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Page: 1/46

Committee on Anti-Dumping Practices

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**NOTIFICATION OF LAWS AND REGULATIONS  
UNDER ARTICLE 18.5 OF THE AGREEMENT**

BRAZIL

The following communication, dated 13 September 2013, is being circulated at the request of the Delegation of Brazil.

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DECREE No. , 2013.

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

**THE PRESIDENT OF THE REPUBLIC**, in the exercise of the duties and powers conferred by article 84, sub-paragraphs IV and VI, of the Brazilian Federal Constitution and taking into account the provisions of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade – GATT/1994 (Antidumping Agreement), approved by Legislative Decree No. 30, dated 15 December 1994, and enacted through Decree No. 1355, dated 30 December 1994, and of Law No. 9019, dated 30 March 1995, under the section governing application of the measures provided for in the Antidumping Agreement,

**HEREBY DECREES:**

**Chapter I  
PRINCIPLES AND ATTRIBUTIONS**

Article 1. Anti-dumping measures may be applied where imports of dumped products cause injury to domestic industry.

Paragraph 1. Anti-dumping measures shall be applied pursuant to investigations initiated and conducted in accordance with the provisions of this Decree.

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

Article 2. Based on the recommendations of the Department of Trade Remedies (DECOM) of the Secretariat of Foreign Trade (SECEX) of the Ministry of Development, Industry, and Foreign Trade (MDIC), the Council of Ministers of the Chamber of Foreign Trade (CAMEX) shall render decisions on:

- I. applying or extending the duration of provisional or definitive anti-dumping duties;
- II. accepting or extending the duration of price undertakings;
- III. the retroactive collection of definitive anti-dumping duties;
- IV. the extending the scope of definitive anti-dumping duties;

- V. the form of application of anti-dumping duties, as well as its alteration;
- VI. suspending investigations for producers or exporters for whom price undertakings have been accepted pursuant to article 67;
- VII. suspending the enforcement of definitive anti-dumping duties levied through mandatory cash deposits or bank guarantees pursuant to section IIII, sub-section I, of chapter VIII, in addition to ordering resumption of the collection of antidumping duties and the conversion of guarantees provided; and
- VIII. suspending the imposition of anti-dumping duties in the case provided for in article 109.

Article 3. Under special circumstances, the Council of Ministers may, for reasons of public interest:

- I. suspend for up to one year, extendable once for an equal period, the enforcement of a definitive anti-dumping duty or price undertaking in force;
- II. not to impose provisional anti-dumping duties; or
- III. accept price undertakings or apply definitive anti-dumping duties in an amount other than that recommended, subject to article 67, paragraph 4, and article 78, paragraph 2.

Paragraph 1. Anti-dumping duties or price undertakings suspended on the basis of sub-paragraph I of the **chapeau** may be reapplied at any time by decision of the Council.

Paragraph 2. Anti-dumping duties or price undertakings shall be terminated on conclusion of the suspension period provided for in sub-paragraph I of the **chapeau** where such duties or undertakings were not reapplied pursuant to paragraph 1 or in the event the suspension does not expressly establish its reapplication at the end of the suspension period.

Paragraph 3. Industrial sectors users of the product under consideration and consumer organizations may submit information deemed relevant regarding the effects of a positive determination of dumping, injury and causal link.

Paragraph 4. Information submitted pursuant to paragraph 3 must be addressed to the Executive Secretariat of CAMEX and shall be considered in the decision-making process on public interest.

Paragraph 5. Public interest analysis shall follow the procedures established in specific regulation enacted by CAMEX.

Paragraph 6. The decisions of the Council of Ministers, including those based on the public interest, shall set forth the reasons and grounds for such decisions.

Article 4. It falls to CAMEX the granting of market economy status for purposes of trade defense.

Article 5. It falls to SECEX the following attributions:

- I. to initiate anti-dumping investigations;
- II. to conclude investigations without application of measures in the cases set out in article 74;
- III. to extend the deadline for completion of the investigations;
- IV. to conclude, by request of the applicant, and set aside an investigation without a decision on the merits;
- V. to initiate a review of a definitive anti-dumping duty or price undertaking; and

- VI. to terminate an anti-dumping measure in the event of negative findings reached during the conduction of the reviews provided for in chapter VIII.

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

## **Chapter II DETERMINATION OF DUMPING**

Article 7. For the purpose of this Decree, dumping means the introduction of a product in the Brazilian market, including under the drawback regime, at an export price less than its normal value.

### **Section I Normal Value**

Article 8. "Normal value" means the price of the like product in the ordinary course of trade destined for consumption in the domestic market of the exporting country.

Article 9. For the purpose of this Decree, the term "like product" shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Paragraph 1. The likeness provided for in the **chapeau** shall be assessed on the basis of objective criteria, including:

- I. raw materials;
- II. chemical composition;
- III. physical characteristics;
- IV. technical standards and specifications;
- V. production processes;
- VI. uses and applications;
- VII. degree of substitutability; and
- VIII. distribution channels.

Paragraph 2. The criteria referred to in the paragraph above do not constitute an exhaustive list, and none of them on its own or together can necessarily give decisive guidance.

Article 10. The term "product under consideration" shall encompass identical products or products whose physical characteristics or chemical composition and market characteristics are similar to those of the like product.

Paragraph 1. Objective assessment of the physical characteristics or chemical composition of the product under consideration shall take into account the raw materials employed, technical standards and specifications, and production processes.

Paragraph 2. Objective assessment of the market characteristics shall take into account the uses and applications, degree of substitutability, and distribution channels.

Paragraph 3. The criteria referred to in paragraphs 1 and 2 do not constitute an exhaustive list, and none of the them on its own or together can necessarily give decisive guidance.

Article 11. For the purpose of this Decree, the term "exporting country" shall be interpreted to mean the declared country of origin of the imports of the product under consideration, subject to article 24.

Article 12. The term "ordinary course of trade" shall include all sales of the like product by the producer or exporter under investigation in the domestic market of the exporting country or to a third country, subject to article 14.

Paragraph 1. Sales of the like product destined for consumption in the domestic market of the exporting country shall be considered as being a sufficient quantity for the determination of the normal value if such sales constitute five per cent (5%) or more of the sales of the product under consideration exported to Brazil, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.

Paragraph 2. The determination mentioned in the paragraph above shall be executed following the exclusion of the sales which are not considered transactions conducted in the ordinary course of trade and shall be accomplished for the totality of the remaining sales of the like product destined for consumption in the domestic market of the exporting country.

Article 13. When sales of the like product destined for consumption in the domestic market of the exporting country are of a sufficient quantity for calculation of the normal value, yet sales of specific models of the product are not of a sufficient quantity for this purpose, the normal value for such models may be determined on the basis of the constructed value, pursuant to article 14, sub-paragraph II, or, conversely, the export price to a third country.

Article 14. When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales of the like product in the domestic market of the exporting country, such sales do not permit a proper comparison with the export price, the normal value shall be determined on the basis of:

- I. the export price of the like product to an appropriate third country, provided the price is representative; or
- II. the constructed value, i.e. the cost of production in the declared country of origin plus a reasonable amount for:
  - a) general costs;
  - b) administrative costs;
  - c) selling costs;
  - d) financial costs; and
  - e) profits.

Paragraph 1. Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit costs of production of the like product, including the costs of manufacturing (fixed and variable) plus general, administrative, selling, and financial costs shall not be treated as being in the ordinary course of trade and shall be disregarded in determining normal value.

Paragraph 2. The provision above shall only apply when the sales are made:

- I. within a reasonable period of time, preferably twelve (12) months, but in no case less than six (6) months;
- II. in substantial quantities; and

- III. at prices which do not provide for the recovery of all costs within a reasonable period of time, preferably twelve (12) months.

Paragraph 3. For the purpose of paragraph 2, sub-paragraph II, "substantial quantities" shall be interpreted to mean situations in which:

- I. the weighted average selling price of the like product in the period of dumping investigation is below the weighted average per unit costs of the like product in the said period; or
- II. the volume of sales of the like product below per unit costs represents not less than twenty percent (20%) of the total volume of sales of the like product.

Paragraph 4. If prices are below per unit costs at the time of sale but are above weighted average per unit costs for the period of the dumping investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

Paragraph 5. Transactions between associated or related parties or between parties which have made a compensatory arrangement shall not be deemed in the ordinary course of trade and shall be disregarded for determination of the normal value, except when demonstrated that the prices and costs of such transactions are comparable to those of the transactions made between unassociated or unrelated parties.

Paragraph 6. Transactions between associated or related parties shall be considered in the ordinary course of trade if the weighted average price of sale from the interested party to the associated or related party is not three percent (3%) greater or less than the weighted average price of sale from the interested party to unassociated or unrelated parties.

Paragraph 7. The following transactions shall not be deemed in the ordinary course of trade and shall be disregarded for calculation of the normal value:

- I. sales of samples or sales to employees and donations;
- II. sales to other companies under manufacturing agreements (**tolling**) or product exchanges (**swaps**);
- III. captive consumption; or
- IV. other transactions, as established by SECEX.

Paragraph 8. The cost referred to in sub-paragraph II of the **chapeau** shall preferably be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the like product.

Paragraph 9. Transactions between associated or related parties or between parties which have made a compensatory arrangement shall not be considered for computation of the costs associated with production, except when demonstrated that the prices of such transactions are comparable to those of transactions between unassociated or unrelated parties.

Paragraph 10. For the purpose of this chapter, parties shall be considered to be associated or related if:

- I. one of them occupies a position of responsibility or a management post in a company held by the other;
- II. the parties are legally recognized as business associates;
- III. the parties consist of an employer and an employee;

- IV. any person directly or indirectly holds, controls, or owns five percent (5%) or more of the voting shares or bonds of both parties;
- V. one of the parties directly or indirectly controls the other, including through shareholder agreements;
- VI. both parties are directly or indirectly controlled by a third party;
- VII. both parties directly or indirectly control a third party;
- VIII. both parties are members of the same family; or
- IX. the parties maintain a relationship of economic, financial, or technological dependence with customers, suppliers, or lenders.

Paragraph 11. All available evidence on the proper allocation of costs shall be taken into account, provided such allocations have been historically utilized by the producer or exporter, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.

Paragraph 12. Costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations, unless already reflected in the cost allocations under the paragraph above.

Paragraph 13. The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of dumping investigation, the most recent costs which can reasonably be taken into account during the investigation.

Paragraph 14. For the purpose of this article, the computation of general, administrative, selling, and financial costs and profit margins shall be based on actual data pertaining to production and sales of the like product by the producer or exporter under investigation in the ordinary course of trade.

Paragraph 15. When this amount cannot be determined pursuant to the paragraph 14, the general, administrative, selling, and financial costs and the profit margin shall be determined on the basis of:

- I. the actual amounts incurred and realized by the producer or exporter under investigation in respect of the production and sale of products of the same general category in the domestic market of the exporting country;
- II. the weighted average of the actual amounts incurred and realized by other producers or exporters under investigations in respect of the production and sale of the like product in the domestic market of the exporting country; or
- III. any other reasonable method, provided that the amount for profit so established does not exceed the profit normally realized by other producers or exporters on sales of products of the same general category in the domestic market of the exporting country.

Paragraph 16. The term "particular market situation" referred to in the **chapeau** includes circumstances in which the formation of domestic prices, in particular those relating to basic inputs, does not occur under market conditions or is determined or significantly influenced by government action.

Article 15. In the case of countries not considered market economies, the normal value shall be determined on the basis of:

- I. the sale price of the like product in a third country;
- II. the constructed value of the like product in a third country;

- III. the export price of the like product from a third country to other countries, except Brazil; or
- IV. where none of the cases above is feasible and provided it is duly justified, any other reasonably determined price, including the price paid or to be paid for the like product in the Brazilian domestic market, properly adjusted, if necessary, to include a reasonable profit margin.

Paragraph 1. The country shall consist of a market economy country considered appropriate, taking into account reliable information submitted in a timely manner by the applicant or by the producer or exporter, including:

- I. the volume of exports of the like product from the third country to Brazil and to the main consumer markets worldwide;
- II. the volume of sales of the like product in the domestic market of the third country;
- III. the similarity between the product under consideration and the product sold in the domestic market or exported by the third country;
- IV. the availability and the degree of disaggregation of the statistics necessary to the investigation; or
- V. the degree of appropriateness of the information submitted in respect of the characteristics of the ongoing investigation.

Paragraph 2. Whenever appropriate, a country subject to the same investigation shall be used as the third country.

Paragraph 3. Upon initiation of the investigation, the interested parties shall be notified of the appropriate third country which is to be utilized and, in the event of disagreement with regard to the selection of such country, the producer, the exporter, or the applicant may recommend an alternative third country, provided such recommendation is duly justified and submitted with the respective evidence within a non-extendable period of seventy (70) days from the date of initiation of the investigation.

Paragraph 4. The final decision on the third country market economy which is to be used in the investigation shall be included in the preliminary determination.

Article 16. Within the period provided for in article 15, paragraph 3, the producer or the exporter of a country not considered a market economy by Brazil may submit evidence with the purpose of permitting determination of the normal value based on the provisions of articles 8-14 of this Decree.

Article 17. The evidence referred to in the article above includes information on the producer or the exporter and the economic sector in which the producer or the exporter is engaged.

Paragraph 1. The information on the producer or the exporter must demonstrate that:

- I. the decisions of the producer or exporter in respect of prices, costs, and inputs, including raw materials, technology, labor, production, sales, and investments, are based on supply and demand conditions, without significant government interference, and that the costs relating to the main inputs substantially reflect market values;
- II. the producer or exporter maintains a unified and transparent internal accounting system which is subject to independent audit, based on international accounting principles;
- III. the costs of production and the financial status of the producer or the exporter are not subject to significant distortions stemming from current or past ties to the government outside market conditions; and

- IV. the producer or the exporter is subject to bankruptcy and property laws, thus ensuring the legal security and stability of its operations.

Paragraph 2. The information on the economic sector in which the producer or the exporter is engaged must demonstrate that:

- I. the involvement of the government in determining the conditions of production or in price formation, including in respect of exchange rates and currency transactions, is non-existent or very limited;
- II. the sector operates primarily on the basis of market conditions, including through free determination of wages between employers and workers; and
- III. the prices the producers or the exporters pay for the main inputs and for a great part of the secondary inputs employed in the production process are determined on the basis of the interaction between supply and demand.

Paragraph 3. The affirmative determination of the conditions established in this article is a necessary condition for determination of the normal value based on the provisions of articles 8 to 14.

Paragraph 4. Affirmative determinations relating to paragraph 2 may be valid for future investigations of the same product.

Paragraph 5. The information set out in paragraphs 1 and 2 does not constitute an exhaustive list, and no piece of this information on its own or together can necessarily give decisive guidance.

## **Section II Export Price**

Article 18. If the producer is also the exporter of the product under consideration, the export price shall be deemed the price received, or the export price to be received, for the product exported to Brazil, net of taxes, discounts or reductions effectively granted and directly related to the sales of the product under consideration

Article 19. If the producer is not the exporter and both are not associated or related, the export price shall preferably be considered the price received, or the price to be received by the producer, for the product exported to Brazil, net of taxes, discounts or reductions effectively granted and directly related to the sales of the product under consideration.

Article 20. In case the producer and the exporter are associated or related, the export price shall be reconstructed on the basis of the price effectively received, or the price to be received by the exporter, for the product exported to Brazil.

Article 21. In cases where there is no export price or where it appears that the export price is unreliable due to an association or relationship or a compensatory arrangement between the exporter or the producer and the importer or a third party, the export price may be constructed using:

- I. the price at which imported products have been resold for the first time to an independent buyer; or
- II. a reasonable basis, in the case of products that are not to be resold to independent buyers, or not to be resold in the same condition as when they were imported.

## **Section III Comparison Between the Normal Value and the Export Price**

Article 22. A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the **ex-factory** level, and in respect of sales made during the period of dumping investigation.



Paragraph 1. Interested parties shall be notified as to what information is necessary to ensure a fair comparison, and an unreasonable burden of proof shall not be imposed on those parties.

Paragraph 2. Due allowance shall be made in each case for differences which affect price comparability, including differences regarding:

- I. conditions and terms of sale;
- II. taxation;
- III. levels of trade;
- IV. quantities;
- V. physical characteristics; and
- VI. any other differences which are also demonstrated to affect price comparability.

Paragraph 3. Duplication of allowances shall not be necessary where more than one of the factors referred to in paragraph 2 overlap.

Paragraph 4. For the purpose of application of article 21, allowances shall also be made for costs incurred between importation and resale, including import duties and other taxes, and for profits realized.

Paragraph 5. In the cases provided for in article 21, if price comparability has been affected, the normal value shall be established at a level of trade equivalent to the level of trade of the constructed export price, or due allowances shall be made in accordance with this article.

Paragraph 6. The value of the allowance shall be calculated on the basis of pertinent data related to the period of dumping investigation or of the data of the last available fiscal year.

Article 23. When the comparison provided for in the **chapeau** of article 22 requires a conversion of currencies, such conversion should be made using the official rate of exchange, as published by the Central Bank of Brazil, on the date of sale.

Paragraph 1. When a sale of foreign currency in forward markets is directly linked to the export sale under investigation, the rate of exchange in the forward sale shall be used.

Paragraph 2. If the official exchange rate in effect on the date of sale is outside a fluctuation band of plus or minus two percent ( $\pm 2\%$ ) in respect of the average of the official daily exchange rates for the preceding sixty (60) days, hereinafter "reference exchange rate", the official daily average exchange rate for the preceding sixty (60) days shall be used.

Paragraph 3. A sustained movement in exchange rates shall be deemed to occur when the weekly average of the official daily exchange rate is at least five percent (5%) greater or less than the weekly average of the reference exchange rates for eight (8) consecutive weeks.

Paragraph 4. Upon determination of the movement referred to in paragraph 3, the reference exchange rate of the last day prior to the identification of such movement shall be utilized for a period of sixty (60) days.

Paragraph 5. Preferably, the date of sale shall be the date of the contract, of the purchase order, or of the acceptance of the order or issuance of the invoice, in a way that whichever document establishes the material conditions of the transaction shall be used.

Article 24. The normal value shall not be determined on the basis of information on the declared country of origin of the product under consideration, where, among other factors:

- I. the product is merely transshipped through that country,
- II. the product is not produced in that country; or

- III. there is no comparable price for the product in that country.

#### **Section IV Margin of Dumping**

Article 25. The margin of dumping shall be the difference between the normal value and the export price.

Article 26. The margin of dumping shall be determined on the basis of a comparison between:

- I. the weighted average normal value and the weighted average price of all comparable export transactions; or
- II. the normal value and the export price on a transaction-to-transaction basis.

Paragraph 1. In the cases set forth in sub-paragraphs I and II of the **chapeau**, the calculation of the margin of dumping shall include the totality of sales to Brazil of the product under consideration, by adding affirmative and negative results found for different transactions or models.

Paragraph 2. A normal value established on a weighted average basis may be compared to the prices of individual export transactions if a pattern of export prices which differ significantly among different purchasers, regions, or time periods is found, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of the methodologies provided for in sub-paragraphs I and II of the **chapeau**.

Article 27. An individual margin of dumping shall preferably be determined for each known producer or exporter of the product under investigation.

Article 28. If the number of exporters, producers, importers, or types of the product under investigation is so large as to render impracticable the determination referred to in the article above, individual determination may be limited to:

- I. a valid statistical sample that includes a reasonable number of interested parties or types of products based on the information available at the time of selection; or
- II. a selection of those producers or exporters who account for the largest percentage of the volume of exports from the exporting country which can be reasonably investigated.

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

Paragraph 2. In the case of sub-paragraph II of the **chapeau**, those producers or exporters who request their exclusion from the selection after confirming their participation or who fail to respond to the questionnaire may have their margin of dumping determined on the basis of the best information available.

Paragraph 3. DECOM may include, at its discretion, another producer or exporter in the selection provided for in sub-paragraph II of the **chapeau**.

Paragraph 4. Any selection of producers or exporters, importers or types of products made pursuant to sub-paragraph II of the **chapeau** shall preferably be accomplished after consultations with producers, exporters, or importers and the obtainment of their consent.

Paragraph 5. The government of the exporting country may submit a statement on the selection, for the purpose of explaining whether the selected companies are exporters, **trading companies**, or producers of the product under investigation within a period of ten (10) days from the date of acknowledgment of the notice of initiation of the investigation.

Paragraph 6. An individual margin of dumping shall also be determined for each producer or exporter not included in the selection who submits the necessary information in time to be taken into consideration during the investigation.

Paragraph 7. The provision in paragraph 6 shall not apply to situations in which the number of exporters or producers is so large that the analysis of individual cases would prevent the completion of the investigation within the established time limits.

Paragraph 8. Any measures to discourage the submission of information as provided for in paragraph 6 is prohibited.

Paragraph 9. For the purpose of determining the individual margin of dumping and of applying antidumping duties, different legal entities may be treated as a single producer or exporter when it is demonstrated that the structural and trade relationship between such entities or with a third entity is sufficiently close.

### **Chapter III DETERMINATION OF INJURY**

Article 29. For the purpose of this Decree, "injury" shall be interpreted to mean:

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

Article 30. The determination of injury shall be based on evidence and involve an objective examination of:

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

Paragraph 1. For the purpose of sub-paragraph I of the **chapeau**, consideration shall be given to whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in Brazil.

Paragraph 2. For the purpose of sub-paragraph II of the **chapeau**, the following shall be considered:

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

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

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

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

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

Article 31. When imports of a product from more than one country are simultaneously subject to antidumping investigations whose periods of dumping investigation coincide, the effects of such imports may be assessed cumulatively if it is demonstrated that:

- I. the margin of dumping established in relation to the imports from each country is not **de minimis**;
- II. the volume of imports from each country is not negligible; and
- III. the cumulative assessment of the effects of those imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

Paragraph 1. The margin of dumping shall be considered to be **de minimis** if this margin is less than two percent (2%) when expressed as a percentage of the export price.

Paragraph 2. The volume of the imports subject to investigation or the volume of dumped imports from a particular country shall be regarded as negligible if such volume is found to account for less than three percent (3%) of total Brazilian imports of the product under investigation and of the like product.

Paragraph 3. If the countries which individually account for less than three percent (3%) of total Brazilian imports of the product under investigation and of the like product collectively account for more than seven percent (7%) of total Brazilian imports of the product under investigation and of the like product, the volume of the imports under investigation or the volume of dumped imports from each country shall not be considered negligible.

Paragraph 4. The determination of a negligible import volume shall be based on the data related to the period of dumping investigation.

Article 32. It must be demonstrated that the dumped imports, through the effects of dumping, have significantly contributed to the injury affecting the domestic industry.

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

- I. all relevant evidence submitted; and
- II. any known factors other than the dumped imports which at the same time might be injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports.

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

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

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

- I. the volume and prices of imports not sold at dumping prices;
- II. the impact of possible import liberalization processes on domestic prices;
- III. contraction in demand or changes in the patterns of consumption;
- IV. trade restrictive practices of foreign and domestic producers;
- V. competition between foreign and domestic producers;
- VI. developments in technology;
- VII. export performance;
- VIII. productivity of the domestic industry;
- IX. captive consumption; and
- X. imports or resale of the imported product by the domestic industry.

Paragraph 5. The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of criteria such as:

- I. the production process; and
- II. producers' sales and profits.

Paragraph 6. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the domestic like product, for which the necessary information can be provided.

Article 33. The determination of a threat of material injury shall be based on the possibility of occurrence of clearly foreseeable and imminent facts.

Paragraph 1. The expectation of occurrence of the future events referred to in the **chapeau** shall be based on evidence set forth in the case file and not merely on allegation, conjecture, or remote possibility.

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

Paragraph 3. The assessment of the material injury provided for in paragraph 2 shall be based on the criteria established in article 30, paragraph 3.

Paragraph 4. When assessing the effect of further dumped imports on the domestic industry as referred to in paragraph 2, the following factors, *inter alia*, may be considered:

- I. a significant rate of increase of dumped imports into the domestic market indicating the likelihood of a substantial increase in importation of the dumped product;
- II. sufficient spare capacity, or an imminent, substantial increase of the productive capacity in the exporter country, indicating the likelihood of a substantial increase in dumped exports to Brazil;
- III. whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase significantly the demand for further imports; and
- IV. the existence of inventories of the product under investigation.

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

Paragraph 6. The determination that additional dumped imports are imminent and that, unless an anti-dumping measure is applied, material injury would occur must be based on the consideration of the totality of the factors mentioned in paragraph 4, with no one of the factors by itself being able to necessarily give decisive guidance.

#### **Chapter IV DEFINITION OF DOMESTIC INDUSTRY**

Article 34. For the purposes of this Decree, the term "domestic industry" shall be interpreted as referring to the totality of producers of the domestic like product.

Sole Paragraph. Where consideration of the domestic producers as a whole, as referred to in the **chapeau**, is not possible and where duly justified, the term shall be interpreted as referring to those domestic producers whose collective output of the domestic like product constitutes a major proportion of the total domestic production of such product.

Article 35. At the discretion of DECOM, the following may be excluded from the concept of domestic industry:

- I. domestic producers associated or related to foreign producers, exporters, or importers;
- II. those producers whose collective share of imports of the product allegedly sold at dumped prices is significant in comparison with their production of the like product.

Paragraph 1. For the purpose of sub-paragraph I of the **chapeau**, domestic producers shall be considered associated or related to foreign producers, exporters, or importers only in the following cases:

- I. one party directly or indirectly controls the other party;
- II. both parties are directly or indirectly controlled by a third party; or
- III. both parties directly or indirectly control a third party.

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

Paragraph 3. The cases set forth in sub-paragraph I of the **chapeau** shall only lead to the exclusion of the associated or related producer from the concept of domestic industry if there is reason to suspect that the respective bond leads the producer in question to act differently than producers without such bond would otherwise act.

Article 36. In exceptional circumstances in which the Brazilian territory may be divided into two or more competitive markets, the term "domestic industry" may be interpreted as referring to the group of domestic producers of each one of those markets separately.

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

- I. the producers within such market sell all or almost all of their production of the like product in that market; and
- II. the demand in that market is not to any substantial degree supplied by producers of the like product located outside such market.

Paragraph 2. In the case set forth in paragraph 1 above, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into an isolated market and provided further that the dumped imports are causing injury to such isolated market.

## **Chapter V INVESTIGATION**

### **Section I Application and Admissibility**

Article 37. The investigation to determine the existence of dumping, injury, or a causal link between the dumped imports and the alleged injury shall be requested upon a written application by or on behalf of the domestic industry.

Paragraph 1. The application shall be considered to have been made "by or on behalf of the domestic industry," when:

- I. consultations have been held with other domestic producers within the domestic industry engaged in producing the like product during the period of dumping investigation;
- II. the application has been supported by those domestic producers whose collective output constitutes more than fifty per cent (50%) of the total production of the like product produced by the portion of the domestic industry which expressed either support for or opposition to the application during the consultations referred to in the sub-paragraph above.

Paragraph 2. The application shall not be considered to have been made "by or on behalf of the domestic industry" when domestic producers expressly supporting the application account for less than twenty-five percent (25%) of total production of the like product produced by the domestic industry during the period of dumping investigation.

Paragraph 3. In the case of fragmented industries involving an exceptionally large number of domestic producers, the degree of support for or opposition to the application may be determined by using statistically valid sampling techniques.

Paragraph 4. A statement of support for or opposition to the application shall only be considered when accompanied by information on the volume or value of production and on the volume of sales in the domestic market during the period of injury investigation.

Paragraph 5. If the application does not include information on the totality of domestic producers of the like product, a justification for this must be provided pursuant to the sole paragraph of article 34.

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

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

Article 38. The application shall include evidence of dumping, injury to the domestic industry, and the causal link between the dumped imports and the alleged injury.

Sole Paragraph. Simple assertions shall not be considered sufficient to meet the requirements of this article.

Article 39. SECEX shall publish a notice setting forth the information that is to be included in the application, and the format in which it shall be presented.

Article 40. Applications that do not meet the requirements set forth in this section, in the SECEX notice provided for in article 39, or in article 51 shall not be considered.

## **Section II Examination of the Application**

Article 41. The filed application shall, in accordance with the provisions in section I, be examined within a period of fifteen (15) days from the date of filing.

Paragraph 1. Where the application is properly documented and does not require supplementary information, the applicant shall be notified of the initiation of the investigation or denial of the application within an additional period of fifteen (15) days.

Paragraph 2. If only minor additional information or specific corrections and adjustments to the application are required, the applicant shall be directed to make the respective changes within a period of five (5) days from the date of the request.

Paragraph 3. Further information, corrections, or adjustments shall be examined within a period of ten (10) days from the date of the receipt thereof.

Paragraph 4. At the end of the period established in the paragraph above, the applicant shall be notified of the initiation of the investigation or denial of the application within a period of fifteen (15) days.

Paragraph 5. One (1) confidential version and one (1) non-confidential version of the application shall be filed simultaneously.

Paragraph 6. Filed documents not labeled "confidential" or "restricted" shall be treated as public documents.

Article 42. The application shall be examined regarding evidence of the existence of dumping, injury to domestic industry, and causal link between the dumped imports and the alleged injury.

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

Paragraph 2. Applications which lack the evidence mentioned in the **chapeau**, do not meet the requirements and time limits set forth in article 41 for the interested parties, or require substantial supplementary information or significant corrections and adjustments shall be denied.



Article 43. The identification of producers or exporters exclusively within the realm of duly formalized dumping investigations, regardless of their presence in the application, shall be made on the basis of the detailed import data provided by the Secretariat of the Federal Revenue of Brazil of the Ministry of Finance, as established by article 198, paragraph 1, sub-paragraph II of the Law No. 5.172, dated 25 October 1966.

### **Section III Initiation of the Investigation**

Article 44. In exceptional and duly justified circumstances, SECEX may initiate an investigation of its own initiative, provided it has sufficient evidence of the existence of dumping, injury, and a causal link between the dumped imports and the alleged injury.

Article 45. SECEX shall publish a notice announcing the initiation of the investigation and DECOM shall notify the known interested parties of the initiation of the investigation.

Paragraph 1. The notice above shall specify the countries of the exporters or producers subject to investigation, the product under investigation, the date of initiation of the investigation, and the time limits for the interested parties to submit statements and shall include the information on dumping, injury to domestic industry, and causal link between the dumped imports and the alleged injury.

Paragraph 2. The following shall be considered interested parties:

- I. domestic producers of the like product and their representative trade associations;
- II. Brazilian importers who imported the product under investigation during the period of dumping investigation and their representative trade associations;
- III. Foreign producers or exporters that exported the product under investigation to Brazil during the period of dumping investigation and their representative trade associations;
- IV. the government of the exporting country of the product under investigation; and
- V. other domestic and foreign parties affected by the investigation, at DECOM's discretion.

Paragraph 3. Other parties wishing to be considered interested parties shall be granted a period of twenty (20) days from the date of publication of the SECEX notice to submit eligibility applications for themselves and their respective legal representatives.

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

Paragraph 5. If the number of producers or exporters is particularly large, the full text of the application shall be sent only to the government of the exporting country or to the corresponding representative trade association.

Paragraph 6. For the purpose of the obligations established in this Decree, all official communications with the government of the exporting country shall be sent to the exporting country's official representation in Brazil.

Paragraph 7. In the absence of an official representation in Brazil, official communications with the government of the exporting country shall be submitted through the Ministry of External Relations.

Article 46. Anti-dumping investigation procedures may not constitute a barrier to customs clearance.

Article 47. The Brazilian government shall not disclose the existence of applications prior to the publication of the SECEX notice which publicly announces the initiation of the investigation, except

in respect of the government of the exporting country, which shall be notified of the existence of a properly documented application prior to publication of the notice authorizing the initiation of the investigation.

#### **Section IV Fact-Finding Phase**

Article 48. During the investigating proceedings, the existence of dumping, injury to domestic industry, and causal link between the dumped imports and the alleged injury shall be analyzed.

Paragraph 1. The period of dumping subject to investigation, hereinafter "period of dumping investigation", shall comprehend twelve (12) months and be concluded in March, June, September, or December.

Paragraph 2. The applicant shall have until the last business day of the fourth month following the conclusion of the respective period of dumping investigation to file the application without the need to amend the aforementioned period of investigation.

Paragraph 3. Under exceptional and duly justified circumstances, the period of dumping investigation may comprehend less than twelve (12) months, but never less than six (6) months.

Paragraph 4. The period of injury subject to investigation, hereinafter "period of injury investigation", shall comprehend sixty (60) months, divided into five periods of twelve (12) months, where the most recent interval must necessarily correspond to the period of dumping investigation and the other four intervals to the twelve months preceding each previous period and so on until the five periods are concluded.

Paragraph 5. Under exceptional and duly justified circumstances, the period of injury investigation may comprehend less than sixty (60) months, but never less than thirty-six (36) months.

Paragraph 6. Throughout the fact-finding phase, industrial users of the product under investigation and the most representative consumer organizations of the product under investigation may provide information deemed relevant on dumping, injury to the domestic industry, and causal link between the dumped imports and the alleged injury, in cases in which the product is usually sold at retail.

#### **Subsection I Information**

Article 49. The known interested parties in an investigation shall be notified of the information required for the investigation and shall have ample opportunity to submit any written evidence they deem relevant to the investigation.

Paragraph 1. Difficulties encountered by interested parties, especially by small companies, in providing the requested information shall be duly considered and all possible assistance shall be provided.

Paragraph 2. All documents presented by the interested parties shall be attached to the respective case file in chronological order, except those submitted after the due date or noncompliant with the applicable rules, in which cases such circumstance shall be recorded and the interested party notified of DECOM's decision to not attach the respective documents to the case file.

Article 50. The known producers or exporters, the known importers, and other domestic producers, pursuant to article 45, paragraph 2, shall receive questionnaires indicating the necessary information for the investigation and shall have a period of thirty (30) days from the date of acknowledgment, to return such questionnaires, without limitation to the distribution of questionnaires to other interested parties.

Paragraph 1. A thirty (30) day extension of the time limit provided for in the **chapeau** shall be granted, upon request and whenever possible.

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

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

Article 51. All confidential information shall be attached to the confidential case file.

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

Paragraph 2. The interested parties that provide confidential information shall submit restricted summaries with detail as to enable an understanding of the information provided, under penalty of such confidential information being disregarded.

Paragraph 3. If the submission of the summary is not possible, the parties shall provide a written explanation for this circumstance.

Paragraph 4. The explanations provided for in paragraphs 1 and 3 do not constitute confidential information.

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

- I. such information is clearly of a public nature in Brazil or is in the public domain in Brazil or abroad; or
- II. such information is related to:
  - a) the shareholding structure and to the identification of the respective controlling party;
  - b) the corporate organization of the group to which the entity belongs;
  - c) the volume of production, domestic sales, exports, imports, and inventories;
  - d) any contracts executed by means of a public deed or filed with a notary public or a commercial registry office in Brazil or abroad; and
  - e) property, financial, and corporate statements of a publicly-held company, a company equivalent to a publicly-held company, or companies controlled by publicly-held companies, including foreign companies, and their full subsidiaries, which must be published or disclosed under the applicable corporate or securities market laws.

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

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

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

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

Paragraph 10. The interested party is responsible for the indication of the confidential nature of the documents submitted, which must be clearly displayed in red at the top-center and bottom-center of each page.

Paragraph 11. All pages must be sequentially numbered and include indication of the total number of pages in the document.

Article 52. DECOM shall, in the course of the investigation, verify the accuracy of the information provided by the interested parties.

Paragraph 1. On-the-spot investigations may be conducted in the territory of other countries, provided that authorization is granted by the involved companies, that the government of the corresponding country is notified, and that such government does not raise any objections to the procedure.

Paragraph 2. The procedures described in chapter XIII shall be applied to on-the-spot investigations conducted in the territory of the exporting country.

Paragraph 3. On-the-spot investigations may be conducted in companies located within the national territory, provide that such companies authorize these procedures.

Article 53. DECOM shall take into consideration the studies submitted by the interested parties, provided the following conditions are met:

- I. tables and graphs shall include detailed references of the respective sources of information and specify the calculations and adjustments used for their preparation, in a way to permit their reproduction based on the original data;
- II. submissions must indicate the corresponding references and sources used;
- III. statistical and econometric estimates, as well as simulations, shall include all methodological information, such as:
  - a) the database used, by electronic means, which reports the source of the data and identifies the variables and the period to which they refer;
  - b) the specification of the computer program used for the estimate;
  - c) the justification of the period chosen for the estimate;
  - d) the justification for the exclusion of an observation in the sample, if applicable;
  - e) the explanation for the assumptions of the econometric analysis or simulation, justifying the functional forms adopted;
  - f) the explanation of how the proposed tests relate to the question raised in the investigation to which they refer;
  - g) the data provided by the party itself, duly accompanied by a statement of responsibility for the veracity of the information provided signed by the respective legal representative;
  - h) any and all data, detailed calculations, methodologies, and information, regardless of how they were stated, which are necessary for a full understanding and reproduction of the results submitted; and
  - i) other information, at the discretion of DECOM.

Sole Paragraph. Any studies containing confidential information or submitted in noncompliance with the provisions of this article may be disregarded by DECOM in its determinations.

## **Subsection II Defense**

Article 54. The interested parties shall be assured ample opportunity to defend their interests.

Article 55. Hearings shall be held with the interested parties upon request by one or more of the interested parties or by initiative of DECOM, in order to ensure the right to an adversarial proceeding and ample defense.

Paragraph 1. Hearings shall be requested in writing within a period of five (5) months from the date of initiation of the investigation, and the request shall include a list of the specific matters to be addressed in the hearing.

Paragraph 2. Only requests for hearings involving matters relating to dumping, injury to domestic industry, or causal link between the dumped imports and the alleged injury shall be granted.

Paragraph 3. The known interested parties shall be notified of the hearing and of the matters to be addressed at least twenty (20) days prior to such hearing.

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

Paragraph 5. Interested parties shall submit in writing the arguments they wish to present at least ten (10) days prior to the hearing and indicate the legal representatives that will be attending the hearing at least three (3) days prior thereto. Interested parties may submit additional oral information at the hearing.

Paragraph 6. DECOM shall only consider oral information presented at the hearing if such information is submitted in writing and filed within a period of ten (10) days following the hearing, in order to be attached to the restricted case file.

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

Paragraph 8. The recordings or the respective transcripts shall also be attached to the restricted case file.

Article 56. At the discretion of DECOM, the number of representatives per interested party taking part in the hearing may be limited.

Article 57. The hearing shall not affect the time limits established in this Decree.

Article 58. All of the interested parties shall be assured the right to procedural follow-up of the restricted case file.

Paragraph 1. The procedural follow-up of the information in the restricted case file shall be granted through a written request and accomplished at DECOM headquarters or by means of electronic access.

Paragraph 2. Electronic access shall be authorized through the issuance of an individual password to the interested parties, which shall remain responsible for ensuring such passwords are not disclosed, under penalty of forfeiting the right to monitor the investigation by electronic means, without limitation to other applicable administrative, civil, and criminal penalties provided by law.

Paragraph 3. SECEX shall publish a notice on electronic access to the case file.

### **Subsection III Final Procedures Concerning the Fact-Finding Phase**

Article 59. The period for submitting information of the investigation shall be concluded within a period no longer than one hundred and twenty (120) days from the date of publication of the preliminary determination.

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

Article 60. The period for submission of statements on the data and the information in the restricted case file shall end twenty (20) days from the date of conclusion of the period for submitting information.

Article 61. DECOM shall provide the interested parties with a technical note containing the essential facts under analysis which are to be considered in the final determination provided for in article 63 within thirty (30) days from the date of conclusion of the period for submission of statements mentioned in the paragraph above.

Article 62. Interested parties shall have twenty (20) days from the date of disclosure of the technical note to submit their final written statements.

Sole Paragraph. Upon termination of the period provided for in the **chapeau**, the fact-finding phase of the proceeding shall be concluded and subsequent information submissions shall not be considered for the purpose of the final determination, which shall include all of the factual and legal elements relating to the investigation and the final conclusions on the existence of dumping, injury to the domestic industry, and causal link between the dumped imports and the alleged injury.

Article 63. DECOM shall prepare the final determination on the investigation within twenty (20) days from the date of conclusion of the period referred to in article 62.

Article 64. Documents submitted after the due date shall not be considered for the purpose of the determinations and, if not withdrawn by the party within the period established by DECOM, shall be destroyed.

### **Section V Preliminary Determination and Provisional Measures**

Article 65. DECOM shall prepare the preliminary determination, including all factual and legal elements available on the existence of dumping, injury to the domestic industry, and causal link between the dumped imports and the alleged injury, within a period of up to one hundred and twenty (120) days, but never less than sixty (60) days, from the date of initiation of the investigation.

Paragraph 1. Exceptionally, the period in the **chapeau** may be extended to up to two hundred (200) days from the date of initiation of the investigation.

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

Paragraph 3. Preliminary affirmative or negative determinations of dumping, injury to the domestic industry, and causal link between the dumped imports and the alleged injury shall be timely attached to the restricted case file.

Paragraph 4. Preliminary negative determinations of injury to the domestic industry or causal link between the dumped imports and the alleged injury may provide grounds for terminating the investigation, provided that the obligation to distribute the technical note specifying the essential facts referred to in article 61 is observed.

Paragraph 5. SECEX shall publish the preliminary determination within a period of up to three (3) days from the date of such determination, which shall establish the time limits provided for in articles 59 to 63.

Paragraph 6. Recommendations for the application of provisional duties shall be forwarded to CAMEX, which, immediately following its decision on whether to apply such duties, shall publish the corresponding notice.

Paragraph 7. The preliminary determination shall be prepared based on the evidence submitted within a period of sixty (60) days from the date of initiation of the investigation.

Paragraph 8. Evidence submitted after the period mentioned in paragraph 7 may be utilized by DECOM if the respective analysis does not jeopardize the fulfillment of the time limit established in the **chapeau**.

Article 66. Provisional duties may only be applied if:

- I. an investigation has been initiated in accordance with the provisions in section III of chapter V, the public notice authorizing initiation of the investigation has been published, and the interested parties have been granted adequate opportunity to submit information and make comments;
- II. there is a preliminary affirmative determination of dumping, injury to the domestic industry, and causal link between the dumped imports and the alleged injury; and
- III. CAMEX deems such measures necessary to prevent injury being caused during the investigation.

Paragraph 1. The amount of the provisional antidumping measure shall not exceed the margin of dumping.

Paragraph 2. Provisional anti-dumping measures shall be applied as a provisional duty or as a security equal to the amount of the provisional anti-dumping duty.

Paragraph 3. The provisional duty shall be paid and the security shall be provided through cash deposit or bank bond, and the Secretariat of the Federal Revenue of Brazil of the Ministry of Finance shall establish the respective payment procedures.

Paragraph 4. CAMEX shall publish the notice on the application of provisional anti-dumping measures, in accordance with chapter X.

Paragraph 5. Customs clearance of the products subject to provisional anti-dumping measures shall be contingent on payment of the duty or provision of the security.

Paragraph 6. The application of provisional anti-dumping measures shall be limited to a period no longer than four (4) months, except in cases in which, by decision of the Council of Ministers of CAMEX and upon request of exporters representing a significant percentage of the trade in question, a period of up to six (6) months is ordered.

Paragraph 7. Exporters may submit a written request for a time extension of the application of provisional anti-dumping measures within a period of up to thirty (30) days prior to termination of the effective period of such measures.

Paragraph 8. If a provisional anti-dumping measure less than the margin of dumping is applied, the periods in paragraph 6 shall be of six (6) months and nine (9) months, respectively.

## **Section VI Price Undertakings**

Article 67. Investigation may be suspended without the imposition of provisional measures or definitive anti-dumping duties, if the exporter or producer voluntarily assumes undertakings to revise prices or to cease exports to Brazil at dumped prices, provided that the authorities cited in

article 2 are convinced that said undertaking is satisfactory to eliminate the injury to the domestic industry resulting from dumped imports.

Paragraph 1. The undertaking referred to in this article shall be celebrated before DECOM and submitted for approval by the Council of Ministers of CAMEX.

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

Paragraph 3. The investigation of dumping, injury to the domestic industry, and causal link between the dumped imports and the alleged injury may be continued upon request of the exporter or at DECOM's discretion.

Paragraph 4. Price increases under the undertaking shall not exceed the margin of dumping.

Paragraph 5. Price increases provided for in the paragraph above shall be equal to or less than the determined margin of dumping, with the sole purpose of eliminating the effects of the dumped imports on the domestic industry.

Paragraph 6. Exporters may only offer price undertakings or accept those offered by DECOM during the period comprehended between the date of publication of the affirmative preliminary determination of dumping, injury to the domestic industry, and causal link between the dumped imports and the alleged injury and the end of the period for submitting information.

Paragraph 7. SECEX shall publish an act with the information that must be included in price undertaking proposals.

Paragraph 8. Exporters shall not be required to offer price undertakings or be forced to accept price adjustments or undertakings offered by DECOM.

Paragraph 9. The price undertaking proposals shall in no way harm the course of the investigation or alter the preliminary determination.

Paragraph 10. DECOM may refuse to accept any price undertakings deemed ineffective or impracticable.

Paragraph 11. The decision to refuse acceptance of the undertakings provided for in the paragraph above shall take into account, among other factors, the degree of homogeneity of the product, the number of price undertakings offered, and the existence of association or relationship between the interested parties, pursuant to article 14, paragraph 10.

Paragraph 12. The producer or the exporter shall be informed of the reasons which led the authorities to consider the undertaking ineffective or impracticable and a period of ten (10) days shall be granted to submit written comments thereon.

Paragraph 13. The analysis of the possibility of approval of the price undertaking shall take into account whether the undertaking was offered by the producers or the exporters of the Member States of MERCOSUR.

Article 68. CAMEX shall publish the notice approving the price undertaking, which shall include, among other information:

- I. the name of the producers or exporters to which the price undertaking shall apply;
- II. a description of the product subject to the measure; and
- III. the terms of the price undertaking.

Article 69. The producer or the exporter subject to the price undertaking shall provide periodically, if requested, information related to the fulfillment of the undertaking and all on-the-spot investigations of relevant data, under penalty of a determination of violation of the terms of the price undertaking.



Article 70. If evidence of the violation of the price undertaking emerges, the producer or the exporter shall be given the opportunity to submit comments thereon.

Article 71. Where the violation of the price undertaking is verified, DECOM shall notify the producer or the exporter in question and CAMEX shall publish a notice on the resumption of the investigation and on the immediate application of provisional duties or on the application of definitive duties.

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

## **Section VII Conclusion of the Investigation**

Article 72. The investigation shall be concluded within a period of ten (10) months from the date of initiation of the investigation, except in exceptional circumstances, in which case the investigation may comprehend a period of up to eighteen (18) months.

Article 73. The applicant may, at any time and upon justification, request termination of the investigation.

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

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

Article 74. The investigation shall be terminated without the imposition of duties where:

- I. there is insufficient evidence of dumping, injury to the domestic industry, or causal link between the dumped products and the alleged injury;
- II. the margin of dumping is **de minimis**; or
- III. the actual or potential volume of the dumped imports, pursuant to article 31, paragraphs 2 and 3, or the injury to the domestic industry is negligible.

Sole Paragraph. Where the investigation is terminated based on a negative determination, a new application on the same product shall only be examined if filed no sooner than twelve (12) months following the conclusion of the investigation, period which may be reduced to six (6) months, in exceptional cases and upon justification.

Article 75. DECOM shall only recommend the imposition of antidumping duties when it has reached a final affirmative determination of dumping, injury to the domestic industry, and causal link between the dumped imports and the alleged injury.

Article 76. Where a price undertaking has been approved, followed by continuation of the investigation:

- I. if DECOM reaches a negative determination of dumping, injury to the domestic industry, or causal link between the dumped imports and the alleged injury, the investigation shall be terminated and the price undertaking shall be automatically extinct, except where such negative determination is substantially due to the existence of the price undertaking. In such cases, the undertaking may be maintained for a reasonable period and CAMEX shall publish the corresponding notice;
- II. if DECOM reaches an affirmative determination of dumping, injury to the domestic industry, or causal link between the dumped imports and the alleged injury, the investigation shall be concluded and the imposition of the definitive duty suspended while the price undertaking remains in effect.

Article 77. CAMEX shall publish the decision authorizing imposition of definitive measures, pursuant to chapter X.

**Chapter VI**  
**IMPOSITION AND COLLECTION OF ANTI-DUMPING DUTIES**

**Section I**  
**Imposition**

Article 78. The term "anti-dumping duty" shall be understood as a monetary amount equal to or less than the determined margin of dumping.

Paragraph 1. Except in the cases provided for in paragraph 3 and CAMEX decisions under article 3, anti-dumping duties shall be less than the margin of dumping where such amount is sufficient to remove the injury to the domestic industry caused by the dumped imports.

Paragraph 2. The amount of the anti-dumping duty may not exceed the margin of dumping.

Paragraph 3. The amount of the anti-dumping duty shall correspond exactly to the margin of dumping in the following cases:

- I. producers or exporters whose margin of dumping was calculated on the basis of the best information available or whose anti-dumping duty was imposed pursuant to article 80;
- II. affirmative re-determinations in respect of the **chapeau** of article 155, sub-paragraph II; and
- III. reviews:
  - a) by virtue of changes in circumstances which, under chapter VIII, section II, subsection I, involve strictly the calculation of the margin of dumping;
  - b) of new producers or exporters, under chapter VIII, section III, subsection I; or
  - c) anti-circumvention, under chapter VIII, section III, subsection II, provided the anti-dumping duty in force was imposed on the basis of the margin of dumping.

Paragraph 4. The anti-dumping duty shall be applied as a fixed or variable, **ad valorem** or specific rate, or through a combination of the two.

Paragraph 5. The **ad valorem** rate shall be applied on the customs value of the goods, on CIF basis, calculated pursuant to the applicable legislation.

Paragraph 6. The specific rate shall be applied in foreign currency and converted into national currency, pursuant to the applicable legislation.

Article 79. The imposition of measures in force may be extended to imported products from third countries, as well as imported parts, pieces and components of the product subject to anti-dumping measures, where trade practices aimed at circumventing the anti-dumping measures in force are verified, in accordance with the provisions on the anti-circumvention review set forth in chapter VIII, section III, subsection II.

Article 80. Where, pursuant to article 28, it is determined that examination on a case-by-case basis would be unduly burdensome for DECOM or would prevent conclusion of the investigation within the established time limits, anti-dumping duties in the same amount shall be imposed for all known producers and exporters who, even if not included in the sampling selection, submitted the information requested in paragraphs 6 and 7 of article 28.

Paragraph 1. The individual anti-dumping duties in the same amount provided for in the **chapeau** shall be calculated on the basis of the weighted average margin of dumping determined for the producers and the exporters included in the sampling selection conducted pursuant to article 28.

Paragraph 2. Where specific information was not requested, individual anti-dumping duties shall be applied for all of the known producers or exporters in the same amount.

Paragraph 3. The calculation of the margin of dumping as provided for in the **chapeau** shall not take into account zero or **de minimis** margins of dumping.

Paragraph 4. For all other producers and exporters shall be applied anti-dumping duties calculated on the basis of the best information available, pursuant to article 50, paragraph 3.

Article 81. In accordance with article 36, anti-dumping duties shall be collected only on imports of the product under investigation if destined for final consumption in the market considered for purpose of the determination of an isolated market.

## **Section II Collection**

Article 82. Irrespective of any tax obligations relative to the imported product under investigation, provisional and definitive anti-dumping duties shall be collected from such product where a provisional or final affirmative determination has been made and all requirements for application of duties have been met.

Article 83. Duties shall not be applied to imports of the product for producers or exporters for which price undertakings have been approved.

## **Section III Retroactive collection**

Article 84. Except in the case provided for in this section, provisional measures and definitive anti-dumping duties shall only be applied to products whose known date of shipping to Brazil is posterior to the date of publication of the notice setting forth the decision prescribed in article 66, paragraph 4, and article 77.

Article 85. Anti-dumping duties may be applied retroactively only in cases of a final affirmative determination of material injury to the domestic market.

Sole Paragraph. When a final affirmative determination of threat of material injury to the domestic market is made, the retroactive application of anti-dumping duties shall only be allowed where the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of material injury to the domestic industry.

Article 86. The amount of the provisional duty collected, guaranteed by deposit or bond, shall be refunded, reimbursed, or terminated in an expedited manner in the following cases:

- I. a final affirmative determination of threat of material injury to the domestic industry;
- II. material retardation to the establishment of the domestic industry; or
- III. a final negative determination of dumping, injury to the domestic industry, or causal link between the dumped imports and the alleged injury.

Article 87. If the definitive anti-dumping duty is higher than the provisional duty paid or the amount estimated for the purpose of the security, the difference shall not be collected.

Article 88. If the definitive anti-dumping duty is lower than the provisional duty paid or the amount estimated for the purpose of the security, the difference shall be refunded or reimbursed, as the case may be.

Article 89. A definitive anti-dumping duty may only be collected on dumped imports whose known date of shipping, as reflected in the respective bill of lading, is up to ninety (90) days prior to the application of the provisional measures and where it is verified, in respect of the dumped product, that:

- I. there is a history of dumping, of injury to the domestic industry, and of a causal link between the dumped imports and the alleged injury or that the importer was, or should have been, aware that the producer or exporter practices dumping and that such dumping would cause injury, and
- II. the injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports and other circumstances – such as a rapid build-up of inventories of the imported product – is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

Paragraph 1. No duties shall be levied on products whose known date of shipping, as reflected in the bill of lading, is prior to the initiation of the investigation or to the violation of the price undertaking.

Paragraph 2. The importers involved shall be granted time to submit written comments on the anti-dumping measure.

Article 90. For the purpose of the provision in article 89, sub-paragraph I, the following considerations shall apply:

- I. there is a history of injury-causing dumping when:
  - a) the dumped imports were subject to a provisional or definitive anti-dumping measure applied in Brazil; or
  - b) the dumped imports are or were subject to a provisional or definitive anti-dumping measure applied in a third country; and
- II. the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury where the imported products were known to be shipped, as reflected in the bill of lading, on a date subsequent to initiation of the investigation.

Article 91. The factual and legal elements that led to the retroactive collection of definitive anti-dumping duties shall be included in the CAMEX decision ordering retroactive collection of definitive duties.

Sole Paragraph. For the purpose of article 90, sub-paragraph II, the importer shall be responsible for demonstrating to the *Secretariat* of the *Federal Revenue* of Brazil of the Ministry of Finance that the date reflected on the bill of lading precedes the SECEX public notice on the basis of which the investigation was initiated.

## **Chapter VII DURATION OF ANTI-DUMPING DUTIES AND PRICE UNDERTAKINGS**

Article 92. Anti-dumping duties and price undertakings shall remain in force only to the extent necessary to counteract the dumped imports which are causing injury to the domestic industry.

Article 93. Any definitive anti-dumping duty shall be terminated on a date not later than five (5) years from the date of its imposition or from the conclusion of the most recent review of the dumping, injury to the domestic industry, and causal link between the dumped imports and the alleged injury, pursuant to chapter VIII, section II.

**Chapter VIII**  
**REVIEW OF ANTI-DUMPING DUTIES AND**  
**PRICE UNDERTAKINGS**

**Section I**  
**Applicable Principles and Provisions**

Article 94. The reviews set forth in this chapter shall comply with the provisions of chapters I, II, III, X to XIV and with the principles, time limits, and procedures established in chapter V, unless as otherwise provided for in this chapter.

Sole Paragraph. For the reviews in section II, the provision in article 73 may also be applied.

Article 95. The reviews prescribed in this chapter shall be requested by means of a reasoned written application grounded on evidence submitted by the interested parties.

Paragraph 1. DECOM may conduct, at its discretion, and on justification, the review proceedings provided for in this chapter simultaneously or together.

Paragraph 2. Interested parties shall be considered those listed in article 45, paragraph 2, unless as otherwise provided for in this chapter.

Article 96. DECOM shall notify the interested parties of the initiation of a review conducted under this chapter.

Article 97. The interested parties shall be granted ample opportunity to submit written evidence considered relevant to the review.

Article 98. Except as otherwise provided for in this chapter, the period of review shall be established pursuant to article 48.

Article 99. SECEX shall publish a notice with a model petition for each of the reviews prescribed in this chapter.

Article 100. The provisions set forth in this chapter shall also apply to price undertakings.

**Section II**  
**Reviews related to the Application of Duties**

**Subsection I**  
**Review of Duties Based on Changed Circumstances**

Article 101. At the request of any interested party to the original investigation or the last review of dumping, injury to the domestic industry, and causal link between the dumped imports and the alleged injury who submits a written application with evidence indicating a change in the circumstances which justified the imposition of the anti-dumping duty, DECOM may initiate a review under this subsection, provided that a period of at least one (1) year has elapsed since the application, modification, extension of the duration, or extension of the scope of a definitive anti-dumping duty.

Paragraph 1. The changed circumstances shall be significant and lasting and shall not constitute mere oscillations or fluctuations inherent to the market, among others.

Paragraph 2. Exceptionally, a review may be initiated under this subsection within a period less than that set in the **chapeau**, provided appropriate justification is given by the applicant.

Article 102. Based on the determination established by DECOM:

- I. the anti-dumping duty may be terminated, where:
  - a) dumping; or

b) injury

is considered unlikely to continue or resume.

II. the anti-dumping duty may be modified if:

- a) it is found to be insufficient or excessive for the purpose of neutralizing the dumping; or
- b) it is found to be insufficient to remove the injury to the domestic industry caused by the dumped imports.

Article 103. In the cases set forth in "a" of sub-paragraphs I and II of the article above, the analysis shall be based on an objective examination of all relevant factors, including:

- I. the existence of dumping while the measure was in force;
- II. the performance of the producer or the exporter in respect of the production, utilization of installed capacity, costs, volume of sales, prices, exports, and profits;
- III. changes in market conditions in the exporting country and other countries, including changes in supply and demand of the product, prices, and the market share of the producer or the exporter in the exporting country; and
- IV. the application of trade defense measures on the like product by other countries and the consequent possibility of trade diversion to Brazil.

Paragraph 1. Requests for the calculation of a new margin of dumping shall include, among other information, data on the export price and the normal value during the period of review, provided the transactions made during such period involved significant quantities.

Paragraph 2. The duty to be levied by virtue of the change in circumstances shall not exceed the margin of dumping calculated for the period of review.

Article 104. In the cases set forth in "b" of sub-paragraphs I and II of article 102, the review shall be based on an objective examination of all relevant factors, including:

- I. the state of the domestic industry during the time the definitive duty was in force;
- II. the volume of imports of the product subject to the measure during the time such measure was in force and the likely trend of such imports in absolute terms and relative to the production or consumption of the like product in the Brazilian domestic market;
- III. the likely price of the dumped imports and the likely effect thereof on the prices of the like product in the Brazilian domestic market;
- IV. the likely impact of the dumped imports on the domestic industry as assessed on the basis of all the relevant factors and pertinent economic indices provided for in article 30, paragraphs 2 and 3;
- V. changes in market conditions in the exporting country, Brazil, or third markets, including changes in the supply and demand of the like product by virtue, for example, of the imposition of trade defense measures by other countries; and
- VI. the likely effect of factors other than the dumped imports on the domestic industry, such as:
  - a) the volume and price of imports not subject to anti-dumping duties;
  - b) the impact of import liberalization processes on domestic prices;

- c) contraction in demand or changes in the patterns of consumption;
- d) trade restrictive practices of and competition between foreign and domestic producers,
- e) developments in technology;
- f) export performance;
- g) productivity of the domestic industry;
- h) captive consumption; and
- i) imports or resale of the imported product by the domestic industry.

Article 105. The review shall be concluded within a period of ten (10) months from the date of initiation of the review.

Paragraph 1. In exceptional circumstances, this time limit may be extended by up to two (2) months.

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

#### **Subsection II Sunset Review**

Article 106. The time period for imposition established in article 93 may be extended by means of a sunset review under this subsection for an equal period if it is determined that the termination of the anti-dumping duty would be highly likely to lead to a continuation or recurrence of dumping or the injury arising therefrom.

Article 107. Determination as to whether the termination of the measure would be likely to lead to the continuation or recurrence of the dumping shall be based on an objective examination of all of relevant factors, including those set forth in article 103.

Paragraph 1. The measure to be imposed by virtue of a sunset review may be determined on the basis of the margin of dumping calculated for the period of review, if it is found that the margin of dumping adequately reflects the behavior of the producers or the exporters during the entire period of review and the amount of the duty shall not exceed the margin of dumping calculated for the period of review.

Paragraph 2. If the margin of dumping calculated for the period of review does not adequately reflect the behavior of the producers or the exporters during the entire period of review, the duration of the duty may be extended without modification.

Paragraph 3. In the absence of exports from the country subject to the measure or in the case of exports in negligible quantities during the period of review, the probability of the recurrence of dumping shall be determined on the basis of a comparison between the internalized average normal value in the Brazilian market and:

- I. the average sale price of the like domestic product in the Brazilian market, determined for the period of review; or
- II. the average export price of other foreign suppliers to the Brazilian market in transactions involving substantial quantities, determined for the period of review.

Paragraph 4. In the case of an affirmative determination under the paragraph above, the time extension of the anti-dumping duty shall be recommended in an amount equal to or less than the duty in force.

Article 108. Determination that termination of the duty would very likely result in continuation or recurrence of the injury shall be based on an objective examination of all the relevant factors, including those set forth in article 104.

Article 109. In circumstances in which there is uncertainty about the likely future evolution of imports of the product subject to an anti-dumping duty, DECOM may recommend the extension of the duration of the duty with immediate suspension of its application.

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

Article 110. The sunset review shall be requested by or on behalf of the domestic industry by means of a reasoned written application containing evidence that termination of the anti-dumping duty would very likely lead to continuation or recurrence of the dumping or injury arising therefrom.

Article 111. The application for a sunset review shall be filed at least four (4) months prior to expiry of the anti-dumping duty provided for in article 93, under penalty of the application being deemed untimely.

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

Article 112. The review shall be concluded within a period of ten (10) months from the date of initiation of the review.

Paragraph 1. In exceptional circumstances, the time limit above may be extended by up to two (2) months.

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

### **Section III Reviews related to the Scope and Collection of the Duty**

#### **Subsection I Review for New Producers or Exporters**

Article 113. When a product is subject to an anti-dumping duty, the producer or the exporter which did not export to Brazil during the period of investigation that resulted in the application, modification, extension of the duration, or extension of the scope of an anti-dumping duty in force may submit a reasoned written application for review of such duty, for the purpose of determining, in an expeditious manner, an individual margin of dumping.

Sole Paragraph. The producer or the exporter referred to in the **chapeau** shall submit sufficient factual and legal elements to demonstrate that:

- I. it does not maintain a relationship or association, pursuant to article 14, paragraph 10, with producers or exporters, located in the exporting country and subject to the anti-dumping duty in force, who exported during the period of investigation that resulted in the application, modification, extension of the duration, or extension of the scope of an anti-dumping duty in force; and
- II. it did not export during the period of investigation that resulted in the application, modification, extension of the duration, or extension of the scope of an anti-dumping duty in force.

Article 114. If the applicant is not the producer of the product subject to the measure, the request shall include, in addition to the information requested pursuant to article 113:

- I. the name of the producer; and



- II. a statement from the producer that it will cooperate with the review by submitting data on the manufacturing costs and the sale price of the like product in the domestic market of the exporting country during the period of review.

Paragraph 1. If the exporter is not considered to be a market economy, a producer in the same third country used in the procedure immediately prior to initiation of the review shall be indicated for the purpose of determining the normal value.

Paragraph 2. In the event of substantial quantities of Brazilian imports of the applicant's product within a period of six (6) months, information on the manufacturing costs and normal value of the like product in the exporting country shall be included in the application, in addition to information on the export volume and price to Brazil as well as any adjustments required for the purpose of ensuring a fair comparison.

Paragraph 3. The application shall be filed up to four (4) months from the termination of the period provided for in the paragraph above.

Article 115. DECOM shall have two (2) months to determine whether the application was properly documented and, in the case of an affirmative determination, SECEX shall publish a notice to inform the initiation of the review.

Paragraph 1. CAMEX shall issue a notice suspending the collection of the anti-dumping duty imposed on imports of the product exported by the producer or exporter applying for the review during the course of such review and require from the importers of such product security in the form of a cash deposit or bond equal to the amount of the suspended duties.

Paragraph 2. The Secretariat of the Federal Revenue of Brazil of the Ministry of Finance shall verify the security provided for in this article at the time of customs clearance.

Paragraph 3. DECOM shall notify the interested parties on the initiation of the review.

Article 116. In the event of absence of Brazilian imports of the applicant's product in an amount sufficient to determine the individual margin of dumping, CAMEX may suspend the collection of the anti-dumping duty on imports of the product exported by the applicant, which are destined for final consumption in Brazil, within a non-extendable period of six (6) months from publication of the CAMEX notice.

Paragraph 1. The suspension provided for in the **chapeau** may only occur following the filing of an application for review of new producer or exporter, in accordance with the requirements established in articles 113 and 114.

Paragraph 2. The notice of the suspension provided for in the **chapeau** shall require security in the form of a cash deposit or bond equal to the amount of the suspended duties to be provided by the importers of the product exported by the applicant.

Paragraph 3. Upon expiry of the period provided for in the **chapeau**, the applicant shall have up to thirty (30) days to file the information on the manufacturing costs and normal value of the like product in the exporting country, as well as the export volume and price for Brazil and any adjustment required for the purpose of ensuring a fair comparison.

Paragraph 4. The information in the paragraph above shall refer to the period provided for in the **chapeau**.

Paragraph 5. After the information in paragraph 3 has been filed, DECOM shall have thirty (30) days to examine such information.

Paragraph 6. Once the petition has been properly documented, SECEX shall publish a notice to inform the initiation of the review.

Paragraph 7. If the information is not filed within the time limit set in paragraph 3, DECOM shall reject the petition and CAMEX shall order conversion of the security provided.

Paragraph 8. If, after the expiry of the period provided for in the **chapeau**, the amount of imports is not sufficient to determine the margin of dumping DECOM shall reject the petition and CAMEX shall order the resumption of the collection of the anti-dumping duty and the conversion of the security provided.

Paragraph 9. From the end of the period of suspension referred to in the **chapeau** through the initiation of the review, the anti-dumping duties shall be normally collected.

Article 117. The individual margin of dumping shall be calculated on the basis of the data used for the period of review.

Article 118. DECOM may request from the applicant further information, which shall be submitted within a non-extendable period of five (5) days from the date of acknowledgment of such request.

Sole Paragraph. In the event the applicant refuses access to the required information, fails to submit information timely, or hinders the review, SECEX shall terminate the review without determination of the individual margin of dumping for the producer or the exporter and CAMEX shall issue a notice ordering resumption of the collection of the anti-dumping duty and conversion of the security provided.

Article 119. The period for submitting information of the review shall be concluded within a period of ninety (90) days from the date of initiation of the review. Evidence submitted after the conclusion of such phase shall not be attached to the case file.

Article 120. The reviews provided for in this subsection shall be concluded within a period of seven (7) months from the date of their initiation.

Paragraph 1. CAMEX shall issue an act ordering resumption of the collection of the duty levied on imports of the product of the producer or the exporter benefited by the review in an equal amount to the definitive individual duty determined in the review.

Paragraph 2. The security provided shall be converted if the value of the definitive individual duty is greater than such security.

Paragraph 3. If the individual duty is less than the amount of the security, the exceeding amount may be subject to reimbursement, pursuant to subsection III.

### **Subsection II Anti-Circumvention Review**

Article 121. The scope of an anti-dumping measure may be extended by an anti-circumvention review under this subsection for the following imports:

- I. parts, pieces or components originating in or from the country subject to the anti-dumping measure destined for the manufacturing in Brazil of the product subject to the anti-dumping measure;
- II. a product from third countries whose manufacture, using parts, pieces or components originating in or from the country subject to the anti-dumping measure, results in the product subject to the anti-dumping measure; or
- III. a product originating in or from the country subject to the anti-dumping measure containing marginal modifications in relation to the product subject to the measure but that do not alter the final use or purpose of the product subject to the anti-dumping.

Article 122. Circumvention is considered as a trade practice aimed at frustrating the effectiveness of an anti-dumping measure in force through the introduction of the imports provided for in article 121 into the national territory.

Article 123. The existence of circumvention shall be determined by the combined examination of the information relative to the countries of origin of the exports of the products or of the parts,

pieces and components and the producers and exporters of such countries, or, in addition, the Brazilian importers of such parts, pieces and components, pursuant to article 121.

Paragraph 1. Examination of the information in the countries of origin of the exports of the products or parts, pieces and components referred to in the **chapeau** shall encompass the countries in question as a whole, for the purpose of determining whether:

- I. by virtue of changes in the trade flows from these countries following initiation of the original investigation or review, the effectiveness of an anti-dumping measure in force is being thwarted, as assessed in terms of the price and imported quantity of the product subject to the review; and
- II. the changes in trade flows from these countries following initiation of the original investigation or review are the product of a process, activity, or practice for which there is no economic basis or justification other than to thwart the effectiveness of the anti-dumping measure in force.

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

- I. in the case of article 121, sub-paragraph I:
  - a) the resale, in Brazil, of the product subject to the anti-dumping measure manufactured with parts, pieces or components originating in or from the country subject to the anti-dumping measure occurred at prices below the normal value determined for the product subject to the anti-dumping measure;
  - b) the parts, pieces or components originating in or from the country subject to the anti-dumping measure are not used for purposes other than the manufacture of the product subject to the anti-dumping measure;
  - c) manufacturing began or substantially increased in Brazil following initiation of the investigation which resulted in the application of the anti-dumping measure; and
  - d) the parts, pieces or components originating in or from the country subject to the anti-dumping measure account for sixty percent (60%) or more of the total value of the parts, pieces or components of the product manufactured in Brazil.
- II. in the case of article 121, sub-paragraph II:
  - a) the export of the product to Brazil occurred at prices below the normal value determined for the product subject to the anti-dumping measure;
  - b) the export of the product to Brazil corresponded to a significant proportion of the total sales of the producer or the exporter;
  - c) the export of the product to Brazil began or substantially increased following initiation of the investigation which resulted in the anti-dumping measure; and
  - d) the parts, pieces or components originating in or from the country subject to the anti-dumping measure account for sixty percent (60%) or more of the total value of the parts, pieces or components of the product exported to Brazil.
- III. in the case of article 121, sub-paragraph III:
  - a) the export of the product containing marginal modifications to Brazil occurred at prices below the normal value determined for the product subject to the anti-dumping measure;

- b) the export of the product containing marginal modifications to Brazil corresponded to a significant proportion of the total sales of the producer or the exporter; and
- c) the export of the product containing marginal modifications to Brazil began or substantially increased following initiation of the investigation which resulted in the application of the anti-dumping measure;

Paragraph 3. Circumvention shall not be considered to occur when the added value in the manufacturing operations provided for in article 121, sub-paragraph I, is above thirty-five percent (35%) of the manufacturing cost of the product.

Paragraph 4. For the purpose of paragraph 3, the manufacturing cost shall not include:

- I. depreciation costs
- II. packaging costs
- III. costs and expenses not directly related to the manufacture of the product.

Article 124. The anti-circumvention review shall be based on the investigation which resulted in the application or extension of the duration of the anti-dumping measure.

Article 125. An anti-circumvention review may be requested by an interested party in the original investigation through a written application, or, if the duration of the measure has already been extended, by the interested party in the last review of the anti-dumping measure in question by means of a written application, or, exceptionally, on the initiative of SECEX.

Article 126. For the purpose of the anti-circumvention review, the interested parties in an anti-circumvention review shall include:

- I. the Brazilian producers of the product subject to the anti-dumping measure or their representative trade association;
- II. the government of the exporting country of the products referred to in article 121, sub-paragraphs II and III;
- III. the producers or the exporters of the products referred to in article 121, sub-paragraphs II and III;
- IV. the Brazilian importers of the parts, pieces or components referred to in article 121, sub-paragraph I;
- V. the companies responsible for the manufacture of the parts, pieces or components referred to in article 121, sub-paragraph I; and
- VI. other domestic or foreign parties which may be affected by the review, at the discretion of DECOM.

Article 127. DECOM may send questionnaires to the interested parties, which shall be granted a period of twenty (20) days following acknowledgment of the distribution of such questionnaires to return them.

Sole Paragraph. Upon request and whenever possible, a ten (10) day extension of the time limit provided for in the **chapeau** may be granted.

Article 128. The reviews shall be concluded within a period of six (6) months from the date of publication of the notice of initiation of the investigation, except in exceptional circumstances, when the time limit may be extended for up to three (3) months.

Article 129. Whenever possible, extension of the scope of an anti-dumping measure shall be subject to an individual determination for each known producer, exporter, or importer of the product subject to the anti-circumvention review.

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

- I. in the case of article 121, sub-paragraph I, a selection of the importers accounting for the largest percentage, which can be reasonably investigated, of the volume of imported parts, pieces or components originating in or from the country subject to the anti-dumping measure whose manufacture results in a like product to the product subject to the anti-dumping measure;
- II. in the case of article 121, sub-paragraphs II and III, a selection of the producers or the exporters accounting for the largest percentage of the volume of exports from the exporting country, which can be reasonably investigated,.

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

Article 130. The scope of anti-dumping duties shall be extended to all producers, exporters, or importers included in the selection provided for in the article above which have submitted the requested data and in respect of which DECOM has reached a final affirmative determination of circumvention practices.

Paragraph 1. The amount of the extended duty shall consist of the weighted average of the margin of dumping determined for the producers or exporters whose duty in the original investigation or in the last review was calculated on the basis of article 27 or article 28, sub-paragraphs I and II, not including zero or **de minimis** margins of dumping.

Paragraph 2. In the case of article 121, sub-paragraph I, the anti-dumping duty levied on parts, pieces or components shall be applied as an **ad valorem** rate.

Paragraph 3. Producers, exporters, or importers for which a final negative determination is reached shall be individually identified in the notice terminating the review and shall not be subject to the extension of the application of the anti-dumping duties in force.

Paragraph 4. Price undertakings shall be considered violated in the case of a final affirmative determination for a producer or an exporter which has price undertakings are in effect.

Article 131. For known importers not included in the selection and who have imported the parts, pieces or components into Brazil referred to in article 121, sub-paragraph I, during the period of review, the anti-circumvention review shall be suspended and the scope of the application of the anti-dumping duties shall not be extended.

Article 132. For the known producers or exporters not included in the selection who exported the products referred to in article 121, sub-paragraphs II and III, during the period of review, the review shall be suspended and the scope of the application of anti-dumping duties shall not be extended.

Article 133. If there is evidence that the producers, exporters, or importers referred to in articles 131 and 132 are engaged in circumvention, DECOM may, based on a reasoned request or by its own initiative, resume the review.

Paragraph 1. SECEX shall publish a notice as to resumption of the review.

Paragraph 2. In the case provided for in article 130, paragraph 4, CAMEX shall publish a notice as to resumption of the review.

Article 134. For unknown producers, exporters, or importers or those who, although included in the selection, fail to provide the data requested, the scope of the anti-dumping duty shall be extended based on the best information available, pursuant to article 50, paragraph 3.

Paragraph 1. Importers not engaged in importing the parts, pieces or components referred to in article 121, sub-paragraph I, into Brazil during the period of the anti-circumvention review may request their exclusion from the anti-dumping measure extended under this subsection.

Paragraph 2. Producers or exporters not engaged in exporting the products provided for in article 121, sub-paragraphs II and III, to Brazil during the period of the anti-circumvention review may request a review of new producer or exporter, pursuant to subsection I of this section.

Article 135. For importers not subject to extension of the scope of the anti-dumping measure, the non-extension shall be contingent on maintenance of the same suppliers identified in the review period.

Article 136. The importer referred to in article 134, paragraph 1, shall submit sufficient factual and legal elements to demonstrate that:

- I. it does not maintain a relationship or association, pursuant to article 14, paragraph 10, with the interested parties in the anti-circumvention review which resulted in the extension of the scope of the anti-dumping measure;
- II. it did not import the parts, pieces or components referred to in article 121, sub-paragraph I, into Brazil during the anti-circumvention review period; and
- III. the manufacturing operations referred to in article 121, sub-paragraph I, resulted in an added value of at least thirty-five percent (35%), calculated on the basis of the total manufacturing cost of the product, pursuant to article 123, paragraphs 3 and 4.

Article 137. Anti-dumping duties extended under anti-circumvention reviews shall be subject to sunset reviews of the anti-dumping duty that gave rise to the anti-circumvention review.

Article 138. Sections V and VI of chapter V shall not apply to anti-circumvention reviews.

Article 139. Duties extended on the basis of the reviews under this subsection shall be terminated and anti-circumventions reviews ended when the anti-dumping duty which gave rise to the anti-circumvention review or to the extension of the application of such duty is terminated.

### **Subsection III Reimbursement Review**

Article 140. Any importer of the product subject to the anti-dumping duty may request reimbursement for definitive anti-dumping duties paid if it is demonstrated that the calculated margin of dumping for the reimbursement review period is less than the duty in force.

Article 141. The reimbursement review shall be requested by the interested importer through a reasoned written application based on evidence that the amount of the anti-dumping duties paid was greater than that which would have been due had the duty been calculated on the basis of the margin of dumping established for the period of review.

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

Paragraph 2. For the purpose of this subsection, the applicant for the reimbursement review and the producers or exporters to which an individual anti-dumping measure has been applied shall be considered interested parties in a reimbursement review.

Paragraph 3. If the exporting country is not considered a market economy, a producer in the third country utilized in the proceeding immediately prior to initiation of the review shall be designated for the purpose of determining the normal value.

Article 142. The period of review shall normally comprehend twelve (12) months, but never less than six (6) months.

Sole Paragraph. The end of the period shall correspond to the date of the last import during the period in which the reimbursement is claimed and in which anti-dumping duties have been paid.

Article 143. The application referred to in article 141 shall be filed within four (4) months from the last day of the period of review.

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

Paragraph 2. The application shall contain evidence on the normal value and price of the product exported to Brazil by the producer or exporter for which an individual margin of dumping was calculated.

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

Article 144. The margin of dumping calculated for the period of review shall serve exclusively to calculate the possible reimbursement of anti-dumping duties collected in an amount above the margin of dumping established for the period of review.

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

Article 145. In the case of a final affirmative determination, DECOM shall notify the Secretariat of the Federal Revenue of Brazil of the Ministry of Finance of the margin of dumping established for the period of reimbursement review. The Secretariat of the Federal Revenue of Brazil shall be responsible for the respective reimbursement.

Sole Paragraph. The reimbursement shall be executed, in general, within a period of ninety (90) days from the date of publication of the completed review.

## **Chapter IX ASSESSMENT OF SCOPE AND REDETERMINATION**

### **Section I Assessment of Scope**

Article 146. Any of the interested parties designated in article 45, paragraph 2, in addition to other importers, may request that DECOM proceed to an assessment of scope, for the purpose of determining whether a product is subject to an anti-dumping measure in force.

Sole Paragraph. If DECOM deems an assessment of scope necessary for determining whether a product is subject to an anti-dumping measure in force, it may initiate an assessment of scope of its own initiative.

Article 147. The assessment of scope shall be requested through a reasoned written application containing:

- I. a detailed description of the product to be assessed and the pertinent evidence, including the product's technical characteristics and uses, as well as its tariff classification under the MERCOSUR Common Nomenclature – MCN; and
- II. a detailed explanation, accompanied by the pertinent evidence, of the reasons for the applicant's conclusion that the product is, or is not, subject to an anti-dumping measure in force.

Article 148. If the application has been properly documented, SECEX shall publish a notice as to initiation of the assessment of scope.

Article 149. The notice that authorizes the initiation of an assessment of scope shall contain:

- I. a detailed description of the product submitted for assessment and the product subject to the anti-dumping measure;
- II. the basis for DECOM's conclusion that the assessment is necessary;
- III. a schedule for the interested parties to be heard on the matter; and
- IV. the date of the hearing provided for in article 152, sole paragraph, if applicable.

Sole Paragraph. For the purpose of fulfilling the schedule in sub-paragraph III, the interested parties shall be given thirty (30) days from the date of publication of the notice referred to in article 148 to file written statements or submit evidence.

Article 150. Where a final conclusion on whether the product is, or is not, subject to an anti-dumping measure is reached based solely on the information contained in the application, DECOM shall prepare a final determination within a period of sixty (60) days from the date of publication of the notice referred to in article 148.

Article 151. If a final conclusion is not possible based solely on the information contained in the application, DECOM may submit questionnaires to the interested parties and conduct on-the-spot investigations of the information received, in which case DECOM shall prepare the final determination within a period of one hundred and twenty (120) days from the date of publication of the notice referred to in article 148.

Article 152. The examination conducted by DECOM shall be based on the criteria used to determine the product subject to the investigation, pursuant to article 10.

Sole Paragraph. DECOM may convene the hearings provided for in article 55 to clarify aspects in connection with the scope of the anti-dumping measure in force within a period of forty (40) days from the date of publication of the notice referred to in article 148.

Article 153. SECEX shall forward the final conclusion to CAMEX for approval and publication of the notice containing the result of the assessment of scope.

Article 154. The results and conclusions of the assessments of scope may be utilized by DECOM to prepare investigations or reviews initiated under this Decree.

Sole Paragraph. The assessment conducted under this section shall be interpretive and shall not modify the scope of the anti-dumping measures in force.

## **Section II Redetermination**

Article 155. The domestic producers of the like product or the representative trade association may request that DECOM proceed to a redetermination, for determining whether the effectiveness of an anti-dumping measure has been compromised:

- I. by virtue of the manner in which the measure was applied; or
- II. as a result of the fact that the export price or, in the case of article 21, the resale price of the product subject to the duty in the Brazilian domestic market decreased, remained unchanged, or increased in an amount less than expected upon application, modification, extension of the duration, or extension of the scope of an anti-dumping measure.

Paragraph 1. Redetermination shall be requested by a reasoned written application.

Paragraph 2. Exceptionally, DECOM may initiate a redetermination on its own initiative.



Article 156. In the case of article 155, sub-paragraph I, the application shall contain a detailed explanation and the pertinent evidence which lead the applicant to conclude that a redetermination is necessary.

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

Paragraph 2. The rule set forth in paragraph 1 shall apply to measures which have had their duration extended through a review under chapter VIII.

Paragraph 3. The adjustment of the form of application shall not exceed the margin of dumping established in the original investigation or the most recent review.

Article 157. In the case of article 155, sub-paragraph II, the application shall contain a detailed explanation and the pertinent evidence which led the applicant to conclude that a redetermination is necessary.

Paragraph 1. Applications submitted pursuant to this article shall only be accepted if the anti-dumping measure has been applied at an amount less than the margin of dumping.

Paragraph 2. Throughout the course of the redetermination, exporters, foreign producers, importers, and domestic producers shall be given adequate opportunity to clarify aspects related to the export or resale prices of the product subject to the duty in the Brazilian domestic market.

Article 158. A redetermination shall only be initiated nine (9) months following the date of application, modification, extension of the duration, or extension of the scope of an anti-dumping measure.

Paragraph 1. SECEX shall publish a notice initiating the redetermination.

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

Article 159. In the case of article 155, sub-paragraph II, if DECOM concludes that the application of the anti-dumping duty should have resulted in changes to the prices in question which did not occur it may recommend that CAMEX adjust the anti-dumping measure in force.

Article 160. Affirmative determinations on the absorption of the duties referred to in article 155, sub-paragraph II, constitute significant evidence that termination of the duty would lead to continuation or recurrence of the dumping.

## **Chapter X DISCLOSURE**

Article 161. The notices arising from the decisions issued by the authorities referred to in articles 2 and 5 shall be published in the Official Daily Government Newspaper and include detailed information on the conclusions regarding the factual and legal elements presented.

Article 162. The notices referred to in article 161 concerning the initiation of an investigation shall contain, among other elements, information on the following:

- I. the name of exporting country or countries and the product subject to the investigation;
- II. the date of initiation of the investigation;
- III. the basis on which dumping is alleged in the application;
- IV. a summary of the facts on which the allegation of injury is based;
- V. the address to which statements by interested parties should be directed; and

VI. the time limits and regulations for the statements of the interested parties.

Article 163. The notices provided for in article 161 on the imposition of provisional anti-dumping measures shall set forth sufficient detail on preliminary determinations reached on dumping, injury and causal link between the dumped imports and the alleged injury and all the factual and legal elements on which acceptance or denial of the arguments presented by the interested parties was based.

Sole Paragraph. In particular, notices shall include, among other elements, the following information:

- I. the names of the producers or the exporters to which the provisional anti-dumping measures shall be applied or, if the number of producers or exporters is so large that hinders individualization, the name of the countries in which the investigated producers or exporters are located;
- II. a detailed description of the product subject to the provisional anti-dumping measure;
- III. the margins of dumping determined and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;
- IV. the data on the principal parameters deemed necessary for the determination of injury and the causal link; and
- V. the factual and legal elements leading to the preliminary affirmative determination of dumping, injury to the domestic industry, and causal link between the dumped imports and the alleged injury.

Article 164. The notices provided for in article 161 concerning the imposition of definitive anti-dumping measures or approval of price undertakings shall contain all of the relevant information on the factual and legal elements leading to the final affirmative determination.

Sole Paragraph. In particular, the notices shall include, in addition to the information referred to in the sole paragraph of article 163, the bases for acceptance or rejection of the arguments presented by the interested parties.

Article 165. The notice referred to in article 161 on the termination or suspension of an investigation following the acceptance of a price undertaking shall include the transcription of the non-confidential part of the undertaking.

Article 166. The provisions in this section shall apply, as the case may be, to the initiation and to the termination of the reviews set forth in chapter VIII.

Article 167. The notification obligations arising from application of this Decree may be met through submission of a copy of the notices referred to in the chapter.

Article 168. Where the investigations encompass interested parties from one or more Member States of MERCOSUR, copies of the respective notices shall be submitted directly, in advance, to the respective investigating authorities in the member countries by electronic medium.

Article 169. Electronic versions of the notices provided for in this chapter shall be made available on the Ministry of Development, Industry, and Foreign Trade's web site.

## **Chapter XI THE FORM OF PROCEDURAL ACTS AND TERMS**

Article 170. Procedural acts and terms do not depend on any special format, but the interested parties must observe the instructions of this Decree and of SECEX when preparing petitions and documents in general; otherwise they shall not be appended to the process.

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

Paragraph 2. Procedural acts shall be considered public in nature.

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

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

## **Chapter XII DECISION-MAKING PROCESS**

Article 171. The preliminary or final, affirmative or negative, determinations on the investigations and on the reviews shall be based on an opinion issued by DECOM.

Article 172. Requests for reconsideration which are not accompanied by reasoned argumentation or which are submitted to the Executive Secretariat of CAMEX after the non-extendable period of ten (10) days from the date of publication provided for in article 66, paragraph 4, and article 77, shall not be considered.

Article 173. Suspension shall not be granted in the case of requests for reconsideration under any circumstances.

Article 174. If the decision is reconsidered, the Executive Secretariat of CAMEX shall request, if it is the case, that the Secretariat of the Federal Revenue of Brazil of the Ministry of Finance proceed to the reimbursement of improperly collected amounts.

## **Chapter XIII ON-THE-SPOT INVESTIGATIONS**

Article 175. Upon initiation of the investigation, DECOM shall notify the foreign producers or exporters, domestic producers, and the selected importers of its intention to conduct on-the-spot investigations and of the recommended dates for execution of such investigations.

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

- I. thirty (30) days, in the case of foreign producers or exporters and importers; and
- II. twenty (20) days, in the case of domestic producers;

Paragraph 2. Within two (2) days from the date of acknowledgment of the notification to which the previous paragraph refers to, the foreign producer or the exporter, the domestic producer, or the importer shall submit express written consent for the investigation.

Paragraph 3. The absence of a timely response from the foreign producer, the exporter, or the importer may give rise to application of the provisions referred to in chapter XIV.

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

Paragraph 5. Except as provided in paragraph 7, changes to the data subject to verification shall not be permitted following the issuance of the notification to which paragraph 1 refers to.

Paragraph 6. DECOM shall issue a verification script and specify the information to be requested and examined at the time of the visit, in addition to the documents which must be submitted within:

- I. twenty (20) days prior to the investigation, in the case of foreign producers or exporters or importers; and
- II. ten (10) days prior to the investigation, in the case of domestic producers.

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

Paragraph 8. DECOM's examination in respect of the explanations provided shall be included in the investigation report, access to which shall be granted to the investigated party within a period of fifteen (15) days from the final date of the authorization of departure from the country of the officials that participate in the investigation team.

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

Paragraph 10. Upon obtainment of the consent of the foreign producer or exporter referred to in paragraph 2, the government of the exporting country shall be immediately notified of the names and addresses of the producers and exporters that are to be investigated, as well as the dates agreed for the respective investigations.

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

Article 176. The on-the-spot investigation of the foreign producer or the exporters shall be conducted following submission of the questionnaire, unless the producer or the exporter agrees otherwise and the government of the exporting country is notified of the investigation in advance and raises no objections.

Article 177. Investigations aimed at explaining the questionnaire referred to in article 50 may be conducted only upon request of the foreign producer or the exporter and shall only occur if DECOM notifies the government of the exporting country and such government raises no objections to the investigation.

Article 178. Replies to requests for information or to questions that are put by authorities or firms of the exporting country, that are essential to a successful on-the-spot investigation should, whenever possible, be submitted before the visit is made.

#### **Chapter XIV BEST INFORMATION AVAILABLE**

Article 179. Upon initiation of an investigation, the interested parties shall be notified of the data and information required for the fact-finding phase of the process, as well as of the manner in which that information should be structured and the time periods for submitting it.

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

Article 180. DECOM shall take into account when preparing its determinations the verifiable information timely and appropriately submitted and, therefore, suitable for utilization in the investigation.

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

Article 181. If DECOM does not accept data or information, it shall notify the interested party of the reasons therefor, for the purpose of giving such party the opportunity to provide further

explanations within the time limits established by DECOM, in a way to ensure that the investigation is not jeopardized.

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

Article 182. If DECOM uses information from secondary sources to prepare its determinations, including those provided in the applications, such information shall, to the extent possible, be compared with information from independent sources or from other interested parties.

Article 183. Whenever DECOM does not have the specific means for processing the information, having received it in computer language incompatible with its operating system, the information must be submitted in the form of a written document.

Article 184. The interested party shall be responsible for cooperating with the investigation and providing all of the requested data and information, assuming the respective liabilities for any omissions.

## **Chapter XV GENERAL PROVISIONS**

Article 185. The time limits provided for in this Decree shall be counted continuously, including the respective due dates.

Sole Paragraph. Time limits that end on a non-business day or on a day with shortened business hours shall be extended to the next full business day.

Article 186. The foreign producers or exporters shall be assumed to have knowledge of the questionnaire sent by DECOM within a period of ten (10) days following the respective postage or transmission date.

Article 187. Counting of time limits shall begin on the first business day after publication of the notice or issuance of the respective correspondence, where applicable.

Article 188. The time limits calculated in months shall be counted from a date to a same date.

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

Article 189. The applications for extension of the duration, when allowed, shall only be considered if submitted prior to expiry of the original time limit and the first day of such extension shall be the day following expiry of the original time limit.

Article 190. The time period corresponding to the extension shall be added to the original time limit, such that the total time limit shall be counted consecutively from the beginning of the original time limit period.

Article 191. The content of all DECOM opinions, determinations, and recommendations shall not be disclosed until the disclosure requirements established in this Decree have been fulfilled, at which point the documents shall be attached to the case file.

Paragraph 1. The confidentiality obligations provided for in this Decree shall extend to the authorities involved in decision-making processes relating to the application of anti-dumping measures.

Paragraph 2. The competent authorities of the Ministries with seats on CAMEX shall have access, through DECOM's opinions, to all confidential information submitted by the interested parties in the course of the anti-dumping investigations conducted under this Decree.

Article 192. The products subject to anti-dumping measures shall be submitted to detailed statistical follow-up and intelligence efforts between SECEX and Secretariat of the Federal Revenue of Brazil so as to assure the effectiveness of the anti-dumping measures in force.

Article 193. For the purpose of this Decree, requests for changes to the MERCOSUR Common Nomenclature (MCN) may be submitted to the proper MERCOSUR body.

Article 194. DECOM may extend the time limits provided for in this Decree for one equal period, except in the cases in which this Decree specifically provides for such extension or prohibits it.

Article 195. SECEX, the Secretariat of the Federal Revenue of Brazil of the Ministry of Finance and CAMEX may issue supplementary rules and regulations to this Decree within the scope of their attributions.

Article 196. In cases in which Brazil has been authorized by the Dispute Settlement Body of the World Trade Organization – WTO to suspend concessions or other obligations provided for in WTO Agreements, the provisions of this Decree may, by decision of the Council of Ministers of CAMEX, be disregarded in whole or in part.

Article 197. The applications for investigations and reviews filed until the entry into force of this Decree shall be covered under Decree 1602, dated August 23, 1995

Article 198. Annex I of Decree 7096, dated February 4, 2010, enters into force in the following form:

"Article 2..... II ...  
 .....  
 .....  
 b).....  
 .....4. Department of Statistic and Export Support; and  
 5. Department of Foreign Trade Competitiveness;  
 ....."

"Article 19. It falls to Department of Statistic and Export Suport the following attributions:  
 ....."  
 "Article 20. It falls to Department of Foreign Trade Competitiveness the following attributions:  
 ....."

Article 199. Annex II of Decree 7096, dated February 4, 2010, enters into force in the form of the Annex to this Decree

Paragraph 1. Additions due to the modifications referred to in the **chapeau** shall occur within twenty (20) days from the date of publication of this Decree.

Paragraph 2. The Minister of Development, Industry, and Foreign Trade shall publish in the Official Gazette, within a period of thirty (30) days following the additions, the nominal list of positions holders as referred in the Annex, indicating the number of vacant positions, their denominations and levels.

Article 200. This Decree shall enter into force on October 1<sup>a</sup>, 2013.

Article 201. The following are hereby revoked:

- I. Decree 1602, dated August 23, 1995;
- II. Article 2 of Decree 7474, dated May 10, 2011; and
- III. Annex II to Decree 7474, dated May 10, 2011.

Brasília, ,2013; 192<sup>o</sup> of Independence e 125<sup>o</sup> of Republic,

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