

INVESTIGAÇÕES NÃO PREFERENCIAIS – LEGISLAÇÃO

Versão em inglês, não oficial, da Portaria SECEX Nº 87/2021, publicada no DOU de 06/04/2021

SECEX ORDINANCE No. 87, OF MARCH 31, 2021

(Published in the DOU of 06/04/2021)

It provides for special non-preferential origin verification procedure for the purposes of application of Article 33 of Law No. 12,546 of December 14, 2011.

THE SECRETARY OF FOREIGN TRADE, OF THE SPECIAL SECRETARIAT OF FOREIGN TRADE AND INTERNATIONAL AFFAIRS OF THE MINISTRY OF ECONOMY, in the use of his duties and the competence provided for in Article 91 of Annex I Decree No. 9,745, of April 8, 2019, in view of the provisions of Article 45 of Law No. 12,546 of December 14, 2011, and the Agreement on Rules of Origin of the World Trade Organization, promulgated by Decree No. 1,355, of December 30, 1994, resolves:

Art. 1 The Secretariat of Foreign Trade (SECEX), through the Subsecretariat of International Negotiations (SEINT), will promote the verification of non-preferential origin under the aspects of authenticity, veracity and compliance with the rules provided for in Law No. 12,546, of December 14, 2011.

CHAPTER I

IMPORTS SUBJECT TO SPECIAL NON-PREFERENTIAL ORIGIN VERIFICATION PROCEDURE

Art. 2 Imports subject to non-preferential rules of origin may be subject to the special non-preferential origin verification procedure regulated by this Ordinance.

§ 1 - The procedure for verification of non-preferential origin will be carried out, upon denunciation or by letter, when there are indications of non-observance of non-preferential rules of origin and will be instructed by means of its own special procedure, according to the rules established in this Ordinance.

§ 2 - SEINT will select, through risk analysis, imports that will be subject to the special non-preferential origin verification procedure.

CHAPTER II

PRESENTATION OF COMPLAINTS

Art. 3 Complaints regarding non-compliance with non-preferential rules of origin shall be forwarded to SEINT.

Single paragraph. The complaint must be submitted pursuant to Article 49, in writing and in vernacular, and shall be instructed with the following information:

I - name, business address and representation of the complainant;

II - name and contact of the employees responsible for monitoring the claim;

III - classification of the product in the Mercosur Common Nomenclature (NCM);

IV - detailed description of the product, containing its main characteristics and destination of use, accompanied by catalogues, when applicable;

V - a detailed description of the facts on which the complaint is based, indicating the countries of origin involved;

VI - detailed description of the production processes for the manufacture of the product, with emphasis on the materials used and their classification in the NCM;

VII - changes in Brazilian import flows of the product by country of origin, in particular those which occurred after the start of the procedure giving rise to the implementation of non-preferential trade policy instruments, including the application or last extension of the trade defense measure;

VIII - information on world production, distribution channels and Brazilian importers of the product, whenever possible; and

IX - information on known producers, the existence of installed capacity and production volume of the product in the declared country of origin, whenever possible.

Art. 4 The complaint shall be preliminarily examined with the aim of verifying whether it is properly instructed or if additional information is needed.

§ 1 - The complaint may be filed when it is not instructed in the manner provided for in the sole paragraph of Article 3 or when any additional information requested is not submitted within the stipulated period.

§ 2 - The deadline for the provision of additional information will be defined by SEINT according to the nature of this information and shall not be less than ten days from the date of knowledge of the request.

§ 3 - If the complainant considers that there is information of a confidential nature, he must present, at the same time, a confidential version and a restricted version of the complaint. The restricted version should contain summaries that allow the understanding of the information provided, under penalty of being disregarded the confidential information.

§ 4 - Documents submitted without the indication "confidential" will be treated as documents of restricted access to interested parties.

§ 5 - The complainant shall be informed of the result of the preliminary examination within twenty days from the date of receipt by SEINT of the complaint or additional information.

§ 6 - If the complaint is filed, the complainant may only file a new complaint about the same product and origin after at least six months after the date of notification of the filing.

Art. 5 The complainant shall not be subject to any sanction as a result of the complaint, except in the case of proven bad faith, in which case the civil and criminal consequences provided for by law will apply.

Art. 6 If SEINT finds, after the preliminary examination, that the complaint offers indications pointing to relevant risks of non-compliance with the rules of origin described in Articles 31 and 32 of Law No. 12,546, of 2011, the information contained in the complaint will be used for the analysis of risks referred to in § 2 of Article 2 of this Ordinance, with a view to identifying import operations that may apply a special procedure for verifying non-preferential origin.

CHAPTER III

SPECIAL NON-PREFERENTIAL ORIGIN VERIFICATION PROCEDURE

Section I

Start of Procedure

Art. 7 The special non-preferential origin verification procedure shall be initiated by communication to interested parties, based on the origin declared by the producer and the other information contained in the Declaration of Origin.

Single paragraph. If the Declaration of Origin is not provided in a timely manner, the origin declared by the producer will be considered to be the one affixed to the Import Declaration.

Art. 8 For the purpose of this Ordinance, interested parties are considered:

I - the complainant;

II - the Brazilian importer;

III - the foreign exporter;

IV - the foreign producer;

V - the government of the declared country of origin; and

VI - other parties, national or foreign, considered by SEINT as interested, by virtue of the specific case.

Single paragraph. For the purposes of fulfilling the obligations established in this Ordinance, official communications with the government of the declared country of origin will be sent to its official representation in Brazil.

Section II

Procedure Instruction

Art. 9 It will be up to SEINT to instruct the special non-preferential origin verification procedure in accordance with the provisions of this Chapter.

Art. 10 The investigation activities aimed at verifying and proving the origin of the product shall take place through information provided by interested parties, documentary evidence, technical visits to establishments of national producers of goods similar to that of the verification of non-preferential origin, on-the-spot verification at the production plant and in the foreign producer's office, in the office of the foreign exporter and the Brazilian importer, in addition to other actions that are necessary.

Single paragraph. Interested parties will have ample opportunity to defend their interests.

Art. 11 SEINT will send a questionnaire to the producer through which the necessary information will be requested to prove the manufacture of the product in the declared country of origin, according to the criteria of origin established in Brazilian legislation.

§ 1 - The questionnaire will include the request of the following information, among others that may be requested required by SEINT:

I - location of the producing establishment;

II - manufacturing process of the product;

III - factory layout;

IV - raw materials constituting the product, quantity and value, as well as their respective origins and utilization indexes;

V- history of the purchase operations of raw materials used in the production of the product;

VI - operational production capacity and volume of the product production; and

VII - cost of production of the product.

§ 2 - The questionnaire must be fully completed and forwarded, as provided for in Article 48, within twenty days of the date of its knowledge, together with documentation able to confirm the information provided.

§ 3 - The period referred to in paragraph 2 may be extended by up to ten days, from the end of the original term, upon duly justified request, presented before the expiration of the original term.

§ 4 - Additional information may be requested to those contained in the answers to the questionnaires, granting up to ten days for response, counted from the date of knowledge of the request, extendable, on request and provided that duly justified, for up to ten days.

§ 5 - It is the responsibility of the producer to present all appropriate documents to prove the origin of the product investigated in accordance with current Brazilian legislation.

Art. 12 Throughout the instructional phase, interested parties may provide information deemed relevant to the special non-preferential origin verification procedure.

Art. 13 Interested parties are responsible for cooperating with the verification of origin and for providing all the requested information, duly accompanied by the respective evidence, bearing any eventual consequences arising from their omission.

§ 1 - If any of the interested parties denies access to the requested information, does not meet the stipulated deadlines, fills out the questionnaire in an incomplete or unsatisfactory way, does not authorize the on-the-spot verification or creates any other obstacles to the special non-preferential origin verification procedure, SEINT may draw up its findings based on the facts and information available, included those contained in the complaint.

§ 2 - The importer is jointly and severally liable for the information submitted by the producing company and by the exporting company concerning the goods it has imported.

Art. 14 All documents submitted by interested parties and also those produced by SECEX shall be added to the respective case file, in chronological order, except those received untimely or in disagreement with the applicable rules.

Single paragraph. SEINT's non-acceptance of untimely information or in disagreement with the applicable rules shall be recorded in the file and notified to the interested party, together with the reason for the refusal.

Section III

On-the-spot verification

Art. 15 SEINT will communicate to the producing company the intention to carry out on-the-spot verification at its establishment, with a date suggestion for said visit, with the aim of examining the production process and the facilities used in the manufacture of the product, as well as proving, through official company documents, the information provided under the special non-preferential origin verification procedure.

Single paragraph. In the event of the impossibility of the producing company to authorize the on-the-spot verification on the suggested date, another date may be defined in common agreement with SEINT and must comply with the procedural deadlines laid down.

Art. 16 The on-the-spot verification of the establishment of the producing company will depend on its express consent.

Art. 17 The producing company shall express in writing its express consent to the on-the-spot verification within five days, counted from the communication knowledge to which the caput of Article 15 refers.

Art. 18 The absence of a timely response or the non-authorization of the on-the-spot verification by the producing company may give the opportunity for the application of paragraph 1 of Article 13.

Art. 19 The on-the-spot verification must be carried out by at least two SECEX servants, who may request the participation, duly authorized by the production company, of specialists previously identified to provide technical assistance.

Art. 20 Except as provided for in Article 22, no changes to the information to be verified will be admitted after sending the communication to which the caput of Article 15 refers.

Art. 21 SEINT will send, within ten days before the date of the on-the-spot verification, the itinerary of the visit, containing clarifications on the information that will be requested and analyzed, as well as on the documents to be submitted at the time of verification.

Art. 22 At the beginning of the on-the-spot verification, the verification team will offer the company the opportunity to provide clarification regarding information previously submitted under the special non-preferential origin verification procedure.

Art. 23 SEINT's analysis of the clarifications provided will be contained in the on-the-spot verification report, which will be made available to the verified party within fifteen days, counted from the final date of the authorization of the removal of the servants that make up the verification team from the country.

Art. 24 Requests for further clarification may be made during the visit as a result of the information obtained in the on-the-spot verification.

Art. 25 If an on-the spot verification is carried out in more than one company, the period referred to in Article 23 above shall be increased by ten days.

Art. 26 The on-the-spot verification may be extended to the exporter and the supplier of inputs of the alleged foreign producer, applying, where appropriate, the Articles of this Section.

Art. 27 SEINT may request the provision of technical assistance from entities and specialists of recognized technical capacity and the realization of technical visits to the establishment of

national producers with the aim of obtaining information on the composition and production process of goods similar to that of the special non-preferential origin verification procedure.

Section IV

Preliminary Report

Art. 28 SEINT will draw up a report with preliminary conclusions on the essential facts contained in the administrative process that instructed the special non-preferential origin verification procedure.

Single paragraph. The preliminary report shall contain the essential facts forming the basis for the conclusion of SEINT and shall clearly indicate whether the product subject to the special non-preferential origin verification procedure complies with the rules set forth in the Articles 31 and 32 of Law No. 12,546, of 2011.

Art. 29 SEINT shall notify interested parties of the preliminary outcome of the special non-preferential origin verification procedure, granting them ten days, counted from the knowledge of the notification, to submit their final statements in writing.

§ 1 - The expression of the interested parties shall be limited to the content of the preliminary report.

§ 2 - The evidence submitted by the interested parties after the preliminary report shall not be added to the case file and shall receive the treatment provided for in the single paragraph of Article 14.

Section V

Final Report

Art. 30 After the deadline for the manifestation of the interested parties, as provided for in Article 29, caput, SEINT will prepare a final report indicating the facts and grounds that motivated the special non-preferential origin verification procedure and the conclusions about compliance with the rules described in the Articles 31 and 32 of Law No. 12,546, of 2011.

Section VI

Closure of the Procedure

Art. 31 SECEX, through an Ordinance, will publish the final result of the special non-preferential origin verification procedure, stating:

I - description and classification in the NCM of the product subject to verification;

II - company declared as producer of the product subject to verification;

III - country declared as the origin of the product subject to verification;

IV - if the product complies with the non-preferential rules of origin provided for in the Articles 31 and 32 of Law No. 12,546, of 2011; and

V - the determination of the country of origin of the product subject to the special non-preferential origin verification procedure.

Art. 32 Where there is no proof of the declared origin, the importer of the products contained in the import operations subject to the special non-preferential origin verification procedure shall adopt the origin determined by SECEX.

Single paragraph. The origin determined by SECEX shall be extended to imports of identical products from the same producer until it proves compliance with the non-preferential rules of origin.

Art. 33 SECEX will publish, through an Ordinance, the final result of the special non-preferential origin verification procedure within one hundred and fifty days, from the date of its initiation.

Single paragraph. The deadline referred to in the caput may be extended by up to thirty days by means of a decision of SEINT to be communicated to interested parties.

Art. 34 SEINT may, by reasoned decision, terminate the special non-preferential origin verification procedure in advance.

§ 1 - If the special non-preferential origin verification procedure is terminated, the case will be archived.

§ 2 - The closure of the procedure will take place through communication to the interested parties, without the need to publish the Ordinance referred to in Article 31.

CHAPTER IV

REVIEW OF THE OUTCOME OF THE SPECIAL NON-PREFERENTIAL ORIGIN VERIFICATION PROCEDURE

Art. 35 The interested parties referred to in Article 8 may, by petition, in the form of Article 48 request a review of the result of the special non-preferential origin verification procedure, after the minimum period of six months after its publication.

Single paragraph. The petition for review of the origin of the product shall be substantiated and accompanied by all the information available to the petitioner for that purpose, which shall be preliminarily examined with the aim of verifying whether the request is justified and whether additional information is needed.

Art. 36 The review procedure shall comply with the rules provided for in Chapter III of this Ordinance, as appropriate.

Art. 37 SEINT shall notify interested parties of the initiation of the review under the provisions of this Chapter.

Art. 38 Interested parties will have ample opportunity to submit in writing the evidence considered relevant to the review.

Art. 39 The revision period shall comply with the provisions of Article 33.

Art. 40 SECEX will publish, through an Ordinance, the result of the review procedure.

CHAPTER V

CONFIDENTIALITY OF INFORMATION

Art. 41 The information provided on a confidential basis must be accompanied by justification and will not be disclosed without express authorization from the party who provided it.

§ 1 - The indication of confidentiality of the documents submitted is the responsibility of the party who provided them and shall appear on all its pages, centered at the top and foot of each page, in red color.

§ 2 - Interested parties who provide confidential information shall simultaneously submit a restricted summary that allows the understanding of the information provided, under penalty of being disregarded.

§ 3 - In cases where it is not possible to submit the restricted summary, the parties shall justify in writing such a circumstance.

§ 4 - The justifications referred to in the caput and paragraph 3 do not constitute confidential information.

§ 5 - Documents, data and information, among others, shall not be considered confidential:

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

II – concerning:

a) the shareholding composition and identification of the respective controller;

b) the corporate organization of the group of which it is a part;

c) the description of the inputs and their respective tariff codes, as well as their origins;

d) any contracts entered into by public deed or filed before a public notary or in a commercial registry, in Brazil or abroad; and

e) the equity, 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 ones, and their wholly-owned subsidiaries, which must be published or disclosed under corporate law or the securities market.

§ 6 - The restricted summary on confidential numerical information shall be presented in the form of index numbers, among others.

§ 7 - At SEINT's discretion, information submitted on a confidential basis shall not be considered, when confidential treatment may result in the curtailment of the right of defense and the contradictory of the other interested parties.

§ 8 - Confidential information will be added to the confidential file case.

§ 9 - If SEINT considers the request for confidentiality to be unjustified and the interested party who has provided the information refuses to adapt it for attachment to the restricted file, the information may be disregarded.

CHAPTER VI

DEADLINES

Art. 42 The deadlines provided for in this Ordinance will be counted racing form, including due date.

Single paragraph. The period will be considered extended until the first following working day if the maturity falls on a day when there is no office hours or if it is closed before normal time.

Art. 43 It is assumed that interested parties will be aware of the questionnaire and other correspondence sent by SEINT three days after the date of electronic transmission of the document.

Art. 44 The counting of deadlines begins on the first working day following the date of knowledge of the interested parties.

Art. 45 Requests for extension, when admitted, may be known only if submitted before the expiration of the original term and the first day of the extended period will be the following day to the expiration of the original term.

Art. 46 The extension period adds to the original, with the resulting total period being counted uninterruptedly from the beginning of the original period.

CHAPTER VII

GENERAL PROVISIONS

Art. 47 The documents prepared by SEINT and the notifications that are necessary under the special non-preferential origin verification procedure will be forwarded to interested parties in their respective electronic addresses based, preferably, on the registration data maintained by the Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy and on the Declaration of Origin.

Single paragraph. When the procedure has been initiated, interested parties may indicate to SEINT the electronic address through which they wish to receive the documents and notifications provided for in the caput.

Art. 48 Complaints, questionnaires, supplementary information, letters, documents, petitions and other expedients addressed to SEINT by virtue of the provisions of this Ordinance, shall be sent by e-mail, to the seintnpref@economia.gov.br address, or to the one indicated in the notification of initiation of the special verification of origin procedure. The interested party must ensure receipt by SEINT of the document sent until the expiration of the deadline, considering the official time of Brasilia-DF.

§ 1 - Communications addressed to SEINT may be written in the official languages of the World Trade Organization (WTO) and incorporated into the file in this condition.

§ 2 - Whenever it deems necessary, SEINT may request sworn translation of certain documents.

§ 3 - In the case of documents prepared in foreign languages for which there is no public translator in Brazil, translations into the Portuguese language made by the official representation of the declared country of origin of the product will be accepted, as long as accompanied by official communication attesting to the authorship of the translation.

Art. 49 All interested parties shall be guaranteed the right to view the file and obtain reprographic copies of the data and documents that integrate it, except for confidential information and documents.

Single paragraph. The request can be made by electronic message addressed to SEINT.

Art. 50 Whenever it deems necessary, SEINT shall request proof of the power of representation of the parties.

CHAPTER VIII

FINAL PROVISIONS

Art. 51 To the administrative procedures provided for in this Ordinance, applies, subsidiarily, Law No. 9,784 of January 29, 1999.

Art. 52 The special non-preferential origin verification procedure that was initiated prior to the entry into force of this Ordinance will continue to be governed by SECEX Ordinance No. 38 of May 18, 2015.

Art. 53 SEINT may extend, for a single time and for an equal period, the deadlines provided for in this Ordinance, except those in which the extension or its prohibition is already provided for.

Art. 54 This Ordinance will enter into force on the date of its publication.

Art. 55 SECEX Ordinance No. 38 of May 18, 2015, is hereby revoked.

LUCAS FERRAZ