

MINISTRY OF ECONOMY

**SPECIAL SECRETARIAT FOR FOREIGN TRADE AND INTERNATIONAL AFFAIRS
SECRETARIAT FOR FOREIGN TRADE**

ORDINANCE N. 169, OF 26 JANUARY 2022

Provides for the specific rules of administrative procedures related to the application of safeguard measures provided for by Decree No. 1,488, of 11 May, 1995, hitherto provided for by SECEX Circulars No. 19, of 2 April, 1996 and No. 59, of 28 November, 2001.

THE DEPUTY SECRETARY OF FOREIGN TRADE OF THE SPECIAL SECRETARIAT FOR FOREIGN TRADE AND INTERNATIONAL AFFAIRS OF THE MINISTRY OF ECONOMY, in the use of the powers conferred on her by item VIII of Article 91 of Annex I of Decree No. 9,745, of 8 April, 2019, and considering the powers of the Undersecretariat for Trade Remedies and Public Interest established in Article 96 of Annex I of Decree No. 9,745, of 2019, for the purposes of compliance with Decree No. 10,139, of 28 November, 2019, resolves:

**CHAPTER I
GENERAL PROVISIONS**

Article 1. The regulation of specific rules that govern administrative procedures related to the application of safeguard measures provided for in Decree No. 1,488, of 11 May, 1995, referring to petitions for the application of safeguard measures mentioned in its Paragraph 1 of Article 3, as well as to the treatment of confidential information, the calculation of time limits and the presentation of information in a foreign language, are the object of this Ordinance.

Article 2. The general rules used in trade remedies proceedings, provided for in Ordinance No. 162, of 6 January, 2022, apply subsidiary to this Ordinance.

**CHAPTER II
REQUEST FOR APPLICATION OF SAFEGUARD MEASURES**

Article 3. Requests for the application of safeguard measures, mentioned in Paragraph 1 of Article 3 of Decree No. 1,488, of 1995, must be formulated by means of a petition, in accordance with the script attached to this Ordinance.

Article 4. A petition for the application of safeguard measures object of Article 1, as well as all documentation relating to the administrative procedure initiated for this purpose, must be submitted via the Electronic Information System - SEI/ME, pursuant to rules set forth by SECEX.

Article 5. Doubts and requests for clarification must be sent to SDCOM through the electronic address sdcom@economia.gov.br.

CHAPTER III INFORMATION PROVIDED IN A CONFIDENTIAL NATURE

Article 6. Under the terms of Paragraph 6, 7 and 8 of Article 3 of Decree No. 1,488, of 1995, information provided on a classified basis, understood as “confidential”, will be subject to the requirements of this chapter.

Article 7. Confidential information will be added to the confidential case file.

Paragraph 1. Information identified by the interested parties as confidential will be treated as such, provided that the request is duly justified, situation in which it cannot be revealed without the express authorization of the party that provided it.

Paragraph 2. Interested parties that provide confidential information must submit restricted summaries with details that allow the understanding of the information provided, under penalty of the confidential information being disregarded.

Paragraph 3. In cases where it is not possible to present the summary, the parties must justify such circumstance in writing.

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

Paragraph 5. The following justifications of confidentiality for documents, data and information will not be considered adequate, *inter alia*:

I - when they have a well-known public nature in Brazil, or are in the public domain, in Brazil or abroad; or

II - the relatives to:

a) the shareholding composition and identification of the respective controlling party;

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

- c) the volume of production, domestic sales, exports, imports and inventories;
- d) any contracts entered into by public deed or filed with a notary public or with a commercial registry, in Brazil or abroad; and
- e) property, financial and business statements of a publicly-held company; company equivalent to a publicly-held company; or companies controlled by publicly-held companies, including foreign companies, and their wholly-owned subsidiaries, which must be published or disclosed pursuant to corporate law or the securities market.

Paragraph 6. The non-confidential summary concerning confidential numerical information must be presented in numerical format, in the form of index numbers, *inter alia*.

Paragraph 7. All versions of documents, responses to questionnaires and other submissions must be filed simultaneously to comply with the deadlines and obligations established in Decree No. 1,488, of 1995.

Paragraph 8. At SDCOM's discretion, documents, data and information presented on confidential bases will not be considered, when the confidential treatment may result in the curtailment of the right of defense and of the adversarial principle of the other interested parties.

Paragraph 9. If SDCOM considers the request for confidentiality unjustified and the interested party that has provided the information refuses to adapt it for annexation in non-confidential records, the information may be disregarded, unless it is demonstrated, to the satisfaction and by an appropriate source, that such information is correct.

Paragraph 10. The indication of confidentiality of the documents presented is the responsibility of the interested party and must appear on all its pages, centered at the top and bottom of each page, in red.

Paragraph 11. The pages must be numbered sequentially and must contain an indication of the total number of pages that make up the document.

CHAPTER IV COUNTING OF TERM

Article 8. The deadlines start to run from the date of acknowledgment of the notifications, excluding the commencement day and including the day in which the period ends.

Sole Paragraph. The term is considered extended until the first following business day, if the due date falls on a day when there is no working day or if the business day is concluded before the normal time.

Article 9. The calculation of deadlines begins on the first business day following the publication of the act.

Sole Paragraph. It is assumed that interested parties will be aware of printed documents sent by SDCOM 5 (five) days after the date of their sending or transmission, in the case of national interested parties, and 10 (ten) days, if they are foreign, and, in the case of electronic administrative documents, knowledge of electronically transmitted documents is assumed 3 (three) days after the date of transmission.

Article 10. Deadlines expressed in days are counted continuously. Deadlines set in months or years are counted from the date to date.

Sole Paragraph. If in the month of the expiry date there is no day equivalent to that of the beginning of the term, the last day of the month is used as term.

Article 11. Requests for extension, when admitted, can only be known if submitted before the expiry of the original deadline and the first day of the extended deadline will be the day following the expiry of the original deadline.

Article 12. The extension period is added to the original, and the resulting total period is counted uninterruptedly from the beginning of the original period.

CHAPTER V DOCUMENTS PRESENTED IN FOREIGN LANGUAGES

Article 13. Pursuant to Article 18 of Law No. 12,995 of 18 June, 2014, for the purposes of investigations related to the application of safeguard measures, carried out under the terms of the Agreement that regulates the provisions of Article XIX of the GATT, approved by Decree No. 1,355, of 30 December 1994, documents prepared in the official languages of the World Trade Organization may be incorporated into the case file, and, in the case of documents prepared in foreign languages for which there is no sworn translator in Brazil, translations into Portuguese will be accepted if submitted by the official representation of the exporting origin in Brazil, provided that they are accompanied by an official communication attesting to the authorship of the translation.

Paragraph 1. Subject to the provisions of the *Caput* of this article and at the discretion of SDCOM, the following will also be accepted in the non-confidential case file of administrative procedures relating to the application of safeguard measures:

I - translations into Portuguese carried out by the official representation of the exporting country in Brazil, considering the country of origin or export that is an interested party in a trade remedies process, or by the legal representative of the interested party who presents it, provided that they are accompanied by official communication attesting to the authorship, reliability and accuracy of the translation; and

II – documentation in the official languages of the World Trade Organization obtained directly from the official governmental website or other reliable and impartial sources, such as banks of legal texts or the website of the World Trade Organization.

Paragraph 2. In the case of documents prepared in foreign languages for which there is no sworn translator in Brazil, translations into Portuguese will be accepted in the confidential and non-confidential case files made by the official representation of the exporting country in Brazil, considering the country of origin or export that is an interested party in a trade remedies process, provided that they are accompanied by an official communication attesting to the authorship, reliability and accuracy of the translation;

Paragraph 3. The submissions made based on Paragraph 1 must, under risk of non-acceptance:

I - be attached to the non-confidential case files of the investigation, in order to allow the contradictory of the other interested parties;

II – clearly and verifiably indicate the sources of the documentation presented; and

III – be accompanied by the entire content of the document in its original language in a searchable and editable digital format using character recognition, so that it is subject to analysis facilitated by other interested parties.

Paragraph 4. The conformity of the documents submitted pursuant to this article will be presumed, and the Undersecretariat for Trade Remedies and Public Interest or any interested party may challenge submissions as a result of:

I – non-compliance with the formal requirements mentioned in this article; or

II – lack of reliability or inaccuracy of the documents presented, provided that it is duly justified and accompanied by the necessary evidence.

Paragraph 5. If there is no reliability or inaccuracy in the information provided or contained in the documents presented to SDCOM, the interested party will be urged to present a translation signed by a sworn translator in Brazil, under penalty of using the best information available in the case file.

Paragraph 6. If intent is found in the inappropriate use of the provisions of Paragraph 1, the best available information will be used, and the interested parties and their legal representatives may be held accountable before the administrative and civil spheres.

CHAPTER VI FINAL DISPOSITIONS

Article 14. The following are hereby revoked:

I - Circular SECEX No. 19, of 2 April, 1996, published in the Federal Official Gazette of 8 April, 1996; and

II - Circular SECEX No. 59, of 28 November, 2001, published in the Federal Official Gazette of 10 December, 2001.

Article 15. This Ordinance enters into force on February 1, 2022.

SOLE ANNEX

SCRIPT FOR SUBMITTING PETITIONS FOR APPLICATION OF SAFEGUARD MEASURES

I. GENERAL INSTRUCTIONS

1. The safeguards investigation petition must contain information indicating a significant increase in imports, serious injury or threat thereof to the domestic industry and the causal relationship between them.
2. The information requested in the script presented below is of reference nature.
3. The corresponding responses must cover as many questions as possible, for the effective justification of the petition.
4. If any of the information provided by the petitioners is confidential, such character must be duly justified. In this case, two versions of the petition must be provided, one containing all information, including confidential information, and another containing non-confidential information, as well as a non-confidential summary of the information considered confidential. In cases where it is not possible to present such a summary, the non-presentation must be duly justified.
5. Indicate the source of the information presented, when the information is not appurtenant to the petitioner(s) themselves.

II. NECESSARY INFORMATION

1. Qualification of Petitioner(s)

1.1. From the Petitioner(s):

- 1.1.1. Corporate Name:
- 1.1.2. Address:
- 1.1.3. Telephone:
- 1.1.4. Email:

1.2. From the Authorized Legal Representative(s) with Secretariat of Foreign Trade (SECEX):

- 1.2.1. Name:
- 1.2.2. Address:
- 1.2.3. Telephone:
- 1.2.4. E-mail:
- 1.2.5. Position:

Note: Attach relevant documentation to the digital information system (SEI/ME).

2. Product object of the Investigation Request

2.1. Product identification and Mercour's Tariff Classification (NCM).

2.2. Evolution of the Import Tax (from the last 5 years to the current month).

2.3. Provide a detailed description of the imported product and the like and/or directly competitive product manufactured domestically. Such description must contain information on the technical characteristics, indicating, as appropriate, the type, model, class, dimension, capacity, potency, chemical composition and/or other particular element of the product.

2.4. Identify the main applications of the product.

3. National Production and Petitioner Representativeness (information from the last 12 months)

3.1. Present the list of manufacturers of the product in question in the country, providing name, address, telephone and fax, identifying those represented in this petition.

3.2. Inform the estimated volume and value of the national production of the like product.

3.3. Indicate the share (%) of national production (quantity and value) of the product in question attributed to the manufacturers represented in this petition. If the petition is presented by a class entity, indicate the name of the represented producers, as well as the volume and value of the production that corresponds to them.

4. Imports of the Product Concerned

4.1. Evolution of imports of the product in question, in quantity and value, in the last 5 (five) years, up to 2 months before the date of entry of the petition, according to the country of origin.

4.2. Indicate the main importing firms that you are aware of.

4.3. Provide the average monthly export prices (in US\$) to Brazil, by country of origin, in the last 5 years up to 2 months prior to the filing date of the petition:

	Country A	Country B	Country...
FOB Price			
Freight			
Insurance			
CIF price			
Import tax			
Other import costs (specify)			
Total			

4.4. Data on export potential to Brazil - effective production capacity or potential of the exporting country(ies) to Brazil - Identify the source(s) used.

5. Serious Injury or Threat Thereof

Note: All information requested in this item must be provided annually for the last 5 years and up to 2 months prior to the filing date of the petition.

Amounts must be presented in current currency and in US\$, exchange rates must be explained, as well as the methodology used in the conversion.

5.1. Data on the national production of the like or directly competitive to the imported product, in terms of quality and value.

5.1.1. Annual production.

5.1.2. Annual inventory.

5.1.3. Annual export.

5.1.4. Annual sales to the domestic market.

5.1.5. Annual apparent consumption:

In the case of a seasonal product, provide the requested information aggregated according to the relevant periods.

5.2. Petitioner Data (Information per company).

5.2.1 List the company's production lines, and present the total revenue value per production line.

5.2.2. In relation to the product in question and other relevant production lines (that is, those that together with the production of the product concerned represent at least 70% of the company's total revenue), indicate separately:

- Evolution of installed capacity, specifying operational regime (1, 2 or 3 shifts) and degree of occupation; (In the case of agricultural products, provide the

evolution of the planted area);

- Annual production, quantity and value; (In the case of agricultural products, also inform the quantity of seeds planted and productivity);
- Annual sales to the domestic market, quantity and value (Total and by market segment);
- Annual export, quantity and value;
- Evolution of monthly prices in the domestic and foreign markets;
- Evolution of annual stocks, quantity, and
- Evolution of employment in production, management and sales.

In the case of a seasonal product, present the requested information aggregated according to the relevant periods.

5.2.3. In relation to the like or directly competitive to the imported product, present the cost structure, broken down in accordance with the items below.

	Technical Coefficient	Unit price	Total cost
a) Raw material (specify)			
b) Direct labor			
c) Other Costs (specify)			
d) Total Production Cost(A+B+C)			
e) Administrative Expenses (specify)			
f) Commercial Expenses (specify)			
g) Total Cost (D+E+F)			
h) Profit			
i) " Ex-factory" price (G+H)			

5.2.4. In relation to the product in question, present:

- a) production technology;
- b) differences in the production technology used by the company and the one(s) used in the production of the imported product.

5.2.5. Provide the audited financial statements and balance sheet.

5.2.6. Present the income statement of the production line of the product in question and of the other relevant production lines.

5.2.7. Evolution of loans taken by the company, breaking them down according to sources (internal or external, public or private)

5.2.8. Present the investments made by the company according to the table below:

Items	Total	THE	B	C	products in question
1) Personnel Training					
2) Maintenance expenses					
3) Expansion capacity					
4) Technological improvement					
Product					
Acquisition of technology					
technology development					
Process					
Acquisition of technology					
technology development					
5) Management Techniques					
6) Distribution network					
7) Consumer assistance					
8) Others (specify)					

- a) Please provide a detailed description of the above related expenditures, per item, specifying their objectives and results achieved in terms of efficiency/competitiveness.
- b) Indicate whether or not the company has been able to generate resources to finance the modernization of its plant.

5.2.9. Provide the information requested below for the product in question:

- a) Demand Features:
 - indication of the main customers with their respective shares in the company's total sales, as well as their areas of activity;
 - identification of distribution channels and their respective shares in the company's total sales;
 - identification of marketing policies by customer type, geographic region, etc.
- b) Supply Features:
 - forms of competition (price, product differentiation, technical assistance,

- distribution network, advertising, etc);
- minimum investment necessary for the operation of the plant;
- minimum efficient scale;
- existence of patents, concessions, etc;
- access to product and process technology;
- supply conditions of the main inputs, indicating the main suppliers per input and the degree of concentration of capital in the main inputs.

5.3. Government Policies:

5.3.1. Describe government policies (exchange, tax, incentives, etc.) that affect national production, evaluating their respective impacts, positive or negative.

5.3.2. Indicate which measures could have been adopted by the government, during the analyzed period, that would have contributed to avoid the alleged injury to national production.

6. Adjustment Commitment

The application of a safeguard measures has the objective of facilitating the adjustment of the domestic industry. In this sense, present the adjustment program proposed by the domestic industry, and per company, the deadline and the measures to be adopted in relation to the following items:

- Productivity increase;
- Updating production techniques;
- Product update;
- Updating management techniques;
- Program for spending on R&D, and technology acquisition;
- Product qualification program: quality, design, packaging, safety;
- Adequacy/improvement-delivery deadlines, technical assistance service;
- Investment program;
- Workforce training, and
- Cost reduction program.

7. Supplementary Information

During the analysis of the petition, Secretariat of Foreign Trade (SECEX) may, if necessary, request the petitioner(s) for additional information regarding the claim.