relevant factors, such as:

I - the state of the domestic industry during the time the definitive duty was in force;



II - the volume of imports of the product subject to the duty during the time the duty was in force and the likely trend of such imports, in absolute terms and relative to the production or consumption of the like product in the Brazilian domestic market;

III - the likely price of imports of the product subject to the duty and its likely effect thereof on the prices of the like product in the Brazilian domestic market;

IV - the likely impact of imports of the product subject to the duty on the domestic industry, as assessed on the basis of all the relevant economic factors and indices defined in article 24, paragraph 2 and paragraph 3;

V - changes in market conditions in the exporting country, in Brazil or in third markets, including changes in supply and demand for the like product, due, for example, to the imposition of trade remedy measures by other countries; and

VI - the likely effect of factors other than the imports of the product subject to the duty on the domestic industry, such as:

- a) volume and price of imports not subject to the countervailing duty;
- b) impact of import liberalization processes on domestic prices;
- c) contraction in demand or change in consumption patterns;
- d) trade restrictive practices of domestic and foreign producers and competition between them;
- e) developments in technology;
- f) export performance;
- g) productivity of domestic industry;
- h) captive consumption; and
- i) import or resale of the imported product by the domestic industry.

Article 102. The review of the duty based on the change of circumstances shall be concluded within twelve (12) months from the date of its initiation.

Paragraph 1 In exceptional circumstances, the time-limite for reviewing the duty referred to in the **Caput** may be extended for up to three (3) months.

Paragraph 2 In the course of the review, the duties shall remain in force and unaltered.

## **Subsection II**

### **Sunset review**

Article 103 By means of a sunset review under this subsection, the time period for imposition of the countervailing duty referred to in article 88 may be extended for an equal time period, if it is determined that the termination of the countervailing duty would highly likely lead to a continuation or recurrence of subsidization and injury arising therefrom.

Article 104 The determination as to whether the termination of the duty would most likely lead to the continuation or recurrence of the granting of countervailable subsidy shall be based on an objective examination of all relevant factors, including those set forth in the **Caput** of article 100, subparagraphs I to III.

Article 105 The determination as to whether the termination of the duty will most likely lead to the continuation or recurrence of the injury shall be based on an objective examination of all relevant factors, including those set forth in article 101.

Article 106 In the event of doubt as to the likely future evolution of imports of the product subject to the countervailing duty, SDCOM may recommend the extension of the countervailing duty with the immediate suspension of its imposition.

Sole Paragraph. The collection of the countervailing duty shall be immediately resumed if the increase in the volume of imports is such as to lead to the recurrence of the injury.

Article 107 The sunset review shall be requested by or on behalf of the domestic industry, by means of a substantiated written application containing evidence that the termination of the countervailing duty would most likely lead to the continuation or recurrence of the granting of countervailable subsidy and the injury arising therefrom.

Article 108 The sunset review application shall be filed at least four (4) months prior to the expiry of the countervailing duty referred to in article 89, under penalty of the application being considered untimely.

Sole Paragraph. The decision on whether to initiate the review shall be published prior to the expiry of the countervailing duty.

Article 109 The review shall be concluded within a period of twelve (12) months from the date of its initiation.

Paragraph 1 In exceptional circumstances, the time-limit for the conclusion of the review referred to in the **Caput** may be extended for up to three (3) months.

Paragraph 2 In the course of the review, the duties shall remain in force and unaltered.

### **Section III**

#### **Reviews relating to the scope and collection of the duty**

##### **Subsection I**

##### **Expedited review**

Article 110 When the product is subject to a countervailing duty, the producer or the exporter that has not been individually investigated for a reason other than a refusal to cooperate with the investigation may request, by means of a reasoned written application, the review of such duty, for the purpose of determining its individual subsidy amount.

Article 111 SDCOM shall have two (2) months to determine whether the application is properly documented and, if in case of an affirmative

determination, so SECEX shall publish an notice in the Federal Official Gazette to inform the initiation of the review.

Article 112 SDCOM may request the petitioner to provide additional information to be forwarded within a non-extendable period of five (5) days, from the date of acknowledgment of the request.

Sole Paragraph. If the petitioner or the government of the exporting country refuses access to the necessary information, fails to provide such information in a timely manner, or creates obstacles to the review, SECEX will terminate the review without determining individual subsidy amount for the petitioner.

Article 113 The period for submitting information of the review shall be concluded within a period no longer than ninety days from the date of initiation of the review.

Sole Paragraph. The evidence submitted following the conclusion of the period for submitting information shall not be attached to the case file.

Article 114 The reviews referred to in this subsection shall be completed within a period of seven (7) months from the date of initiation of the reviews.

## **Subsection II**

### **Anti-circumvention review**

Article 115 The scope of a countervailing measure may be extended by an anti-circumvention review for the following imports:

I - parts, pieces or components originating in or from the country subject to a countervailing measure, destined for manufacturing in Brazil of the product subject to the countervailing measure;

II - a product from third countries whose manufacture, using parts, pieces or components originating in or from the country subject to the countervailing measure results in the product subject to the countervailing measure; or

III - a product originating in or from the country subject to the countervailing measure containing marginal modifications in relation to the product subject to the countervailing measure, but that do not alter the final use or purpose of the product subjecte to the coutervailing measure.

Article 116 For the purposes of this Decree, circumvention is considered to be a trade practice aimed at frustrating the effectiveness of a countervailing measure in force through the introduction of the imports provided for in article 115 into the national territory.

Article 117 Subject to the provisions of article 115, the existence of circumvention shall be determined by the combined examination of information relating to:

I - countries of exports of the products or parts, pieces or components;

II - producers or exporters from the countries referred to in subparagraph I; or

III - Brazilian importers of parts, pieces or components.

Paragraph 1 Examination of the information in the exporting country of the products or parts, pieces or components referred to in the **Caput** shall encompass the countries in question as a whole, for the purpose of determining whether:

I - by virtue of changes in the trade flows from these countries following initiation of the original investigation or review, the effectiveness of the countervailing measure in force is being thwarted, as assessed in terms of the price and imported quantity of the product subject to the review; and

II - the changes in the trade flows from these countries following the initiation of the original investigation or review are the result of a process, activity or practice for which there is no economic basis or justification other than to thwart the effectiveness of the countervailing measure in force.

Paragraph 2 The analysis of the information on the the producers, exporters or importers referred to in the **Caput** shall encompass producers, exporters or importers individually, for the purpose of determining whether:

I - in the case of subparagraph I of the **Caput** of article 115:

a) the resale, in Brazil, of the product subject to the countervailing measure manufactured with parts, pieces or components originating in or from the country subject to the countervailing measure occurred at prices below the export price determined for the product subject to the countervailing measure, plus the amount of subsidies;

b) the parts, pieces or components originating in or from the country subject to the countervailing measure are not used for purposes other than the manufacture of the product subject to the countervailing measure;

c) manufacturing began or increased in Brazil following the initiation of the investigation which resulted in the application of a countervailing measure; and

d) the parts, pieces or components originating in or from the country subject to the countervailing measure represent sixty percent (60%) or more of the total value of parts, pieces or components of the product manufactured in Brazil;

II - in case of subparagraph II of the **Caput** of article 115:

a) the export of the product to Brazil occurred at prices below the export price determined for the product subject to the countervailing measure, plus the amount of subsidies;

b) the export of the product to Brazil corresponded to a significant proportion of the total sales of the producer or exporter;

c) the exports of the product to Brazil began or substantially increased following the initiation of the investigation which resulted in the application of a countervailing measure; and

d) the parts, pieces or components originating in or from the country subject to the countervailing measure account for sixty percent (60%) or more of the total value of parts, pieces or components of the product exported to Brazil; and

III - in case of subparagraph III of the **Caput** of article 115:

a) the export of the product containing marginal modifications to Brazil occurred at prices below the export price determined for the product subject to the countervailing measure, plus the amount of subsidies;

b) the export of the product containing marginal modifications to Brazil corresponded to a significant proportion of the total sales of the producer or exporter; and

c) the export of the product containing marginal modifications to Brazil began or substantially increased following the initiation of the investigation which resulted in the application of a countervailing measure.

Paragraph 3 The circumvention shall not be considered to occur when the added value in the manufacturing operations provided for in subparagraph I of the **Caput** of article 115 is above thirty-five percent (35%) of the manufacturing cost of the product.

Paragraph 4 For the purposes of Paragraph 3, the manufacturing cost will shall not include:

I - depreciation costs;

II - packaging costs; and

III - costs or expenses not directly related to the manufacture of the product.

Article 118 The anti-circumvention review shall be based on the investigation which resulted in the application or extension of the countervailing measure.

Article 119 The anti-circumvention review may be requested:

I - by means of a written application by a interested party in the original investigation;

II - by means of a written application by the interested party in the last review of the countervailing measure, in the event that the duration of the countervailing measure has already been extended; or

III - in exceptional circumstances, on the initiative of SECEX.

Article 120 For the purposes of the anti-circumvention review, the interested parties in an anti-circumvention review shall include:

I - the Brazilian producers of the like product to the product of subject to a countervailing measure or their representative trade association;

II - the government of the exporting country of the products referred to in subparagraphs II and III of the **Caput** of article 115;

III - the producers or exporters of the products referred to in subparagraphs II and III of the **Caput** of article 115;

IV - the Brazilian importers of the parts, pieces or components referred to in subparagraph I of the **Caput** of article 115;

V - the companies responsible for the manufacture of the parts, pieces or components referred to in subparagraph I of the **Caput** of article 115; and

VI - other domestic or foreign parties which may be affected by the anti-circumvention review, at the discretion of SDCOM.

Article 121 SDCOM may send questionnaires to the interested parties, which shall be granted a period of twenty (20) days following the acknowledgment of the distribution of such questionnaires to return them.

Sole Paragraph. Upon request a ten (10) day extension of the time limit provided for in the **Caput** may be granted.

Article 122 The review shall be concluded within a period of six (6) months from the date of publication of the notice of initiation the investigation.

Sole Paragraph. In exceptional circumstances, the time limit referred to in the **Caput** may be extended for up to three months.

Article 123. The extension of the scope of a countervailing measure shall be subject to individual determination for each known producer, exporter or importer of the product subject to the anti-circumvention review.

Paragraph 1 If the number of producers, exporters or importers is so large as to make the determination referred to in the **Caput** impracticable, the individual determination may be limited to:

I - in the case of subparagraph I of the **Caput** of article 115, a selection of importers accounting for the largest percentage that can be reasonably investigated, of the volume of imports of parts, pieces or components originating in or from the country subject to the countervailing measure whose manufacture results in a like product to the product subject to the countervailing measure; or

II - in the cases of subparagraphs II and III of the **Caput** of article 115, a selection of the producers or the exporters accounting for the largest percentage of the volume of exports from the exporting country, which can be reasonably investigated.

Paragraph 2 The selection provided for in Paragraph 1 shall include the producers, exporters or importers which, listed in descending order of volume, account for the largest export volumes, in the case of producers or exporters, or import volumes, in the case of importers to f Brazil.

Article 124 The scope of the countervailing duties shall be extended to all producers, exporters or importers included in the selection provided for in article 123 which have submitted the requested data and in respect of which SDCOM has reached a final affirmative determination of circumvention practices.

Paragraph 1 The value of the extended countervailing duty provided for in the **Caput** shall consist of:

I - in the case of subparagraphs I and II of the **Caput** of article 115, the weighted average of the amounts of subsidies calculated for producers or exporters for which individual subsidies have been calculated, disregarding those that are null, **de minimis** or fully calculated based on the best available information; or

II - in case of subparagraph III of the **Caput** of article 115, on the countervailing duty applied to the producer or exporter identified in the investigation that culminated in the application or extension of the countervailing measure.

Paragraph 2 In the case of subparagraph I of the **Caput** of article 115, the countervailing duty on the parts, pieces or components shall be extended in the form of an **ad valorem** rate.

Paragraph 3 Producers, exporters or importers for whom a negative final determination has been reached shall be individually identified in the notice that makes the conclusion of the review public and the application of the countervailing duties in force shall not be extended to them.

Paragraph 4 In the case of an affirmative final determination for the producer or exporter for which there is a undertaking in force, the undertaking shall be considered violated.

Article 125 For known importers not included in the selection referred to in article 123 and who have imported the parts, pieces or components into Brazil, during the period of review, as provided for in subparagraph I of the **Caput** of article 115, the anti-circumvention review shall be suspended and the application of countervailing duties shall not be extended.

Article 126 For producers or exporters not included in the selection referred to in article 123 and who have exported to Brazil the products referred to in subparagraphs II and III of the **Caput** of article 115 during the period of review, the review shall be suspended and the application of countervailing duties shall not be extended.

Article 127 If there is evidence that the producers, exporters or importers referred to in article 125 and article 126 are engaged in circumvention, SDCOM may, based on reasoned request or ex officio, resume the review.

Paragraph 1 SECEX shall publish a notice in the Federal Official Gazette to determine the resumption of the review.

Paragraph 2 In the case provided for in Paragraph 4 of article 124, CAMEX shall publish a notice in the Federal Official Gazette as to resumption of the review.

Article 128 For unknown producers, exporters or importers or those who, although included in the selection, fail to provided the data requested, the scope fo the countervailing duty shall be extended based on the best available information, pursuant to Paragraph 3 of the article 46.

Paragraph 1 Importers not engaged in importing parts, pieces or components referred to in subparagraph I of the **Caput** of article 115 into Brazil, during the period of the anti-circumvention review, may request their exclusion from the extended countervailing measure based on the provisions of this Subsection.

Paragraph 2 Producers or exporters not engaged in exporting the products referred to in subparagraphs II and III of the **Caput** of article 115, to Brazil, during the period of the anti-circumvention review may request an expedited review, based on the provisions of Subsection I of this Section.

Article 129 The countervailing measure not extended to importers shall be contingent on maintenance of the same suppliers identified in the review period.

Article 130 The importer referred to in Paragraph 1 of article 128 shall submit sufficient factual and legal elements to demonstrate that:

I – it does not maintain relationship or association, pursuant to the provisions of article 8, with the interested parties in the anti-circumvention review which resulted in the extension of the scope of the countervailing measure;

II - it did not import into Brazil the parts, pieces or components referred to in subparagraph I of the **Caput** of article 115 during the anti-circumvention review period; and

III - the manufacturing operations referred to in subparagraph I of the **Caput** of article 115 resulted in an added value of at least thirty-five percent (35%), calculated on the basis of the total manufacturing cost of the product, pursuant to Paragraph 3 and Paragraph 4 of article 117.

Article 131 The countervailing duty extended based on anti-circumvention reviews shall be subject to sunset reviews of the countervailing duty that gave rise to the anti-circumvention review.

Article 132 The provisions of Sections V and VI of chapter VI shall not apply to anti-circumvention reviews.

Article 133 When the countervailing duty that gave rise to the anti-circumvention review or the possible extension of the application of such duty is terminated:

I - the countervailing duty extended based on anti-circumvention reviews shall be terminated; and

II - suspended anti-circumvention reviews shall be terminated.

### **Subsection III**

#### **Reimbursement review**

Article 134 The importer of the product subject to the countervailing duty may request reimbursement for definitive countervailing duties paid, if it is demonstrated that the amount of subsidies determined for the reimbursement review period is less than the duty in force.

Article 135 The reimbursement review shall be requested by the interested importer through a reasoned written application based on evidence that the amount of countervailing duties paid was greater than that which would have been due had the duty been calculated on the basis on the amount of subsidies calculated for the period of review.

Paragraph 1 Mere allegations shall not be considered sufficient to meet the requirements established in this Subsection.

Paragraph 2 For the purposes of this subsection, the following are considered interested parties in a reimbursement review:

I - the applicant for the reimbursement review;

II - the government of the exporting country; and

III - the producers or exporters to which an individual countervailing duty has been applied.

Article 136 The period of review shall normally comprehend twelve (12) months.



Paragraph 1 The period of review referred to in the **Caput** shall not be less than six (6) months.

Paragraph 2 The end of the period shall necessarily correspond to the date of the last import during the period in which the reimbursement is claimed and in which countervailing duties have been paid.

Article 137 The application referred to in article 135 shall be filed within four (4) months from the last day of the period of review.

Paragraph 1 The petition shall only be considered properly documented if it contains accurate information on the amount to be reimbursed and is accompanied by the original or certified copies of all customs documentation relative to the payment of the due countervailing duties.

Paragraph 2 The application shall contain evidence relative to the subsidy granted and the export price to Brazil of the producer or exporter for which the individual amount of subsidies has been determined.

Paragraph 3 If the importer is related or associated with the producer or the exporter, such importer shall present the resale price of the product imported into the Brazilian domestic market.

Article 138 The amount of subsidies calculated for the review period shall serve exclusively to calculate the possible reimbursement of countervailing duty paid in an amount above the amount of subsidies calculated for the period of review.

Sole Paragraph. The reimbursement review shall be concluded within a period of ten (10) months from the date of its initiation.

Article 139 In the case of a final affirmative determination, SDCOM shall notify the Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy of the amount of subsidies determined for the period of the reimbursement review.

Paragraph 1 The Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy shall be responsible for the respective reimbursement.

Paragraph 2 The reimbursement referred to in Paragraph 1 shall be executed, in general, within a period of ninety (90) days from the date of publication of the notice of conclusion of the review.

## CHAPTER X

### ASSESSMENT OF SCOPE AND REDETERMINATION

#### Section I

##### Assessment of Scope

Article 140 The interested parties designated in paragraph 2 of article 40, in addition to other importers, may request that SDCOM proceed to an assessment of scope for the purpose of determining whether a product is subject to a countervailing measure in force.

Sole Paragraph If SDCOM deems an assessment of scope as necessary for determining whether a product is subject to a countervailing measure in force, it may initiate an assessment of scope ex officio.

Article 141 The assessment of scope referred to in article 140 shall be requested by through a reasoned written application containing:

I - a detailed description of the product to be assessed and the pertinent evidence, including the product's technical characteristics, uses and its tariff classification under the Mercosur Common Nomenclature - MCN; and

II - a detailed explanation, accompanied by the pertinent evidence of the reasons for the applicant's conclusion that the product is, or is not, subject to a countervailing measure in force.

Article 142 If the application has been properly documented SECEX shall publish an notice in the Federal Official Gazette to inform about the initiation of the assessment of scope.

Sole Paragraph. The notice referred to in the **Caput** shall contain:

I - a detailed description of the product submitted for assessment of scope and of the product subject to the countervailing measure; and

II - the basis for SDCOM conclusion that assessment is necessary.

Article 143 A period of twenty (20) days shall be granted, counting from the date of publication of the notice referred to in article 142, so that interested parties can qualify and file written statements or submit evidence and request a hearing in order to clarify aspects related to the scope of the countervailing measure.

Paragraph 1 The provisions of paragraph 4, paragraph 7 and Paragraph 8 of article 51 applies to the hearing referred to in the **Caput**.

Paragraph 2 The information presented orally during the hearing shall only be considered by SDCOM if reproduced in writing and filed within five days, from the date of the hearing, so that they can be attached to the case file.

Article 144 In the case of conclusion based only on the information contained in the application and the comments presented within the period established in the **Caput** of article 143, SDCOM shall prepare a final determination, within sixty days, counted from the date of publication of the notice referred to in the article 142

Article 145 If it is not possible to reach a conclusion based only on the information contained in the application and comments presented within the period established in article 143, SDCOM shall prepare the final determination within one hundred and twenty (120) days, counting from the date of publication of the notice referred to in article 142.

Sole Paragraph. The comments of the interested parties shall be presented within ninety days, counting from the date of initiation of the assessment of scope.

Article 146 The assessment of SDCOM shall be based on the evidence provided to define the product subject to the countervailing measure.

Article 147 SECEX shall forward the final conclusion to the Chamber of Foreign Trade for approval and publication of the notice containing the result of the assessment of scope.

Article 148 The results and conclusions of the assessments of scope may be utilized by SDCOM to prepare investigations or reviews initiated under this Decree.

Sole Paragraph. The assessment conducted under this Section shall be interpretative and shall not modify the scope countervailing measures in force.

Article 149 The provisions of this Section applies to **antidumping** and countervailing measures applied to the same product subject to assessment of scope.

## **Section II**

### **Regarding the redetermination**

Article 150 The domestic producers of the like product or the representative trade association may request that SDCOM proceed to a redetermination.

Paragraph 1 The redetermination shall be carried out to determine whether the effectiveness of the countervailing measure has been compromised:

I - by virtue of the manner in which the measure was applied; or

II - as a result of the fact that the export price decreased, remained unchanged or increased in an amount less than expected upon application, modification, extension of the duration or extension of the scope of a countervailing measure.

Paragraph 2 The redetermination shall be requested by a reasoned written application.

Paragraph 3 Exceptionally SDCOM may initiate a redetermination ex officio.

Article 151 In the case of subparagraph I of the **Caput** of article 150, the application shall contain a detailed explanation and the pertinente evidence which led the applicant to conclude that a redetermination is necessary.

Paragraph 1 The application of a countervailing measure may only be altered by virtue of a redetermination one (1) time every five (5) years.

Paragraph 2 The rules set forth in Paragraph 1 apply to measures which have had their duration extended through a review under chapter IX.

Paragraph 3 The adjustment of the form of application shall not exceed the amount of subsidies determined in the original investigation or in the most recent review.

Article 152 In the case of subparagraph II of the **Caput** of article 150, the application shall contain a detailed explanation, pertinente evidence which led the applicant to conclude that a redetermination is necessary.

Paragraph 1 Applications submitted pursuant to this article shall only be accepted if the countervailing measure has been applied in an amount less than the amount of subsidies.

Paragraph 2 Throughout the course of the redetermination, exporters, foreign producers, importers, governments of exporting countries and domestic producers shall be given adequate opportunity to clarify aspects related to export prices.

Article 153 A redetermination shall only be initiated nine (9) months following the date of the application, modification, extensión of the duration or extension of the scope of a countervailing measure.

Paragraph 1 SECEX shall publish in the Federal Official Gazette a notice initiating the redetermination.

Paragraph 2 A redetermination shall be concluded within three (3) months from the date of its initiation.

Article 154 In the case of subparagraph II of the **Caput** of article 150, if SDCOM concludes that the application of a countervailing duty should have resulted in changes to the prices in question which did not occur, it shall recommend that the Chamber of Foreign Trade adjust the countervailing measure in force.

Article 155 The affirmative determinations on the absorption of duties referred to in subparagraph II of the **Caput** of article 150 constitute significant evidence that the termination of the duty shall result in the continuation or recurrence of the granting of subsidies.

## CHAPTER XI

### DISCLOSURE

Article 156 The notices arising from the decisions issued by the authorities referred to in article 3 and article 5 shall be published in the Federal Official Gazette and shall contain detailed information on the conclusions regarding the factual and legal elements presented.

Article 157 The notices referred to in article 156 concerning the initiation of an investigation shall contain:

I - the name of the exporting country or countries and the product subject to the investigation;

II - the date of initiation of the investigation;

III - the basis on which the practice or practices of granting subsidy is alleged in the application;

IV - a summary of the facts on which the allegation of injury is based;

V - the address to which statements by interested parties should be directed to; and

VI - the time limits and regulations for the statements by the interested parties.

Article 158 The notices provided for in article 156 on the imposition of provisional countervailing measures shall contain:

I - sufficient detail on preliminary determinations reached on the existence of subsidy, injury and the causal link between the subsidized imports and the injury;

II - the factual and legal elements on which acceptance or denial of the arguments presented by the interested parties was based;

III - the names of the producers or exporters to which the provisional countervailing measures shall be applied;

IV - the detailed description of the product that subject to the provisional countervailing measure;

V - the amount of subsidies calculated and a full explanation of the reasons for the calculation methodology used to calculate them;

VI - the data on the principal parameters deemed necessary for the determination of injury and the causal link; and

VII - the factual and legal elements leading to preliminary affirmative determination of the existence of subsidy, injury and causal link between the subsidized imports and the injury.

Sole Paragraph. In the case of subparagraph III of the **Caput**, when the number of producers or exporters is especially large, the producers or exporters shall be identified by the country in which they are located.

Article 159 The notices referred to in article 156 concerning the imposition of definitive countervailing measures or the approval of a compromise shall contain:

I - the relevant information on the factual and legal elements and on the reasons on which the final affirmative determination was based; and

II - the information required in subparagraphs III to VI of the **Caput** of article 158 and the reasons for the acceptance or denial of the arguments presented by the interested parties.

Article 160 The notices referred to in article 156 on the termination or suspension of an investigation following the acceptance of an undertaking shall include the transcription of the non-confidential part of the undertaking.

Article 161 The provisions of this chapter apply, as the case may be, to the initiation and to the termination of the reviews set forth in chapter IX.

Article 162 The notification obligations arising from the application of the provisions of this Decree may be fulfilled by disclosing the electronic address where the notices referred to in this chapter shall be made available.

Article 163 Where the investigations encompass interested parties from one or more Member States of MERCOSUR, copies of the notifications shall be made available in advance, in electronic media, to the respective investigating authorities in the member countries by electronic medium.

Article 164 The electronic versions of the notices provided for in this chapter shall be available for consultation on the Ministry of Economy's website.

## CHAPTER XII

### THE FORM OF PROCEDURAL ACTS AND TERMS

Article 165 The procedural acts and terms do not depend on any special format, but the interested parties must observe the instructions of this

Decree and those issued by SECEX when preparing applications and documents in general, otherwise they shall not be appended to the case file.

Paragraph 1 Observance shall be required only of instructions that have become public prior to the initiation of the proceedings or that shall have been specified in the communication to the part involved.

Paragraph 2 The procedural acts are considered public in nature.

Paragraph 3 The right to consult the restricted case file and verify the status of the investigation shall be limited to the interested parties and their legal representatives, in accordance with the provisions on the confidentiality ruling internal government information and documents.

Paragraph 4 The designation of a legal representative shall be duly signed by a individual with the requisite powers to this end, pursuant to the articles of association of the legal entity.

## CHAPTER XIII

### DECISION-MAKING PROCESS AND APPEAL

Article 166 Preliminary or final affirmative or negative determinations on the investigations and on the reviews shall be based on an opinion issued by SDCOM.

Article 167 Of the decisions referred to in article 166, an appeal shall be lodged, without suspensive effect, within a non-extendable period of ten (10) days, from the date of publication in the Official Gazette of the notice that made the decision public.

Paragraph 1 The appeal shall be addressed to the authority that issued the decision.

Paragraph 2 If the appealed authority does not reconsider its decision, it will forward the appeal to the Council of Trade Strategy of the Chamber of Foreign Trade, which shall decide it as the final instance.

Article 168 Appeals without accompanying the reasons that support them or presented out of time shall not be considered.

Article 169 In the event of reconsideration of the decision, the Executive Secretariat of the Chamber of Foreign Commerce shall request the Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy to proceed the reimbursement of improperly collected amounts.

## CHAPTER XIV

### ON-THE-SPOT INVESTIGATIONS

Article 170 Upon the initiation SDCOM shall notify the foreign producers or exporters, domestic producers, selected importers and the governments of the exporting countries its intention to conduct on-the-spot investigations and of the recommended dates for execution of such investigations.

Paragraph 1 The communication provided for in the **Caput** shall be formally issued with the following advance of the recommended date for the investigation:

I - thirty (30) days, in the case of foreign producers or exporters, governments of exporting countries and importers; and

II - twenty (20) days, in the case of domestic producers.

Paragraph 2 Within two (2) days from the date of acknowledgment of the notification referred to in Paragraph 1, the foreign producer or the exporter, the domestic producer, the government of the exporting country or the importer shall submit express written consent for the investigation.

Paragraph 3 The absence of a timely response from the foreign producer, exporter or importer shall give rise to the application of the provisions of chapter XV.

Paragraph 4 The absence of a timely response from the companies that constitute the domestic industry may give rise to the termination of the investigation without a decision on the merits.

Paragraph 5 Except for the provisions of paragraph 7, changes to the data to be subject to the investigation following the issuance of the notification referred to in paragraph 1 shall not be permitted.

Paragraph 6 SDCOM shall issue an on-the-spot investigation script and specify the information to be requested and examined at the on-the-spot investigation, in addition to the documents which must be submitted within:

I - twenty (20) days prior to the investigation, in the case of foreign producers or exporters, governments of exporting countries and importers; or

II - ten (10) days prior to the investigation, in the case of domestic producers.

Paragraph 7 Prior to the initiation of the investigation, the interested parties shall be given the opportunity to submit clarification in respect of the information previously submitted to the investigation team.

Paragraph 8 The analysis of SDCOM regarding the specific clarification referred to in Paragraph 7 shall be included in the on-the-spot investigation report, access to which shall be provided to the verified party within a period of fifteen (15) days, from the final date of the authorization of departure from the country of the official that participated in the investigation team.

Paragraph 9 The on-the-spot investigation reports shall be attached to the respective case file.

Paragraph 10 Upon obtainment of consent of the foreign producer or exporter referred to in Paragraph 2, the government of the exporting country shall be immediately notified of:

I - the names and addresses of the producers or exporters to be investigated; and

II - the dates agreed for the on-the-spot investigations.

Paragraph 11 Under exceptional circumstances, if the inclusion of non-governmental experts in the on-the-spot investigation is needed, such experts and the government of the exporting country shall be notified thereof.

Paragraph 12 The deadlines provided for in Paragraph 1, Paragraph 6 and Paragraph 8 do not apply to the procedures referred to in section I of chapter X.

Article 171 The investigation of foreign producers or exporters shall be conducted following submission of the questionnaire, except:

I - if the producer or exporter agrees otherwise; and

II - if the government of the exporting country is notified of the investigation in advance and raises no objection.

Article 172 Investigations aimed at explaining the questionnaire referred to in article 46 may be conducted at the request of the foreign producer of the exporter and shall only occur if SDCOM notifies the government of the exporting country and such government raises no objection to the investigation.

Article 173 Replies to requests for information or 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 submitted before the visit is made.

## CHAPTER XV

### BEST INFORMATION AVAILABLE

Article 174 Upon initiation of the investigation, the interested parties shall be notified of the data and information required for the fact-finding phase of the process, as well as of the manner in which that information should be structured and the time periods for submitting it.

Sole Paragraph. The interested parties shall be notified that SDCOM may prepare a preliminary or a final determination on the basis of the facts available, including those contained in the application for the initiation of the investigation, if the requested data and information, duly accompanied by the respective evidence, are not submitted or are submitted after the established time-limit.

Article 175 When preparing its determinations, SDCOM shall take into account the verifiable information timely and appropriately submitted.

Sole Paragraph If data in electronic media are required, the interested party that does not maintain computerized accounting or for which the submission of data in electronic media represents an unduly extra burden and would entail unreasonable additional cost and difficulties, shall be dispensed from submitting the information in question in an electronic media.

Article 176 If SDCOM does not accept data or information it shall:

I - notify the interested party of the reasons therefore; and

II - establish time limits for the interested party to provide further explanations, in a way to ensure that the investigation is not jeopardized.



Sole Paragraph. If the explanations submitted are not considered satisfactory, the reasons for the rejection shall be given in the pertinent decision or determination.

Article 177 If SDCOM uses information from secondary sources to prepare its determinations, including those provided in the applications, such information shall, to the extent possible, be compared with information from independent sources or from other interested parties.

Article 178 The information must be submitted in the form of a written document whenever SDCOM does not have the specific means for processing the information received in a computer language that is incompatible with its operating systems.

Article 179 The interested party shall be responsible for cooperating with the investigation and providing all of the requested data and information.

Sole Paragraph. In the event of non-compliance with the provision of the **Caput**, the interested party will assume the respective liabilities for any omissions.

## CHAPTER XVI

### FINAL PROVISIONS

Article 180 The time limits provided for in this Decree shall be counted continuously, including the respective due dates.

Sole Paragraph. If the time limit ends on a non-business day or on a day with shortened business hours, it shall be extended to the next full business day.

Article 181 It shall be assumed that exporters or foreign producers and governments have knowledge of the questionnaire sent by SDCOM within a period of ten days following the respective date of postage or transmission.

Article 182 Counting of time limits shall begin on the first business day after publication of the notice or, when applicable, the issuance of the respective correspondence.

Article 183 The periods calculated in months shall be counted from a date to a same date.

Sole Paragraph. If in the month of expiry does not include a day equivalent to that of the start month, the last day of the end month shall be used.

Article 184 The applications for extension of the duration, when allowed, shall only be considered if submitted prior to the expiry of the original time limit.

Sole Paragraph. In the case provided for in the **Caput**, the first day of the extension shall be the day following the expiry of the original time date.

Article 185 The total time limit shall be the original time limit plus the extension, counted consecutively.

Article 186 The content of all opinions, determinations and recommendations of SDCOM shall not be disclosed until the disclosure requirements established in this Decree have been fulfilled.

Paragraph 1 Once the disclosure requirements have been fulfilled, the documents referred to in the **Caput** shall be attached to the case file.

Paragraph 2 The confidentiality obligations provided for in this Decree shall be extended to the authorities involved in the decision-making processes relating to the application of countervailing measures.

Paragraph 3 The authorities involved in the decision-making process shall have access, through the opinions of SDCOM, to all confidential information submitted by interested parties in subsidy investigations conducted under this Decree.

Article 187. The products subject to countervailing measures shall be subject to detailed statistical follow-up and intelligence efforts between SECEX and the Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy, so as to assure the effectiveness of the countervailing measures in force.

Article 188 For the purpose of this Decree, requests for changes to the Mercosur Common Nomenclature may be submitted to its appropriate body.

Article 189 SDCOM may extend the time limits provided for in this Decree, for one equal period, except in the cases in which this Decree specifically provides for such extension or prohibits it.

Article 190 SECEX, the Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy and the Chamber of Foreign Trade may issue complementary rules and regulations to this Decree, within the scope of their attributions.

Article 191 In cases in which Brazil has been authorized by the Dispute Settlement Body of the World Trade Organization to suspend concessions or other obligations provided for in World Trade Organization Agreements, the provisions of this Decree may, by decision of the Chamber of Foreign Trade, be disregarded in whole or in part.

Article 192 The applications for investigations and reviews filed until the entry into force of this Decree shall be covered under Decree No. 1751, of 19 December 1995.

Article 193 Decree No. 1751, of 19 December 1995 is hereby revoked.

Article 194 This Decree shall enter into force one hundred and twenty days after the date of its publication.

Brasilia, 18 October 2021; 200<sup>th</sup> of Independence and 133<sup>rd</sup> of the Republic.

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