

MINISTRY OF ECONOMY

SPECIAL SECRETARIAT FOR FOREIGN TRADE AND INTERNATIONAL AFFAIRS

ORDINANCE N. 162, OF 6 JANUARY, 2022.

Provides for the general rules used in trade remedies proceedings provided for in Decrees N. 1,488 of 11 May, 1995, N. 8,058 of 26 July, 2013, N. 9,107 of 26 July, 2017 and N. 10,839 of 18 October, 2021, and in the commercial agreements in force in Brazil, until then supported by Ordinance N. 41, of 27 July, 2018, in Ordinance N. 21, of 30 March, 2020, in Ordinance N. 103, of 27 July, 2021, in Normative Instruction N. 3 of 22 October, 2021 and in Ordinance N. 150 of 26 November, 2021, for the purpose of complying with Decree N. 10,139 of 28 November, 2019.

THE SECRETARY OF FOREIGN TRADE, OF THE MINISTRY OF ECONOMY, in the use of the powers conferred on him by item VIII of article 91 of Annex I of Decree N. 9,745, of 8 April, 2019, considering the powers of the Undersecretariat for Trade Remedies and Public Interest established in article 96 of Annex I of Decree N. 9,745, of 2019, for the purposes of compliance with Decree N. 10,139, of 28 November, 2019, decided that:

CHAPTER I

GENERAL PROVISIONS

Article 1. The regulation of the general rules used in trade remedies proceedings on the electronic administrative process in the Electronic Information System (SEI/ME), on the procedure of the optional phase of the pre-application, on notifications and communications to interested parties within the scope of proceedings of trade remedies, on the qualification of the national production of a certain product as a fragmented industry and on the necessary adaptations to the procedures of the trade remedies investigations that are under the management of the Undersecretariat for Trade Remedies and Public Interest, will comply with the provisions of this Ordinance.

CHAPTER II

ELECTRONIC INFORMATION SYSTEM - SEI

Article 2. This chapter regulates the electronic administrative process related to investigations and trade remedies procedures supported by Decrees N. 1,488, of 11 May, 1995, N. 1,751, of 19 December, 1995, N. 8,058, of 26 July, 2013, and N. 9,107, of 26 July, 2017, and by trade

agreements in force in Brazil, and to assessments of public interest supported by Ordinance N. 13, of 29 January, 2020.

Section I

General instructions

Article 3. The Undersecretariat for Trade Remedies and Public Interest shall use the Electronic Information System of the Ministry of Economy - SEI/ME to produce, edit, sign, process, receive and conclude the electronic processes related to investigations and trade remedies procedures.

Paragraph 1. The ME Ordinance number 294 of 2020, will have subsidiary application to the specific provisions foreseen in this Ordinance.

Paragraph 2. Articles 4 and 5 of this Rule do not apply to assessments of public interest disciplined by Ordinance N. 13, issued on January 29th, 2020.

Article 4. The access to the processes and the sending of documents by the interested parties will be made through a legal representative authorized by the Undersecretariat for Trade Remedies and Public Interest.

Paragraph 1. The intervention of legal representatives who are not enabled by the Undersecretariat for Trade Remedies and Public Interest in the processes will only be allowed in the following acts:

I - submission of pertinent documentation for qualification as legal representative of interested party;

II - request for an extension of time to present answers to the questionnaires;

III - presentation of answers to questionnaires and manifestations about product models;

IV - request for qualification of other parties that consider themselves interested;

V - submission of a proposal from a third alternative market economy country;

VI - comments on the selection of producers or exporters, importers or product types; and

VII - manifestations on the decision of the Undersecretariat for Trade Remedies and Public Interest to qualify the national production of a certain product as a fragmented industry, under the terms of Article 49 of this Ordinance.

Paragraph 2. The regularization of the qualification of the representatives that perform the acts described in items II to VII of the previous paragraph must be made within the term

foreseen in the act of the Secretariat of Foreign Trade that initiates the corresponding investigation, without the possibility of extension.

Paragraph 3. The absence of regularization of the representation within the deadlines and conditions foreseen in the previous paragraph will cause the acts to be considered null.

Article 5. Under the terms of article 17 of Law N. 12,995, of on 18 June, 2014, all procedural acts of the investigations and procedures referred to in article 3 must be digitally signed with the use of a digital certificate issued by the Brazilian Public Key Infrastructure - ICP-Brazil, in order to maintain the integrity, authenticity, interoperability and, when necessary, the confidentiality of the documents.

Paragraph 1. In order to comply with the **Caput**, it is enough that only the joining petition, provided it contains a list of all documents filed and attached, be digitally signed by a qualified legal representative of the corresponding interested party with the use of a digital certificate issued by ICP-Brazil before it is sent to SEI/ME.

Paragraph 2. The Undersecretariat for Trade Remedies and Public Interest will assume that the submission of the documents was done in accordance with the provisions in the **Caput**, being up to the other interested parties to argue about any formal irregularity.

Paragraph 3. If the submitted documents do not comply with the head provision, the Undersecretariat for Trade Remedies and Public Interest will request the resubmission of the same document, which must be delivered within two days, as of the date of acknowledgement.

Paragraph 4. In case the responsible for the documents indicated on the previous paragraph does not answer to the Undersecretariat for Trade Remedies and Public Interest request in the period specified on the previous paragraph, such documents will be disregarded.

Paragraph 5. In cases in which a resubmission of documents is requested, the date of the first protocol will be considered for the purposes of compliance with procedural terms.

Article 6. The records of trade remedies investigations (confidential and restricted) referred to in article 3 will be kept in distinct electronic processes in SEI/ME.

Paragraph 1. The electronic processes containing confidential trade remedies records will be accessible only to the Undersecretariat for Trade Remedies and Public Interest and will have a "restricted" access level, pursuant to item XVII of article 3 of Ordinance N. 294, of in 2020.

Paragraph 2. The electronic processes containing the restricted trade remedies records will be accessible to the Undersecretariat for Trade Remedies and Public Interest and to the authorized legal representatives of the interested parties of the investigation or

corresponding procedure and will have a "restricted" access level, pursuant to item XVII of article 3 of Ordinance N. 294, of 2020.

Paragraph 3. The external user must submit confidential and restricted documents within the scope of confidential and restricted electronic processes referring to investigations and procedures referred to in paragraphs 1 and 2 of the **Caput** with a "restricted" access level in the SEI-ME.

Paragraph 4. The access of authorized legal representatives to the electronic processes containing the restricted records will be granted by the Undersecretariat for Trade Remedies and Public Interest, upon request and presentation of the relevant documentation.

Article 7. In addition to the responsibilities provided for in Ordinance N. 294, of 2020, the external user is responsible for the correct protocol of documents in electronic processes referring to investigations and procedures referred to in article 3, and the intercurrent petition must necessarily be used in ongoing processes.

Paragraph 1. In the event of inconsistency between the content of the document sent and the confidential, restricted or public nature of the records in which the document was filed with SEI/ME, the nature of the records in which the document was filed by the external user will prevail.

Paragraph 2. The disclosure of confidential information due to an error in the filling or classification of the document in the SEI/ME is the exclusive responsibility of the external user who submitted it.

Article 8. The Undersecretariat for Trade Remedies and Public Interest, whenever it deems it necessary, may request the original document that has been submitted scanned, which must be delivered within the period specified in the request communication.

Paragraph 1. If the holder of the document indicated in the previous paragraph does not comply with the Undersecretariat for Trade Remedies and Public Interest request within the specified period, the scanned document may be disregarded.

Paragraph 2. The originals of digitized documents that are submitted to the Undersecretariat for Trade Remedies and Public Interest must be preserved by their holder until the statute of limitations and statute of limitations established in the specific laws occur.

Article 9. To enable the presentation of product samples to the Undersecretariat for Trade Remedies and Public Interest, the interested party's authorized legal representative must describe the sample in detail and submit the description through the SEI/ME.

Paragraph 1. After sending the description indicated in the **Caput**, the product must be presented in the Central Protocol of the Ministry of Economy within 5 (five) business days.

Paragraph 2. If the submitted sample does not correspond to the submitted description, the Undersecretariat for Trade Remedies and Public Interest will disregard the electronically submitted document and discard the submitted sample.

Paragraph 3. Interested parties will have access to the samples delivered to the Undersecretariat for Trade Remedies and Public Interest upon prior request to be filed in the records of the corresponding process and at a date, time and place to be established by the Undersecretariat.

Paragraph 4. Samples delivered to the Undersecretariat for Trade Remedies and Public Interest in the course of a trade remedies process will be returned to the interested party that presented them, upon request made within five working days after the investigation is closed.

Paragraph 5. If the interested party does not request a refund within the period specified in the previous paragraph, the samples will be discarded.

Article 10. The deadlines that expire on the day of any occurrence of technical impossibility of the SEI/ME system will be automatically extended to the first business day following the one on which the system is restored, pursuant to Paragraph 2 of article 24 of Ordinance N. 294 of in 2020.

Sole paragraph. The extension referred to in the **Caput** will be recorded in the records of ongoing investigations and procedures.

Article 11. Electronic processes referring to investigations and trade remedies procedures referred to in article 3 must be filed directly with the SEI/ME and will be processed only in that system.

Sole Paragraph. The Digital Decom System - SDD will remain active only for consultation purposes by interested and qualified parties.

Article 12. Doubts and requests for clarification must be sent to the Undersecretariat for Trade Remedies and Public Interest through the electronic address sdcom@economia.gov.br, and can be analyzed in the Guide to the Electronic Process (SEI) in Trade remedies, available on the Ministry of Economy website.

CHAPTER III

PRE-APPLICATION

Article 13. This chapter regulates the optional pre-application step within the scope of original investigations, reviews and other trade remedies procedures provided for in Decrees N. 8,058, of 2013, N. 1,751, of 19 December, 1995, and N. 1,488, of 1995, in Ordinance N. 41, of 27 July, 2018, and in trade agreements in force in Brazil.

Section I

General instructions

Article 14. For the purposes of this ordinance, the optional step, of a consultative and non-binding nature, prior to the submission of a request or petition to initiate original investigations, reviews and other trade remedies procedures provided for in Decrees N. 8,058, of 2013, N. 10,839, of 18 October, 2021, and N. 1,488, of 1995, in this Ordinance, and in the commercial agreements in force in Brazil.

Sole Paragraph. The pre-application does not consist of a request or initiation petition, does not entail the formal initiation of the administrative process related to original investigations, revisions or other procedures provided for in the decrees, in the ordinance and in the aforementioned commercial agreements, and will not be part of the records of any process administration later started.

Article 15. The pre-application must be filed with the Undersecretariat for Trade Remedies and Public Interest, via the Ministry of Economy's Electronic Information System – SEI/ME.

Article 16. The protocol referred to in article 15 must be carried out at least one month prior to the maximum date for submission of the request or initiation request referring to the original investigation, review or other procedure.

Article 17. The pre-application must be filed confidentially, pursuant to article 47 of Decree N. 8,058, of 2013, of article 42 of Decree N. 10,839, of 2021, of Paragraph 6 of article 3 of Decree N. 1,488, of 1995 and of article 41 of this Ordinance.

Article 18. In addition to the responsibilities provided for in Ordinance N. 294, of 2020, the external user is responsible for the correct protocol of documents in electronic processes related to investigations and procedures referred to in article 12, and the intercurrent petition must necessarily be used in ongoing processes.

Article 19. The pre-complainant may request meetings with the Undersecretariat for Trade Remedies and Public Interest regarding the pre-claim.

Article 20. The information presented in the pre-application will not bind the pre-complainant in subsequent procedural stages of the original investigations, reviews and other trade remedies procedures.

Article 21. Failure to submit the pre-application will not be used to the detriment of the petitioner when analyzing the petition to initiate original investigations, revisions and other trade remedies procedures.

Article 22. The submission of pre-claims dealt with in this Ordinance does not oblige the Undersecretariat for Trade Remedies and Public Interest to carry out the analysis.

Article 23. The analysis of pre-applications filed in accordance with the provisions of article 13 will depend on the availability of the Undersecretariat for Trade Remedies and Public Interest, which may respond informing, among other reasons, the lack of operational capacity.

Article 24. If there is no manifestation by the Undersecretariat for Trade Remedies and Public Interest within 10 (ten) days from the date of the protocol, it will be assumed that the pre-application will not be analyzed, as a tacit rejection of the analysis by the Undersecretariat for Trade Remedies and Public Interest.

Article 25. The Undersecretariat for Trade Remedies and Public Interest will prioritize the analysis of pre-claims submitted by fragmented industries related to original investigations, reviews or other trade remedies procedures, pursuant to Paragraph 1 of article 1 of Decree N. 9,107 of 2018, as well as pre-claims related to requests for authorization of the national production of a certain product as a fragmented industry for trade remedies purposes, under the terms of this Secretariat of Foreign Trade ordinance.

Article 26. The Undersecretariat for Trade Remedies and Public Interest will forward impressions and doubts about the information contained in the pre-application, to the party that filed it, via SEI/ME, on a confidential basis.

Article 27. Impressions and doubts made by the Undersecretariat for Trade Remedies and Public Interest will not bind it, under any circumstances, in the original investigation, review or other procedure corresponding to the pre-claim in question.

Article 28. The Undersecretariat for Trade Remedies and Public Interest will not anticipate the merits analysis and will not pass judgment on the chances of the petition being accepted.

CHAPTER IV

NOTIFICATIONS AND COMMUNICATIONS TO INTERESTED PARTIES IN SCOPE OF TRADE REMEDIES PROCEEDINGS

Article 29. This chapter provides for notifications and communications to interested parties within the scope of trade remedies proceedings provided for in Decrees N. 8,058, of 2013, N. 1,751, of 19 December, 1995, and N. 1,488, of 1995, and in commercial agreements in force in Brazil.

Section I

Notifications of instructed petition

Article 30. In the trade remedies proceedings provided for in Decrees N. 8,058, of 2013, N. 10,839, of 2021 and N. 1,488, of 1995, and in commercial agreements in force in Brazil, in which it is necessary to send a notification of the existence of a duly instructed to the government of the exporting country, the Undersecretariat for Trade Remedies and Public Interest will transmit this notification, via electronic mail, to the official representation of that country in Brazil, before the publication of the act that will initiate the referred process.

Sole Paragraph. In the event that there is no official representation in Brazil, official communications with foreign interested parties will be transmitted with the help of the Ministry of Foreign Affairs.

Section II

Notifications of initiation

Article 31. Interested parties will be notified of the commencement of trade remedies proceedings provided for in Decrees N. 8,058, of 2013, N. 10,839, of 2021, and N. 1,488, of 1995, and in the commercial agreements in force in Brazil by electronic mail.

Paragraph 1. For the purposes of the notifications provided for in the *caput*, the Undersecretariat for Trade Remedies and Public Interest will identify the electronic addresses of interested parties based, preferably, on the registration data maintained by the Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy.

Paragraph 2. The notifications provided for in the **Caput** intended for governments of countries exporting the product object of the trade remedies process will be transmitted, via electronic mail, to the official representation of these countries in Brazil, subject to the provisions of the sole paragraph of article 30, and will contain a list of foreign producers or exporters identified by the Undersecretariat for Trade Remedies and Public Interest as interested parties.

Paragraph 3. The Undersecretariat for Trade Remedies and Public Interest will register in the records of the corresponding trade remedies process the name and, when applicable, the number of the National Register of Legal Entities of the interested parties that could not be notified as provided for in the **Caput**, due to the lack of information about their addresses. electronic addresses or the incorrectness of the electronic addresses available and identified by this Secretariat.

Article 32. The data and information necessary for the investigation of trade remedies processes, as well as the form and deadline for their presentation, will be included in the Secretariat of Foreign Trade act that initiates the corresponding trade remedies process.

Section III

Other notifications and communications

Article 33. Once the trade remedies process has started, the Undersecretariat for Trade Remedies and Public Interest will electronically transmit to interested parties the notifications and communications regarding the other actions carried out within the scope of this process, through:

I - Electronic Information System – SEI/ME; and

II - electronic e-mail, subject to the provisions of the sole paragraph of article 31 and in Paragraph 1 of article 32.

Sole Paragraph. The provisions of the **Caput** do not apply to the interested parties referred to in Paragraph 3 of article 32, except in cases where these interested parties enable legal representatives within the scope of the trade remedies process in question or indicate an electronic address through which they wish to receive the notifications provided for in the **Caput**.

Article 34. The Undersecretariat for Trade Remedies and Public Interest will assume that the interested parties will be aware of the documents transmitted electronically under the terms of this Ordinance 3 (three) days after the date of transmission, as provided for in article 19 of Law N. 12,995, of 2014.

CHAPTER V

ENABLING NATIONAL PRODUCTION OF A CERTAIN PRODUCT AS A FRAGMENTED INDUSTRY FOR TRADE REMEDIES PURPOSES

Article 35. This chapter provides the information necessary for the qualification of the national production of a certain product as a fragmented industry for trade remedies purposes, according to Decree N. 9,107, of 2017.

Section I

General instructions

Article 36. In trade remedies investigations involving fragmented industries, the deadlines for filing petitions and additional information to petitions and for analyzing information submitted by industries will be determined by the competent investigative authority, within the scope of each process, considering the specifics of each fragmented sector of national industry and the principles of proportionality and reasonableness.

Paragraph 1. A fragmented industry is considered to be one that involves a large number of domestic producers.

Paragraph 2. It will be up to the investigating authority to determine whether the national production of the product in question fits as a fragmented industry.

Paragraph 3. The determination referred to in Paragraph 2 will be motivated and will take into account, among other factors, the degree of spraying of national production of the product in question and its distribution by size of national producers.

Paragraph 4. The act that initiates the trade remedies investigation must contain the determination of the investigating authority, pursuant to **Paragraph 2** and 3.

Article 37. An act of the Secretariat of Foreign Trade will establish the information to be included in the petitions to be presented by or on behalf of the investigated fragmented industry, in each trade remedies investigation, and the form of its presentation, observing the requirements foreseen in the pertinent Brazilian regulations.

Article 38. The qualification of the national production of a certain product as a fragmented industry will be the Undersecretariat for Trade Remedies and Public Interest responsibility, observing the provisions of this chapter.

Article 39. The qualification procedure to which article 38 refers must be concluded before presenting the trade remedies investigation petition.

Paragraph 1. The qualification as a fragmented industry must be requested by:

I - domestic producers of the like product or class entity representing them, in cases of dumping or actionable subsidy investigations; or

II - domestic producers of the like or directly competing product or class entity that represents them, in cases of investigation aiming the application of safeguard measure.

Paragraph 2. The request referred to in this article must be prepared in accordance with the provisions of chapter III.

Article 40. Requests for qualification may be rejected if they do not meet the requirements provided for in this regulation, or require corrections, adjustments, or significant additional information that cannot be presented under the terms of article 48, Paragraph 2 of this regulation.

Article 41. All information submitted must be accompanied by relevant evidence, justification, and the sources and methodologies used.

Paragraph 1. The Undersecretariat for Trade Remedies and Public Interest may use information contained in registers or databases of government entities or of a public character to make the final decision.

Paragraph 2. The Undersecretariat for Trade Remedies and Public Interest may perform on-the-spot verification in order to confirm the information presented to justify the request for qualification of national production of a certain product as a fragmented industry.

Article 42. A confidential and a non-confidential version of the request must be filed simultaneously.

Article 43. Documents filed without "confidential" or "restricted" indication are presumed to be public.

Article 44. The authorization of the national production of a given product as a fragmented industry will remain valid until a decision to the contrary by the Undersecretariat for Trade Remedies and Public Interest.

Article 45. The request for qualification as a fragmented industry must be filed with the Electronic Information System - SEI/ME.

Article 46. Queries and requests for clarification must be sent to the Undersecretariat for Trade Remedies and Public Interest through the electronic address: sdcom@economia.gov.br

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Section II

Qualification procedure

Article 47. The start date of the qualification procedure as a fragmented industry will be the filling date of your application.

Article 48. The request for qualification as a fragmented industry will be analyzed within 15 (fifteen) days, counting from the date of its protocol.

Paragraph 1. If the request is duly instructed and no additional information is required, the applicant shall be notified, at the end of the analysis period indicated in the **Caput**, of the Undersecretariat for Trade Remedies and Public Interest decision and its rationale.

Paragraph 2. If necessary, a request for complementary information will be sent to the applicant, who must present it within 5 (five) days as of the date of acknowledgement of the request, which can be extended, upon request and provided it is duly justified, for the same period.

Paragraph 3. The additional information presented by the applicant will be analyzed within a period of 10 (ten) days as of the date it is received.

Paragraph 4. At the end of the period described in Paragraph 3, the applicant will be notified of the Undersecretariat for Trade Remedies and Public Interest decision and its rationale, within two working days.

Paragraph 5. Once the qualification is granted, the petition of the respective trade remedies investigation must be presented in accordance with the deadline defined by the Undersecretariat for Trade Remedies and Public in the notification referred to in Paragraph 1 and 4 of this article, which will never be longer than ten months from the closing of the investigation period referred to in article 54 of this ordinance.

Paragraph 6. If the petition for the respective trade remedies investigation is not presented within the period defined by the Undersecretariat for Trade Remedies and Public Interest, as provided for in Paragraph 5 of this article, a new qualification as a fragmented industry for the national production of the product in question must be requested.

Paragraph 7. If the qualification is rejected, the petition for the respective trade remedies investigation must be prepared using exclusively the format present in the Secretariat of Foreign Trade acts that regulate the trade remedies procedures for non-fragmented industries.

Article 49. Once the trade remedies investigation has been initiated, the interested parties of the referred procedure may appeal against the Undersecretariat for Trade Remedies and Public Interest 's decision to enable the national production of the product in question as a fragmented industry within thirty days from the publication of the Secretariat of Foreign Trade Circular initiating the respective investigation.

Paragraph 1. The information presented on appeal must be accompanied by relevant evidence, justification and the sources and methodologies used.

Paragraph 2. The domestic industry, whose production of the product object of the trade remedies investigation has been qualified as a fragmented industry, may present its counter-refutation within fifteen days, as of the end of the term referred to in the **Caput**.

Paragraph 3. The reconsideration or not of the Undersecretariat for Trade Remedies and Public Interest decision regarding the qualification as a fragmented industry, considering all the elements of proof brought by the interested parties, will be informed within sixty days from the end of the term referred to in Paragraph 2.

Paragraph 4. In case the decision referred to in the **Caput** is reconsidered, the trade remedies investigation will be immediately closed, without analysis of the merit.

Article 50. In consonance with the provisions in article 44 of this rule, the qualification of national production of a certain product as a fragmented industry may be used for the petitioning of other trade remedies procedures after the term foreseen in the Paragraph 5 of article 48 of this rule, through previous consultation to the Undersecretariat for Trade Remedies and Public Interest .

Paragraph 1. The consultation referred to in the **Caput** will be made by means of a document sent to the Undersecretariat for Trade Remedies and Public Interest and must contain the decision referred to in the Caput of article 49 and the information mentioned in article 52, in item XII of article 53 and in arts. 54 and 55 of this ordinance.

Paragraph 2. The Undersecretariat for Trade Remedies and Public Interest will decide about the use of the previous qualification within fifteen days as of the consultation protocol referred to in the head of this article.

Paragraph 3. At the end of the period indicated in Paragraph 2, the applicant will be notified of the Undersecretariat for Trade Remedies and Public Interest decision and the period for protocol of its petition.

Article 51. The Undersecretariat for Trade Remedies and Public Interest, ex officio or at the request of any interested party of a trade remedies investigation initiated under the terms of this ordinance, to submit a written petition with indications that the circumstances that justified the qualification of the national production of a certain product as a fragmented industry have changed, may initiate a review procedure in order to decide on the fragmentary character granted.

Section III

Content of the qualification request

Article 52. The application for qualification as a fragmented industry will indicate:

I - information regarding the company name, full address, telephone number and e-mail address of the applicant;

II - name, function, full address, telephone and electronic address of the legal representative authorized by the Undersecretariat for Trade Remedies and Public Interest;

Article 53. The application for qualification as a fragmented industry must contain, in relation to the domestic like product or, in cases of investigation with a view to applying a safeguard measure, to the like product or to the directly competing product, the following information regarding the calendar year prior to the of the submission of the request, which may, exceptionally and provided that duly justified, be prior to this period:

I - detailed description, specifying, as applicable: raw material(s), chemical composition, physical characteristics, standards and technical specifications, production process, uses and applications, degree of substitutability and distribution channels;

II - other characteristics considered relevant with a view to identifying the product produced by the applicant;

III - indication of the item(s) of the MERCOSUR Common Nomenclature (NCM) in which the product is normally classified;

IV - number of national producers or their estimate;

V - volume of national production or its estimate;

VI - sales volume in the Brazilian market or its estimate;

VII - distribution of national producers by size or their estimate, based on revenue or number of employees, or based on a criterion commonly adopted in the producing sector;

VIII - geographic distribution of national producers or their estimate;

IX - existence of an association or class entity of national producers and number of associated companies;

X - list of known national producers;

XI - individualized production of the known national producers referred to in item X of the **Caput** or, if this is not possible, the individualized production of the largest known national producers;

XII - indication of the period considered necessary for filing the petition referred to in Paragraph 5 of article 48 of this ordinance.

Paragraph 1. The information listed in the **Caput** is not an exhaustive list and none of them, alone or together, will necessarily be able to provide a decisive indication.

Paragraph 2. The information listed in the **Caput** must be presented together with the respective elements of proof.

Paragraph 3. Must the information listed in the **Caput** be presented based on estimates, the applicant must observe the provisions of article 53 of Decree N. 8,058, of 2013 and article 49 of Decree N. 10,839, of 2021.

Paragraph 4. If it is not possible to individually identify the production of the product, the data may be submitted based on the production of the group or range of products which, defined as narrowly as possible, includes the domestic like product or, in cases of investigation for the application of safeguard measure, the like or directly competing product, and for which the necessary data can be submitted.

Article 54. The request for qualification as a fragmented industry must indicate the period with which the petition referred to in the **Caput** of article 39 of this Ordinance, relating to:

I - the investigation of damage or threat of damage, in the case of investigations of dumping or actionable subsidies; or

II - the investigation of serious damage or threat of serious damage, in cases of investigation with a view to the application of a safeguard measure.

Article 55. Based on the information indicated in article 53 and in others that it may deem relevant for the purposes of the Undersecretariat for Trade Remedies and Public Interest analysis, the applicant must explain how the fragmented nature of the industry would make it difficult to present a trade remedies investigation petition within the deadlines provided for in Brazilian trade remedies regulations and under the terms of the Undersecretariat for Trade Remedies and Public Interest acts that regulate trade remedies procedures for non-fragmented industries.

Paragraph 1. The Undersecretariat for Trade Remedies and Public Interest will observe the explanation presented by the applicant under the terms of the **Caput**, when considering the trade remedies investigation petition filed under the terms of Paragraph 1 and 4 of article 48 or of article 50 of this ordinance.

Paragraph 2. In the event that the factors that motivated the qualification of a certain national production as a fragmented industry are not verified by the Undersecretariat for Trade Remedies and Public Interest in the assessment referred to in Paragraph 1, the trade remedies investigation petition may be rejected, as well as the qualification of the national production as a fragmented industry under the terms of article 44 of this ordinance.

CHAPTER VI

NECESSARY ADAPTATIONS TO TRADE REMEDIES INVESTIGATION PROCEDURES

Article 56. This chapter provides for the necessary adaptations to the procedures of trade remedies investigations and public interest assessments conducted by the Undersecretariat for Trade Remedies and Public Interest as a result of the new coronavirus (COVID-19) pandemic.

Section I

Carrying out on-the-spot verifications

Article 57. Considering the evolution of the COVID-19 pandemic, preference will be given to on-the-spot **verification procedures** provided for in articles 175 to 178 of Decree N. 8,058, of 2013, provided that the conditions of article 58 of this ordinance, and, if this is not possible, the Undersecretariat for Trade Remedies and Public Interest will carry out verification of evidence, pursuant to arts. 59 to 67 of this ordinance.

Article 58. Carrying out the on-the-spot **verification procedures** provided for in arts. 175 to 178 of Decree N. 8,058, of 2013, will depend on the fulfillment of the following conditions:

I – compliance with the current rules of the Ministry of Economy on travel by its employees;

II – availability of servers to carry out the procedures in the **Caput**;

III – availability of employees of the verified parties, in Brazil or abroad, to receive on-the-spot verification ;

IV – formal acceptance of the interested parties to be verified for the accomplishment of the verifications;

V – analysis of the evolution of the pandemic situation in the places where the verification were carried out;

VI - rules for the entry permission of Brazilian travelers; and

VII – other factors that may prevent or impair the performance of the procedures in the **Caput**.

Paragraph 1. Any indication by the interested party of the impossibility of meeting the conditions mentioned in the **Caput** for carrying out an on-site **verification** must necessarily be accompanied by arguments and evidence, when applicable.

Paragraph 2. In the event that the arguments and evidence mentioned in Paragraph 1 are considered by the Undersecretariat for Trade Remedies and Public Interest as impediments to the procedure, the verification of the evidence will be carried out in accordance with article 59.

Paragraph 3. In the event that the arguments and evidence mentioned in Paragraph 1 are considered by the Undersecretariat for Trade Remedies and Public Interest as not impeding the procedure, the party will bear any consequences arising from its decision.

Section II

Carrying out verification of evidence

Article 59. After verifying the impossibility of carrying out the **in loco** verification procedures, the Undersecretariat for Trade Remedies and Public Interest will proceed, exceptionally, with a detailed analysis of all the information submitted by the interested parties within the scope of trade remedies investigations, seeking to verify its correctness based on the cross-analysis of the information filed by each interested party with that submitted by the other parties, as well as with information from other sources available to the Undersecretariat, if possible and when applicable.

Article 60. In order to validate the information presented, the Undersecretariat for Trade Remedies and Public Interest may send a letter requesting evidence to interested parties.

Paragraph 1. By means of the letter referred to in the **Caput**, the Undersecretariat for Trade Remedies and Public Interest may request additional supplementary information to that provided for in the Paragraph 2 of article 41 and in Paragraph 2 of article 50 of Decree N. 8,058, of 2013, and evidence, pursuant to article 179 of the aforementioned decree, such as samples of invoices, accounting documents, proof of payments, details of specific expenditures, etc.

Paragraph 2. After the letter referred to in the **Caput** has been sent, no changes in the data to be verified shall be permitted, with the exception of clarifications in relation to information previously presented by the parties, as provided for in Paragraph 5 and 7 of article 175 of Decree N. 8,058, of 2013.

Paragraph 3. Presentation of evidence must be separated into

I - clarifications that import occasional adjustments, pursuant to Paragraph 7 of article 175 of Decree N. 8,058, of 2013, in the data previously reported by the party, which shall be presented accompanied by the rectification of data, detailed explanation and justification why they consist of occasional adjustments; and

II - evidence and other clarifications in relation to information previously presented by the parties, as requested in the communication object of the **Caput**.

Paragraph 4. The Undersecretariat for Trade Remedies and Public Interest will carry out an analysis of the detailed explanation and justification mentioned in item I of Paragraph 3 in order to verify if they consist of punctual adjustments.

Paragraph 5. The deadline for the protocol of response to the letter of request for evidence will be 10 (ten) days from the date of the acknowledgment of the request, extendable once for up to 10 (ten) days depending on the deadlines of the process and upon duly substantiated request.

Article 61. Interested parties may request a meeting to clarify doubts as to the content of the letter requesting evidence.

Paragraph 1. The holding of the meeting referred to in the **Caput** will depend on the availability of the Undersecretariat for Trade Remedies and Public technicians.

Paragraph 2. The interested party must indicate in the request the items of the letter in relation to which there is a need for clarification.

Paragraph 3. The holding of the meeting referred to in the **Caput** will not justify the extension of the period provided for in Paragraph 5 of article 60.

Article 62. It is imperative that interested parties submit their information as completely, clearly and accurately as possible, meeting all requirements and data requests contained in

the questionnaires and other communications sent by the Undersecretariat for Trade Remedies and Public Interest.

Sole Paragraph. The information presented by the interested parties must be accompanied by their respective evidence, justifications, sources, calculation memories and methodologies used, as well as spreadsheets and auxiliary documents that may have been used in the preparation of this information.

Article 63. If there is no need for additional clarifications to the response of an interested party to the letter of request for evidence filed within the period provided for in Paragraph 5 of article 60, the Undersecretariat for Trade Remedies and Public Interest will record the completion of the verification procedure in the process.

Article 64. If additional clarifications are required after receiving a response to the letter requesting evidence, the Undersecretariat for Trade Remedies and Public Interest will send a letter requesting a clarification meeting with the interested party, which will contain an indication of the matters to be addressed at the meeting.

Paragraph 1. The purpose of the meeting provided for in the **Caput** is limited to the presentation by the interested party of additional clarifications to the information submitted in response to the letter requesting evidence, not being allowed to present new information or change the information previously filed by the part at stake.

Paragraph 2. The additional clarifications presented by the interested party during the meeting will only be considered by the Undersecretariat for Trade Remedies and Public Interest if they are reproduced in writing and filed in the case file within 2 (two) business days after the meeting took place and must be limited to the clarifications presented at the said meeting.

Paragraph 3. The additional clarifications filed by the interested party will be analyzed by the Undersecretariat for Trade Remedies and Public Interest as provided for in Paragraph 2 of this article.

Paragraph 4. If such clarifications are considered satisfactory, the Undersecretariat for Trade Remedies and Public Interest will include a record of the conclusion of the verification procedure in the case file.

Article 65. If the Undersecretariat for Trade Remedies and Public Interest observes that the information presented by petitioners requires additional information, corrections or significant adjustments, the respective petitions may be rejected, pursuant to Paragraph 2 of article 42 of Decree N. 8,058, of 2013.

Article 66. If the Undersecretariat for Trade Remedies and Public Interest finds that the data and information presented by the petitioner do not allow proof of the existence of damage

to the domestic industry caused by an unfair trade practice, the corresponding administrative proceeding may be closed, pursuant to item I of article 74 of the aforementioned decree.

Article 67. If the Undersecretariat for Trade Remedies and Public Interest finds that the other interested parties have denied access to the necessary information, have not provided it in a timely manner, created obstacles to the investigation or have not provided the data and information requested by the Undersecretariat, duly accompanied by the respective evidence, a letter will be sent to the interested party informing that the determinations may be fully or partially prepared based on the best available information, pursuant to arts. 179 to 184 of Decree N. 8,058, of 2013.

Article 68. The possible carrying out of on-the-spot verifications for certain interested parties and verifications of evidence based on article 59 to other interested parties of the same investigation or review will not be considered as favorable or unfavorable treatment for one, to the detriment of the other.

Article 69. The temporary adaptations of procedures presented in this chapter will apply, as appropriate, to investigations or reviews of the existence of subsidies and global or bilateral safeguards conducted by Brazil.

CHAPTER VII

FINAL DISPOSITIONS

Article 70. The following are hereby revoked:

I - Ordinance N. 41, of 27 July, 2018;

II - Ordinance N. 21, of 30 March, 2020;

III - Ordinance, N. 103, of 27 July, 2021;

IV - Normative Instruction N. 3, of 22 October, 2021; and

V - Ordinance N. 150, of 26 November, 2021.

Article 71. This Ordinance enters into force on February 1st, 2022.