

## **INVESTIGAÇÕES NÃO PREFERENCIAIS – LEGISLAÇÃO**

Atualização da versão em inglês, não oficial, dos Arts. 28 a 45 da Lei 12.546/2011, publicada no DOU de 15/12/2011

### **LAW No. 12,546, OF DECEMBER 14, 2011**

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**(Articles 28 to 45)**

Art. 28 The rules of origin referred to in the Agreement on Rules of Origin of the General Agreement on Tariffs and Trade 1994 (Gatt), approved by Legislative Decree No. 30 of December 15, 1994, and promulgated by Decree No. 1,355 of December 30, 1994, shall be applied only to non-preferential instruments of trade policy, in a consistent, uniform and impartial manner.

Art. 29 Trade defense investigations under the competence of the Secretariat of Foreign Trade of the Special Secretariat for Foreign Trade and International Affairs of the Ministry of Economy shall be based on the declared origin of the product.

§ 1 - The application of trade defense measures shall be imposed through a specific act of the Chamber of Foreign Trade (Camex) and shall dispense with additional investigation to that carried out under the caput.

§ 2 - Even if the requirements established in this Law have been met, trade defense measures supported by Article 10-A of Law No. 9,019, of March 30, 1995, may be extended to products whose origin is different from that on which the application of the trade defense measure referred to in paragraph 1 of this Article was based.

Art. 30 In cases where the application of a trade defense measure has been established by a specific act of Camex based on the origin of the products, the collection of the amounts due will be carried out by the Secretariat of the Federal Revenue of Brazil, pursuant to the non-preferential rules of origin established in the Articles 31 and 32 of this Law.

Art. 31 Subject to the criteria arising from an international act to which Brazil is a party, the country of origin of the good is the one where it has been produced or, in the case of merchandise resulting from material or labor from more than one country, the one where it has received substantial transformation.

§ 1 - For the purposes of the provisions of Articles 28 to 45 of this Law, produced goods are considered:

I – products wholly obtained, understood as follows:

- a) products of the plant kingdom harvested in the territory of the country;
- b) live animals born and reared in the territory of the country;

- c) products obtained from live animals in the territory of the country;
- d) goods obtained from hunting, trapping or fishing carried out in the territory of the country;
- e) minerals and other natural resources not included in items "a" to "d" extracted or obtained in the territory of the country;
- f) fish, crustaceans and other marine species obtained from the sea outside their exclusive economic zones by boats registered or enrolled in the country and authorized to fly the flag of that country, or by boats leased or chartered to companies established in the territory of the country;
- g) goods produced aboard factory ships from the products identified in items "d" and "f" of this paragraph, whenever such factory ships are registered, enrolled in a country and are authorized to fly the flag of that country, or by factory ships leased or chartered by companies established in the territory of the country;
- h) goods obtained by a legal entity from a country from seabed or marine subsoil, whenever the country has rights to exploit that seabed or marine subsoil;
- i) goods obtained in extraterrestrial space, whenever they are obtained by a legal entity or by a natural person of the country; and
- j) goods produced exclusively with materials listed in items a to i of this paragraph;

II – products fully manufactured in the territory of the country, when in its manufacture are used, solely and exclusively, materials originating from it.

§ 2 - For the purposes of the Articles 28 to 45 of this Law, it is understood to have undergone substantial transformation:

I - the product in which materials not originating in the country have been used, when resulting from a processing process conferring on it a new individuality, characterized by the fact that it is classified in a tariff heading, identified by the first four digits of the Harmonized Commodity Description and Coding System, different from the heading of those materials, subject to the provisions of paragraph 3 of this Article, or

II - the product in which materials not originating in the country have been used, where the customs value of such materials does not exceed 50% (fifty percent) of the Free on Board value (FOB) of the product, subject to the provisions of paragraph 3 of this Article.

§ 3 – The product resulting from an operation or process carried out in the territory of the exporting country through which it acquires the final form in which it will be marketed shall not be deemed to be originating in the exporting country when, in the operation or in the process, material not originating in the country is used and consists only of assembly, packaging, fractionation into batches or volumes, selection, classification, marking, composition of assortments of goods or simple dilutions in water or other substance that does not alter the characteristics of the product as originating or other equivalent operations or processes, even if these result in compliance with paragraph 2 or other criteria established by the Federal Executive Branch in accordance with the provisions of Article 32 of this Law.

§ 4 If the requirements referred to in paragraph 2 of this Article are not met, the product shall be considered as originating in the country of origin of the materials that represent the largest share in the FOB value.

Art. 32 The Executive Branch may define specific non-preferential criteria of origin.

Single paragraph. The specific requirements defined pursuant to the *caput* shall prevail over those established in Article 31 of this Law.

Art. 33 The Secretariat of the Federal Revenue of Brazil and Secex, within the scope of their competences, shall promote the verification of non-preferential origin under the aspects of authenticity, veracity and compliance with the rules provided for in the Articles 28 to 45 of this Law or in its regulations.

Art. 34 The proof of origin will be verified upon presentation by the exporter/producer or importer of information concerning, among others:

- I – the location of the producing establishment;
- II – operational capacity;
- III – the manufacturing process;
- IV – the constituent raw materials; and
- V - the index of non-originating materials used to obtain the product.

§ 1 - The presentation of the information referred to in the **caput** of this Article does not exclude the possibility of conducting due diligence or inspection in the establishments of the foreign producer, importer or exporter.

§ 2 - The Executive Branch may establish the additional procedures and requirements for proof of origin, as well as the form, the deadline for submission and the content of the documents required for their verification.

§ 3 - In the event that the foreign producer, exporter or importer denies access to the information referred to in this Article, does not provide it in a timely manner or creates obstacles to the non-preferential origin verification procedure, the goods shall be presumed to be originating in the country recorded with the trade defense measure that motivated the opening of an investigation of non-preferential origin.

Art. 35 The importer is jointly and severally liable for the information submitted by the exporter/producer concerning the products he has imported.

Art. 36 It is incumbent upon the Secretariat of Foreign Trade of the Special Secretariat of Foreign Trade and International Affairs of the Ministry of Economy to carry out the verification of non-preferential origin, through the submission of a complaint or *ex officio*, when there are indications of non-compliance with the provisions of Articles 31, 32 and 34 of this Law.

§ 1 – Once initiated the procedure for verification of non-preferential origin, the foreign producer will be notified for the presentation of the information referred to in Article 34 of this Law.

§ 2 - The origin determined by the Secretariat of Foreign Trade of the Special Secretariat of Foreign Trade and International Affairs of the Ministry of Economy with the completion of the non-preferential origin verification procedure shall apply to all imports of identical goods from the same exporter or producer.

§ 3 - The Secretariat of Foreign Trade of the Special Secretariat of Foreign Trade and International Affairs of the Ministry of Economy may review the origin referred to in paragraph 2 of this Article through the presentation, by the interested party, of the information referred to in Article 34 of this Law, in order to demonstrate compliance with the non-preferential rules of origin referred to in Articles 31 and 32 of this Law.

Art. 38 The import license of the product subject to verification will only be granted after the completion of the investigation process proving the declared origin.

Art. 39 It is incumbent upon the Secretariat of the Federal Revenue of Brazil to carry out the verification of non-preferential origin in the course of customs clearance or during the performance of customs tax actions initiated after the clearance of goods and to apply, when appropriate, the pecuniary penalties established in this Law.

Art. 40 In the case of importation of a product subject to quantitative restriction, when the declared origin is not proven, the importer is obliged to return the products abroad.

§ 1 - The importer shall bear the burden arising from the return abroad of the products to which the caput refers.

§ 2 - In the event of quantitative restriction on the application of quotas, the return abroad will be limited to what exceeds the quota.

Art. 41 Without prejudice to the characterization of abandonment, pursuant to item II of Article 23 of Decree-Law No. 1,455, of April 7, 1976, during the course of customs clearance, the importation of product subject to quantitative restriction, when the declared origin is not proven, will be subject to a fine of R\$ 5,000.00 (five thousand reais) per day, counted from the date of registration of the Import Declaration until the date of the effective return of the product abroad.

Art. 42 Except for the case provided for in Article 41 of this Law, failure to provide proof of non-preferential origin will subject the importer to a fine of 30% (thirty percent) on the customs value of the goods.

Art. 43 The application of penalties related to proof of origin shall be without prejudice to the collection, provisional or definitive, of antidumping or countervailing duties or safeguard measures by the Secretariat of the Federal Revenue of Brazil.

Art. 44 Secex and the Secretariat of the Federal Revenue of Brazil shall notify each other in writing of the opening and conclusion of the respective investigation processes of non-preferential origin and shall conduct them in a coordinated manner.

Single paragraph. In the event of an investigation by a body on a particular product and company that have already been the subject of a previous investigation by another body, the information obtained by that body and its conclusions shall be taken into account in the open investigation process.

Art. 45 Secex and the Secretariat of the Federal Revenue of Brazil shall issue, within the scope of their competences, the complementary rules necessary for the execution of Articles 28 to 44 of this Law.